



Malaysian Communications and Multimedia Commission

Review of Mandatory Standard on Access

Public Inquiry Paper

13 June 2022

This Public Inquiry Paper was prepared in fulfilment of sections 55(2), 55(4) and 61 of the Communications and Multimedia Act 1998

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PREFACE

The MCMC invites submissions from industry participants, other interested parties and members of the public on the questions and issues raised in this PI Paper concerning the **Review of Mandatory Standard on Access**. In this PI Paper the MCMC sets out a number of preliminary views. Submissions are welcome on the preliminary views where comment is specifically sought. Submissions are also welcome on the rationale and analysis in this PI Paper where no specific questions have been raised. All submissions should be substantiated with reasons and, where appropriate, evidence or source references. Written submissions, in both hard copy and electronic form, should be provided to the MCMC in full by **12 noon, 8 August 2022**.

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In the interest of fostering an informed and robust consultative process, the MCMC proposes to make submissions received available to interested parties upon request. The MCMC also reserves the right to publish extracts or entire submissions received. Any commercially sensitive information should be provided under a separate cover clearly marked '**CONFIDENTIAL**'. However, for any party who wishes to make a confidential submission, a "public" version of the submission should also be provided.

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ABBREVIATIONS AND GLOSSARY

ADUN	Ahli Dewan Undangan Negeri
AMR-WB	Adaptive Multi-Rate Wideband
ANE	Access to Network Elements
API	Application Programming Interface
ARC	Advanced Research Communications Sdn. Bhd.
ARD	Access Reference Document, which is a document of the terms and conditions required to be formulated by an Access Provider under the current MSA
A2P	Application-to-person
BSS	Business Support System
BTU	Broadband Termination Unit
CAAM	Civil Aviation Authority of Malaysia
CAPEX	Capital Expenditure
CIMS	Communications Infrastructure Information Management System
CMA	Communications and Multimedia Act 1998
CMCO	Conditional Movement Control Order
CNII	Critical National Information Infrastructure
COS	Class of Service
CPE	Customer Premise Equipment
CRM	Commercial Radio Malaysia
CSU	Cost Sharing Unit
DBKL	Dewan Bandaraya Kuala Lumpur
DNB	Digital Nasional Berhad
DRM	Digital Radio Mondiale
DSL	Digital Subscriber Line
DTT	Digital Terrestrial Television

DTBMS	Digital Terrestrial Broadcasting Multiplexing Service
EMF	Electronic Magnetic Field
EOI	Equivalence of Inputs
EPC	Evolved Packet Core
FLC	Federal Lands Commissioner
FNP	Fixed Number Portability
FTA	Free to Air
FWA	Fixed Wireless Access
GSMA	GSM Association
GSP	Gaining Service Provider
HLR	Home Location Register
HSBB	High Speed Broadband
IBC	In-building Coverage
IP	Internet Protocol
IPTV	Internet Protocol Television
IR 4.0	Fourth Industry Revolution
ISDN	Integrated Services Digital Network
JENDELA	Pelan Jalinan Digital Negara
JKR	Jabatan Kerja Raya
KPI	Key Performance Indicators
LTBE	Long-Term Benefit of the End User
LTE	Long-Term Evolution
Mbps	Mega Bit Per Second
MAFB	Malaysian Access Forum Berhad
MCMC	Malaysian Communications and Multimedia Commission
MCO	Movement Control Order
MGW	Media Gateway
MNP	Mobile Number Portability

MNO	Mobile Network Operator
MOCN	Multi-operator Core Network
MSA	Mandatory Standard on Access
	The terms of the current MSA are set out across two instruments: the Commission Determination on Mandatory Standard on Access, Determination No 2 of 2005, as varied by the Variation to Commission Determination on the Mandatory Standard on Access (Determination No 2 of 2005), Determination No 2 of 2009.
	The draft MSA proposed by the MCMC is set out in Annexure 3.
MSAP	Mandatory Standard on Access Pricing
MSAP 2012	Commission Determination on the Mandatory Standard on Access Pricing, Determination No.1 of 2012
MSC	Mobile Switching Centre
MSQoS	Mandatory Standard for Quality of Service
MTSFB	Malaysian Technical Standards Forum Berhad
MTU	Minimum Transmission Unit
MVNO	Mobile Virtual Network Operator
MVNE	Mobile Virtual Network Enabler
NEAP	Numbering and Electronic Addressing Plan
NFP	Network Facilities Provider
NFCP	National Fiberisation and Connectivity Plan
NSP	Network Service Provider
NGN	Next-Generation Network
NOC	Network Operation Centre
Ofcom	Office of Communications (United Kingdom)
OLT	Optical Line Terminal
ONU	Optical Network Unit
OPEX	Operational Expenditure

OSA	One-Stop Agency
OSC	One Stop Centre
OSHA	Occupational Safety and Health Act
OSS	Operational Support System
OTT	Over-the-Top
O&T	Origination & Termination
POA	Point of Access
POC	Proof of Concept
POI	Point of Interconnection
PPIT	Persatuan Penyedia Infrastruktur Telekomunikasi
PTW	Permit to Work
QoS	Quality of Service
RAN	Radio Access Network
RAO	Reference Access Offer
ROE	Right of Entry
RFS	Ready for Services
ROW	Right of Way
RSP	Releasing Service Provider
SAO	Standard Access Obligation
SBC	State-Backed Company
SESB	Sabah Electricity Sdn. Bhd.
SG	Service Gateway
SIP	Session Initiation Protocol
SLA	Service Level Agreement
SMS	Short Messaging Services
SOC	Service Operation Centre
SRSP	Standard Radio System Plan
SS7	Signalling System Number 7

STB	Set Top Box
TDM	Time Division Multiplexing
TOL	Temporary Occupancy Licence
TM	Telekom Malaysia
TNB	Tenaga Nasional Berhad
TV	Television
UK	United Kingdom of Great Britain and Northern Ireland
USP	Universal Service Provision
VLAN	Virtual Local Area Network
VDSL	Very High Bit Rate Digital Subscriber Line
VoLTE	Voice-over-LTE (Long-Term Evolution)
2G	Second Generation
3G	Third Generation
4G	Fourth Generation
5G	Fifth Generation

Review of Mandatory Standard on Access

1 Overview of the current Mandatory Standard on Access

Regulatory approach and scope of the current Mandatory Standard on Access

- 1.1 The current Mandatory Standard on Access (**MSA**) imposes obligations on Access Providers and Access Seekers in relation to Facilities and Services contained in the Access List. It does not extend regulation beyond the Access List. The MSA principally imposes obligations to facilitate the negotiation of Access Agreements between an Access Provider and an Access Seeker.
- 1.2 The current MSA currently does not specify all of the actual terms and conditions that are required to be included in an access agreement. It instead targets specific areas for regulation, such as disclosure, negotiation, content and Service Specific Obligations, and requires Access Providers and Access Seekers to reach agreement in relation to those (and other) requirements.
- 1.3 An Access Provider must prepare a RAO, which sets out the full terms and conditions on which the Access Provider is prepared to supply Facilities and Services to any other operator. Access Seekers are then left to either negotiate an access agreement with the Access Provider that is based on, and aligns with, the MSA, or to enter into an agreement based on the RAO (which must itself be consistent with the MSA) as published by the Access Provider.

Overview of obligations under the current MSA

- 1.4 The current MSA contains 4 substantive sections imposing obligations on Access Providers and Access Seekers:
 - (a) **Disclosure Obligations** – Under the Disclosure Obligations in the MSA, Access Providers must make available certain information to Access Seekers during negotiation of an access agreement and, on two occasions a year, to the Malaysian Communications and Multimedia Commission (**MCMC**). In particular, an Access Provider must prepare an RAO which is consistent with the rights and obligations set out in the MSA.
 - (b) **Negotiation Obligations** – Under the Negotiation Obligations in the MSA, Access Providers must negotiate with Access Seekers in accordance with certain requirements concerning timeframes and process. Given that the MSA does not specify all terms and conditions of access, the Negotiation Obligations attempt to limit the ability of an Access Provider to misuse its stronger position during negotiations with an Access Seeker by means of regulated Negotiation Obligations.

- (c) **Content Obligations** – Under the Content Obligations in the MSA, Access Providers must include terms and conditions in their RAOs and Access Agreements which are consistent with certain principles and terms specified in the MSA. These content obligations target a wide ranging number of areas where Access Providers may otherwise attempt to undermine the intent of access.
- (d) **Service Specific Obligations** – Under the Service Specific Obligations in the MSA, Access Providers must comply with certain terms and conditions relating to the supply of specific Facilities and Services set out in the Access List. These were introduced by the MCMC in its 2016 MSA Review to reflect that a “one size fits all” approach to regulation of some non-price terms may not always be appropriate for certain Facilities and Services.

Historical development of the current MSA

- 1.5 The first Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2003 came into force in response to Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003.
- 1.6 In 2005, the MCMC conducted a review of the Access List and the MSA, which resulted in a series of amendments to address comments received from stakeholders, as well as the consequential amendments arising from the review of the Access List.
- 1.7 In summary, the changes to the MSA in 2005 resulted in:
 - (a) a “fast track” process for applications and agreements, specifically applicable for Access Seekers whose requirements for access and interconnection are relatively simple;
 - (b) a streamlining of the application and negotiation process for negotiation of an Access Request;
 - (c) clarification regarding the binding nature of forecasts, confirmed by Access Seekers, on those Access Seekers;
 - (d) clarification regarding the provision of co-location by deemed Access Providers;
 - (e) obligations concerning inter-operator mobile number portability (**MNP**) support service;
 - (f) obligations concerning Domestic Connectivity to International Services;
 - (g) obligations concerning Internet Interconnection Service;
 - (h) obligations concerning Digital Terrestrial Broadcasting Multiplexing Service; and
 - (i) obligations concerning Access to Network Elements.

- 1.8 In 2008, the MCMC also combined the review of the Access List and the MSA in a single inquiry. The MCMC concluded that it had not been presented with strong evidence requiring major amendments to the MSA. However, the following changes were made to the MSA by variation in 2009:
- (a) introducing obligations relating to Wholesale Line Rental Service;
 - (b) introducing obligations relating to High Speed Broadband (**HSBB**) Network Services;
 - (c) encouraging the Malaysian Access Forum Berhad (**MAFB**) to enhance efforts towards self-regulation, including developing Quality of Service parameters and taking an active role in the development of non-price terms and conditions of access through access codes;
 - (d) amending the Digital Terrestrial Broadcasting Multiplexing Service to remove prescriptive bit rate allocation; and
 - (e) in respect of naked digital subscriber line (**DSL**):
 - (i) enabling Access Seekers to provide naked DSL to their end users as a retail service offering; and
 - (ii) prohibiting Access Providers from requiring the end user to acquire the line rental service at a fee from them, if the Access Seeker is acquiring the Wholesale Line Rental Service, Full Access Service, Bitstream Services or Sub-Loop Service.
- 1.9 In 2015 and 2016, the MCMC conducted separate reviews of the Access List and the MSA, and ultimately made the following changes to the MSA through a new Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016:
- (a) replacing the Access Reference Document (**ARD**) model with a stronger Reference Access Offer (**RAO**) model, with Access Providers prohibited from refusing entry into an access agreement on the terms set out in a RAO (subject to certain limited exceptions);
 - (b) introducing new Service Specific Obligations, which include more detailed and nuanced terms in respect of forecasts, acknowledgement of receipt of orders, time for acceptance or rejection of orders, billing cycle and indicative delivery times, in each case applying specifically for certain services;
 - (c) including terms relating to three new services listed in the Access List following the 2015 Access List Review, being the Layer 3 HSBB Network Service, MVNO Access and End-to-End Transmission Service;
 - (d) introducing additional and expanded definitions, such as defining "Service Qualification" in a service-specific manner;

- (e) bolstering the non-discrimination obligations by, among other things adopting an equivalence of inputs (**EOI**) standard and including new reporting requirements for specific services;
 - (f) introducing a new section to address necessary third-party involvement causing or contributing to non-compliance with a regulated timeframe by an Access Provider;
 - (g) amending the forecasting obligations to limit the ability of an Access Provider to use the forecasting requirements in such a way that it gives the Access Provider's retail operations a strategic advantage in downstream markets; and
 - (h) amending the Service Specific Obligations relating to physical access, on a case-by-case basis.
- 1.10 As the MCMC has noted in the past, the historical development of the MSA provides important context for the current (and any future) inquiry. The MCMC will consider its original positions where possible when determining whether to add, amend or remove terms from the MSA as part of the current review.

Access List alignment

- 1.11 In December 2021, the MCMC made a Determination on the Access List following a review of the Access List (**Access List Review**), as part of which several amendments were made to the Access List.
- 1.12 Given that the MSA relates specifically to the Facilities and Services in the Access List, the MCMC notes that corresponding amendments to the MSA will be required to align with the updated Access List.
- 1.13 The following Facilities and Services have been removed from the Access List:
- (a) Wholesale Line Rental Service;
 - (b) Full Access Service;
 - (c) Line Sharing Service;
 - (d) Sub-Loop Service;
 - (e) Bitstream with Network Service;
 - (f) Bitstream without Network Service; and
 - (g) Digital Subscriber Line Resale Service.
- 1.14 Further, the following Facilities and Services were included in the Access List following a Public Inquiry:
- (a) Domestic Inter-Operator Roaming Service;
 - (b) 5G Standalone Access;

- (c) 4G Evolved Packet Core ("EPC) with 5G Radio Access Network ("RAN") Access; and
- (d) IP Transit Service.

1.15 Finally, the MCMC has made amendments to the following services:

- (a) **Fixed Network Origination Service** and **Mobile Network Origination Service**, to remove short messaging service (SMS)/multimedia messaging service;
- (b) **Mobile Network Termination Service** and **MVNO Access Service**, to clarify that 5G technology is included in the scope of this service;
- (c) **Infrastructure Sharing Service**, to expand the scope of the service to cover access to poles, rooftops and street furniture;
- (d) **Duct and Manhole Access**, to expand the scope of duct and manhole infrastructure included within the listed service and to clarify the obligation of access providers to provide access to the land upon which such infrastructure is located;
- (e) **Interconnect Link Service**, to include Internet Protocol (IP)-based interconnection and included bandwidth for such interconnection;
- (f) **Digital Terrestrial Broadcasting Multiplexing Service**, through amending the definition of "Transport Stream" to reflect that the service can be supplied as an audio-visual or audio-only service and to include any method of delivery of the Transport Stream;
- (g) **End-to-End Transmission Service** and **Wholesale Local Leased Circuit Service**, to clarify the scope of these services, include certain technical parameters, and ensure that transmission services are supplied on an unbundled basis; and
- (h) **HSBB Layer 2 Network Service with QoS** and **HSBB Layer 3 Network Service**, to reflect the availability of higher speed tiers for the services, and to clarify that the scope of services also includes any technical parameters not expressly listed.

1.16 The amendments summarised above are not exhaustive but reflect the material changes made by the MCMC to the Facilities and Services listed in the Access List. The proposed variations to the MSA terms set out in Annexure 3 include changes to align with the above, and other updates, in the Access List.

2 Key Themes

Overview

- 2.1 In conducting this review, the MCMC is considering whether any changes to the current MSA are required to best promote the national policy objectives for the communications and multimedia industry.
- 2.2 In particular, the MCMC is considering whether there are any issues with or deficiencies in the current MSA that may need to be addressed by regulation and whether any existing provisions no longer require the force of regulation.
- 2.3 In order to assist respondents to this Public Inquiry, the MCMC sets out in this section 2 a summary of the key themes that underline many of the changes it is proposing in its review of the MSA. The key themes are:
 - (a) equivalence and non-discrimination;
 - (b) limiting anti-competitive conduct; and
 - (c) consistency with operational processes.

Legislative background

- 2.4 The access regime under the Communications and Multimedia Act 1998 (**CMA**) requires that an Access Provider provide access to an Access Seeker who makes a written request for access on “reasonable terms and conditions”.¹
- 2.5 However, an access agreement only falls within the scope of the CMA if it has been registered with the MCMC.² The registration process is set out in Chapter 8, Part V and provides that the MCMC will register a written agreement if it is satisfied that the agreement is consistent with the objects of the Act, any relevant instrument under this Act (i.e. an MSA) and any relevant provisions of the Act or its subsidiary legislation.
- 2.6 Section 91 of the CMA leaves the option open for the MCMC to significantly alter the form of access agreements by changing the drafting of the MSA. Although the MCMC prefers minimal regulatory intervention, in cases where there is clear evidence that the MSA is not fulfilling its intended purpose, the MCMC is justified in stepping in.

Overview of current MSA approach

- 2.7 Following the 2016 MSA Review, the MCMC adopted the RAO model currently set out in the MSA, which requires Access Providers to prepare and maintain a RAO setting out the full terms and conditions on which the Access Provider is prepared to supply Facilities and Services listed in the Access List.

¹ CMA, subsection 149(1).

² CMA, section 150.

- 2.8 At the time, the MCMC noted that other jurisdictions had adopted similar models, including Australia, Singapore and Qatar.
- 2.9 The benefits of the RAO model include that Access Providers and Access Seekers are provided with absolute certainty about the terms and conditions of access, which significantly reduces the costs associated with lack of transparency and negotiation (e.g., time delay) and assists Access Seekers who may have otherwise faced difficulties negotiating Access Agreements.
- 2.10 The MCMC notes that while it considers that the RAO model remains relevant and generally appears to have been well received by the industry, it is concerned by submissions from many operators that some Access Provider RAOs do not comply with the requirements set out in the MSA. Such non-compliance undermines the access regime and creates barriers to competition and effective negotiation more generally. The MCMC's views in respect of this issue is set out in section 6 below.
- 2.11 The MCMC also reaffirms that the current MSA sets out regulatory principles rather than a standard form commercial wholesale contract. The MSA contains mechanisms for determining terms and conditions in the event that parties are unable to reach an agreement, including the option of seeking dispute resolution.³ The current MSA⁴ and the CMA⁵ also contain non-discrimination and equivalence of input obligations, meaning that Access Providers must negotiate and reach agreement with Access Seekers on a non-discriminatory basis, and services must be supplied on the same basis as they are supplied to an Access Provider's own retail arm.

Equivalence

Summary of proposed approach

- 2.12 In the 2016 MSA Review, the MCMC raised the non-discrimination provisions in the MSA to the current EOI standard in order to create a more level playing field between Access Seekers and an Access Provider's own retail arm.
- 2.13 Although the MCMC has observed some improvements, the MCMC does not consider that Access Providers are complying with this standard in the manner that was originally intended. To address this, the MCMC proposes to include specific provisions in the Service Specific Obligations set out in the MSA clarifying the application of the EOI standard to certain services, where the MCMC identifies that such a provision would be of assistance.
- 2.14 For clarity, the MCMC notes that the existing EOI standard already requires Access Providers to take many of the steps that the MCMC is proposing to enshrine in the Service Specific Obligations. Accordingly, the MCMC considers that the incremental compliance burden for Access Providers arising from these changes should be minimal, provided those Access

³ MSA, subsection 5.4.12.

⁴ MSA, subsection 4.1.5 – subsection 4.2 (inclusive).

⁵ CMA, subsection 149(2).

Providers are acting in accordance with the existing non-discrimination and EOI provisions.

- 2.15 The MCMC will also be considering enforcement action in respect of non-compliance with existing non-discrimination requirements under the MSA, if required. The MCMC continues to request operators to complain about, and to come forward with details of, any non-compliance for review by the MCMC.

Overview

- 2.16 The MCMC has noted the submissions of several operators who have complained that they have been unable to access certain Facilities and Services, or that they may be unable to access these in future, for various reasons including:
- (a) unavailability or inaccuracy of information;
 - (b) Access Providers imposing requirements that make access unviable or undesirable; and
 - (c) the incentive for mobile network operators (**MNOs**) to delay providing MVNOs with access to 5G networks.
- 2.17 These issues were reported primarily in the context of the following services:
- (a) Duct and Manhole Access, in respect of which Access Seekers complained that transparency and availability of the service is limited;
 - (b) MVNO Access, in respect of which Access Seekers commented that timely access to 5G networks will be critical; and
 - (c) HSBB Network Services, in respect of which Access Seekers continue to face issues in accessing the Layer 2 HSBB Network Service with QoS and desired bandwidth profiles for HSBB Network Services generally.
- 2.18 The MCMC reminds operators that the EOI principle requires that all elements that make up the service provided by the Access Provider are equal, including the parameters of the service, price charged, processes used, and timescales adopted. To this end, in addition to the amendments the MCMC proposes to the Service Specific Obligations to clarify the application of the EOI principle, the MCMC notes its amendments to the description of certain Facilities and Services in the Access List to further enshrine the application of the principle to the technical parameters with which those Facilities and Services are supplied.

Limiting anti-competitive conduct and promoting transparency

Summary of proposed approach

- 2.19 In the 2016 MSA Review, the MCMC expanded the scope of the prohibition on bundling in the MSA, in an effort to address the types of anti-competitive behaviour reported by operators.
- 2.20 Although the MCMC considers that the existing prohibition on bundling has resulted in a reduction in complaints, the MCMC proposes to make targeted amendments to the MSA to address some ongoing issues reported by Access Seekers regarding conduct by Access Providers which has the effect of delaying or denying access to Facilities and Services.

Overview

- 2.21 In their responses to the MCMC's informal questionnaire, operators commented on the following conduct by some Access Providers which created difficulties in accessing certain Facilities and Services:
- (a) non-compliance of RAOs with the terms set out in the MSA;
 - (b) complex churn processes for HSBB Network Services which create barriers for existing end users of the Releasing Service Provider to transfer to the GSP;
 - (c) inconsistent information between the Access Provider's systems and the Access Seeker's systems, including as to port availability; and
 - (d) the imposition of minimum ports per-card requirements in the context of copper-based services.
- 2.22 The MCMC considers that these issues demonstrate that despite the principles set out in the MSA, some Access Providers continue to take actions that are inconsistent with the principles of the access regime, including the promotion of competition and the efficient use of, and investment in, infrastructure. Although the MSA already contains processes which the MCMC considers capable of responding to each of these issues, the MCMC proposes targeted amendments in order to more effectively limit such conduct.
- 2.23 In particular, and as detailed later in this PI Paper, the MCMC proposes to:
- (a) increase its enforcement focus on RAO compliance;
 - (b) introduce new churn processes specific to HSBB Network Services;
 - (c) require Access Providers to provide application programming interface (**API**) integration with their operational support system (**OSS**); and
 - (d) clarify that the prohibition under subsection 5.16.14 of the MSA on requiring Access Seekers to acquire Facilities or Services in any minimum or maximum capacity applies to all elements of Facilities

and Services (e.g., as to ports per card), and not just the Facility or Service itself.

- 2.24 The MCMC also proposes to make other amendments to reflect issues raised by operators during the initial information sessions, particularly in respect of challenges faced by MNOs and MVNOs alike in the context of the MVNO Access service.

Consistency with operational processes

Summary of proposed approach

- 2.25 In the 2016 MSA Review, the MCMC included in the MSA a number of mandatory timeframes for various activities, aimed at ensuring that Access Providers did not unnecessarily delay access to Facilities and Services. Although many operators commented that these timeframes are satisfactory and are at least helpful as a guide, the MCMC understands that some of these timeframes may not be appropriate or reflect the reality of how long certain activities take to perform in practice.
- 2.26 Given the MCMC's ongoing focus on ensuring the Service Specific Obligations are tailored so as to address the issues arising in respect of each Service and Facility, the MCMC proposes to update the timeframes throughout the MSA based on submissions from operators, to fairly balance the needs of Access Providers and Access Seekers.

Overview

- 2.27 One of the key themes emerging from submissions received by operators is that some of the existing timeframes set out in the MSA, including for negotiation of Access Agreements, indicative delivery timeframes for certain Facilities and Services, and decommissioning, do not reflect the actual timeframes for these activities experienced by the industry in practice.
- 2.28 One immediate consequence of this mismatch is that Access Providers may be required to pay late delivery rebates under the MSA even where it may not be appropriate for them to do so. A broader consequence is that the MSA sets unrealistic expectations for parties, which may result in an expanded potential for disputes between parties when timeframes are not met by Access Providers.
- 2.29 The MCMC also notes that several Access Providers complained that third parties were the driving factor behind many delays. However, the MCMC notes that Access Providers have not notified the MCMC of these delays as required under section 4.5 of the MSA. Although the MCMC will not speculate as to the reason that Access Providers have not notified the MCMC of delays caused by third parties, the MCMC is concerned by the discrepancy between delays reported to the MCMC and the issues raised to the MCMC in the context of this inquiry.
- 2.30 The MCMC is unable to address issues unless they are brought to its attention for any compliance or enforcement activities. It is difficult for the

MCMC to determine that extensions of time should be enshrined in the MSA when those extensions have not been sought in practice.

- 2.31 Nonetheless, given the weight of submissions from operators regarding the inadequacy of some of these timeframes, the MCMC has proposed amendments throughout the MSA to more closely reflect operational practice, which the MCMC expects will create balanced obligations, and in so doing, minimise the scope for disputes between operators.
- 2.32 The MCMC proposes to retain, however, the existing obligation for Access Providers to notify the MCMC of delays caused by necessary third-party involvement under subsection 4.5.1 of the MSA and encourages operators to make use of this provision. The MCMC notes that this mechanism is not only designed to inform the MCMC as to Access Provider compliance with timeframes, but also aids in informing future regulatory decisions, whether under the MSA or in the furtherance of broader national policy objectives under other instruments.

3 Overview of Proposed Changes to the MSA

- 3.1 Sections 7 to 40 of this PI Paper summarise and explain the material changes proposed by the MCMC to the substantive provisions of the MSA. Not all proposed drafting changes in Annexure 3 are discussed in this PI Paper, for example, where the mark-up is clear on its face or where changes are incidental to broader amendments to the MSA. However, operators are invited to comment on or ask questions about any issues that are not directly discussed in this PI Paper.
- 3.2 The current MSA is set out in the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016. The matters covered in sections 4 to 39 below generally follow the same sequence as the MSA, other than in respect of any proposed new Service Specific Obligations (which have been included within the MCMC's discussion of the existing Service Specific Obligations below), and any other general submissions not directly related to any particular MSA section (which are set out in section 40 below).
- 3.3 The detailed structure of this PI Paper is as follows (with draft MSA section reference):
 - (a) sections 4 and 5: Introductory MSA terms and General Principles (section 4 of the draft MSA);
 - (b) sections 6 to 21: Operator Access Obligations (section 5 of the draft MSA);
 - (c) sections 22 to 37: Service Specific Obligations (section 6 of the draft MSA); and
 - (d) sections 38 and 39: Standard Administration and Compliance and Dispute Resolution Procedures (section 7 and Annexure A of the draft MSA)

4 Interpretation and Introductory Sections

Overview

- 4.1 The introductory sections of the MSA set out definitions used, and rules of interpretation for, the MSA.
- 4.2 Stakeholders generally did not report any difficulties in interpreting any provisions of the MSA. TM submitted that in its experience, differences in interpretation between operators tend to be on the definition of certain services under the Access List rather than the terms and conditions in the MSA itself.

Discussion

- 4.3 The MCMC proposes to include two new defined terms in the MSA which would introduce new concepts:
 - (a) **Customer Demand List**, meaning a list submitted by the Access Seeker requiring certain actions to be taken by the Access Provider to facilitate the placement of an Order by the Access Seeker (see paragraph 27.63).
 - (b) **High Priority Areas**, meaning certain locations, facilities or areas in respect of which a new fast-track process for access to Common Antenna Systems will apply (see paragraphs 29.22 to 29.23).
- 4.4 The MCMC notes that it has also refined existing definitions and introduced new definitions to define existing concepts in the draft MSA and to align with the amendments to the Access List, but these changes do not materially affect the substantive provisions of the MSA and so have not been listed in this section.

5 General Principles

Overview

- 5.1 Section 4 of the MSA sets out a number of general principles which govern access to Facilities and Services in the Access List.
- 5.2 In the last review of the MSA, the MCMC bolstered the non-discrimination obligations in the MSA by amending the definition of “non-discriminatory” under section 4 of the MSA to adopt an EOI standard, and by including more detailed service-specific non-discrimination obligations in the MSA (e.g. in relation to the HSB Network services).

Discussion

- 5.3 While some operators reported that the existing general principles in section 4 of the MSA are sufficient and do not require changes, operators mainly commented on the following potential areas for improvement / clarification:
 - (a) the interaction between section 4.1 and other sections of the MSA;

- (b) the non-discrimination and EOI provisions in subsections 4.1.5 and 4.1.6 of the MSA;
- (c) provisions relating to third-party delays, in section 4.5 of the MSA; and
- (d) restrictions on re-supply, in subsection 4.4.2 of the MSA.

Non-discrimination

- 5.4 The non-discrimination principle is set out in subsection 149(2) of the CMA. This provision requires an Access Provider to provide access to another provider that is:
- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided on the first provider's network facilities or network services; and
 - (b) on an equitable and non-discriminatory basis.⁶
- 5.5 Section 4 of the MSA incorporates, and further elaborates on, the legislated non-discrimination requirements. In particular, subsection 4.1.6 of the MSA currently provides that the term "non-discriminatory" requires comparison of:
- (a) the basis on which a Facility and/or Service is provided by the Access Provider to an Access Seeker; with
 - (b) the basis on which that Facility and/or Service is provided by the Access Provider to itself and to other Access Seekers.⁷
- 5.6 The MCMC bolstered these provisions in the course of the previous MSA Review and has since observed a general improvement in compliance with the non-discrimination principle across the industry. The MCMC notes that the reporting requirements introduced in the last MSA Review have also contributed to greater transparency and support for the MCMC's ability to enforce non-discriminatory supply (and EOI) by Access Providers. This is supported by submissions from operators such as Maxis, who noted that the detailed terms and conditions contained in the MSA provides good guidance in negotiating equitable and non-discriminatory access to HSBB network services in particular.
- 5.7 One Access Seeker complained about a non-discrimination issue arising specifically in the context of the HSBB Network service. In particular, that Access Seeker expressed concern about the practices applied by other operators in relation to the churn/transfer of HSBB services from the Releasing Service Provider (**RSP**) to the GSP. That complaint is further discussed in section 27 regarding the Service Specific Obligations for that service. In response, the MCMC has added Churn to the list of activities

⁶ CMA, subsection 149(2).

⁷ MSA, subsection 4.1.6.

which the non-discrimination principle applies to under subsection 4.2.1 of the MSA.

- 5.8 Astro submitted that the non-discrimination principle should expressly state that Access Providers are required to provide documents or information (i.e., capacity allocation, queuing, etc.) to show that they adhere to this principle, if requested by Access Seekers.
- 5.9 In response, the MCMC notes that it does not consider it appropriate to require Access Providers to provide information to Access Seekers that demonstrates compliance with the non-discrimination principle. Access Providers are already required to provide relevant information to the MCMC on two occasions a year under subsection 5.3.12 of the MSA, and in the MCMC's view it would be unduly onerous to also require the provision on request of further information to Access Seekers at large. The MCMC will continue to monitor reports submitted by Access Providers pursuant to subsection 5.3.12 of the MSA to determine compliance with the MSA, including compliance with the non-discrimination principle. Moreover, there is nothing preventing Access Seekers seeking to commercially resolve any perceived non-compliance with the non-discrimination principle directly with Access Providers, or otherwise submitting a dispute with the MCMC under the MSA.
- 5.10 Celcom Timur (Sabah) submitted that subsections 4.1.5 and 4.1.6 of the MSA (relating to non-discrimination obligations) and subsection 4.2.1 of the MSA (examples of matters to which the non-discrimination obligations apply) should be subject to subsection 4.2.2 of the MSA (which includes relevant economic factors, such as pricing of technical and service specifications as agreed between the Access Provider and Access Seeker), which allows Access Seekers to request access to Facilities and Services that is either superior or inferior to that which an Access Provider provides to itself.
- 5.11 In response to Celcom Timur (Sabah)'s comments, the MCMC does not propose to amend subsection 4.2.1 of the MSA to make it subject to subsection 4.2.2 of the MSA. The non-discrimination principle is an overarching principle enshrined not just within the MSA, but within the CMA itself.⁸ There is accordingly no scope for the principle to be limited, whether in the manner proposed by Celcom Timur (Sabah) or otherwise. The MCMC notes that the current drafting in subsection 4.2.2 of the MSA is designed to give Access Seekers flexibility in the services they acquire from Access Providers, rather than giving Access Providers the ability to subvert the non-discrimination principle. Accordingly, the MCMC considers these provisions are capable of operating as intended, without any amendment.

Equivalence of inputs

- 5.12 Similarly, the MCMC has observed a reduction in complaints regarding Access Provider compliance with the EOI principle, which the MCMC notes is

⁸ CMA, subsection 149(2).

also set out in section 149 of the CMA. As noted by one Access Seeker, the inclusion of the EOI provision in subsection 6.6.17 of the MSA “has been fundamental in facilitating fair access” to HSBB services.

- 5.13 However, some Access Seekers have requested that the EOI principle be expanded to cover other Facilities and Services offered by Access Providers. In particular, NET2ONE commented that the MSA must uphold the equivalence of input principle in the provision of MVNO Access, while Maxis submitted that the principle should apply to all Facilities and Services offered by an Access Provider.
- 5.14 MY Evolution did not propose any changes to section 4 but specified that it has experienced issues with an Access Provider not providing it with access to long-term evolution (**LTE**) at the same quality of service with which that Access Provider provisions services to itself. Further, MY Evolution reports that access to currently commercialised newer technologies is not being provided to MNOs. The MCMC refers to section 34 of this PI Paper, in which it deals with the terms of access specifically relating to the MVNO Access service.
- 5.15 As noted by the MCMC above and in previous reviews, the MCMC considers that the EOI principle is already set out in section 149 of the CMA, which applies on a service-neutral basis. The MCMC intends that the MSA should operate as a set of access terms issued under the CMA, and not as an extension or repetition of the CMA itself. In any event, subsection 4.1.6 of the MSA expressly requires operators to comply with the EOI principle across all Facilities and Services.
- 5.16 The application of the EOI principle to specific Facilities and Services is set out in the sections of this PI Paper discussing the relevant Service Specific Obligations in the MSA, including as to HSBB Network services (section 27) and MVNO Access services (section 34). The MCMC considers that, in order to address issues raised by Access Seekers regarding ongoing compliance issues with the EOI principle, it would be more appropriate to make targeted amendments to these Service Specific Obligations to clarify the specific expectation of the EOI principle to the relevant Facility or Service, rather than make further amendments to the existing general non-discrimination provision in section 4. The MCMC notes that the current MSA already adopts this approach in respect of the HSBB Network Service.
- 5.17 TTdC considers that given each individual operator designs and builds its network specific to its requirements (resulting in different cost bases as there are no standard input for referral across the industry), the implementation of EOI invites confusion and disparity and results in Access Providers providing non-standard services to Access Seekers based on a single Mandatory Standard on Access Pricing (**MSAP**) structure. In TTdC’s view, adopting principles as a patch solution, without taking into account the evolution of why certain principles are adopted, is a short-sighted approach. However, in line with the above discussion, the MCMC is not persuaded to limit the application of the EOI principle as proposed by TTdC.

- 5.18 As the MCMC has previously noted, including in the Access List Review, the CMA does not contemplate an asymmetric regulatory scheme. The MCMC does not intend to implement any regulation which applies differently to different operators based purely on their network design.

Third-party delays

- 5.19 Section 4.5 of the MSA requires Access Providers to notify the MCMC of non-compliance with timeframes under the MSA that are caused or contributed to by third party involvement, such as where local authority approvals are required. However, a number of Access Providers noted that they do not notify the MCMC of any delays caused by third parties pursuant to section 4.5 of the MSA, and the MCMC confirms it has not received any such notifications.
- 5.20 In Digi's experience, Access Providers provide sufficient information on a timely basis and with a certain degree of transparency as to third-party delays. Typically, such third-party delays arose mainly (but not exclusively) due to:
- (a) delays in access approval from the landlord/building management to allow additional Access Seekers to share telco structures;
 - (b) inability to resolve rental/commercial negotiation with the landlord/building management;
 - (c) structure loading issues, which will then require PE analysis and strengthening works; and
 - (d) delays due to protest/complaints from residents within close proximity of the Access Provider's existing telco structure, due to installation of additional telco equipment (e.g. health and safety concerns).
- 5.21 edotco submitted that during the execution of tower orders from Access Seekers, it has experienced many instances of delays in obtaining permits and approvals from local authorities, which put edotco in a non-compliant position under the MSA. edotco does not necessarily notify the MCMC of such delays given it usually has an exclusion clause in its access agreements with Access Seekers that covers such a scenario, and accordingly notification to the MCMC is not required.
- 5.22 In relation to universal service provision (**USP**) sites, edotco has also encountered delays in obtaining approvals from landowners, but immediately discusses any such issues with the MCMC during monthly updates, and so far, the MCMC has assisted through facilitating mediation with the third party causing the delay.
- 5.23 edotco faces delays when negotiating agreements with landowners during the land acquisition process, due to the finalisation of commercial rental rates and the period of tenancy agreement. Additionally, if the party to the agreement is a corporate or state government, the delays are mainly due to

the multiple levels of approvals for the terms of the agreement which involves various departments vetting, while corporate parties normally prefer to adopt their own agreement. For parties who are unfamiliar with telco industry practices and standards arrangements, this only causes further delays. edotco also experienced tedious land acquisition and agreement settlement processes with a few joint management bodies in Klang Valley and Penang, where the joint management body only gave approvals after obtaining approvals/consents from each of the tenants/residents in the building. However, edotco submitted that it always provides sufficient information and justifications to its customers in the event of any delays, including through weekly updates.

- 5.24 edotco proposes that instead of mandating notification to the MCMC under subsection 4.5.1 of the MSA in the event of third-party delays, it would be more helpful and logical to include a provision that Access Providers will not be held responsible for delays caused by third parties. Further, edotco proposed that any service level agreement that involves third party process and approvals (e.g. local authorities, state government, etc.) should be taken into consideration.
- 5.25 Maxis submitted that it is agreeable with section 4.5 of the MSA and recommended that this be retained in the MSA. Maxis considers that the MCMC can use the information provided by the Access Provider under this section to assist the operator and industry to address any issues with the relevant state, local or other authority, especially on network roll-out issues e.g. the permit approval processes, high one stop agency (**OSA**) & one stop centre (**OSC**) fees, etc.
- 5.26 Persatuan Penyedia Infrastruktur Telekomunikasi (**PPIT**) commented that it has generally not notified the MCMC of delays due to third parties, as PPIT prefers to resolve the issues with the third parties (typically local authorities) directly rather than involve the MCMC. PPIT fears that if issues are reported to MCMC, this will sour PPIT's good rapport with local authorities. As telecommunication services are generally considered a "public utility", PPIT submitted that the MCMC should streamline the applicable processes that they are applied by all local authorities instead of different local authorities requiring different things and imposing various fees (some of which are exorbitant).
- 5.27 PPIT also submitted that the obligation under subsection 4.5.1 of the MSA is onerous and may harm PPIT's relationships with local authorities, in suggesting that this provision be made optional rather than mandatory.
- 5.28 TM considers that section 4.5 of the MSA is not necessary and is overly prescriptive, given a failure to comply with timeframes can be resolved at an operational level. TM finds that requiring further reporting to the MCMC merely adds another layer of administrative obligation, given Access Seekers can ask the MCMC to investigate the issue in more detail under the dispute resolution mechanism if required.

Other delays

5.29 As an Access Provider, Celcom has not experienced any delays to timeframes caused or contributed to by third parties. Celcom provided a list of challenges that it faces where there is insufficient clarification given in respect of some delays. These challenges can be summarised as follows:

- (a) **Dual truck roll:**
 - (i) Celcom experienced numerous challenges in coordinating between the Access Seekers' and the Access Provider's teams. For example, there were delays in receiving the Access Provider's installer's contact details, or the number provided was not in service and not contactable; and
 - (ii) the Access Provider's installers arrived late or there was a 'no show'.
- (b) **Return orders (unsuccessful installation):** There have been many "unreasonable" reasons provided by the Access Provider in relation to returning orders, including port unavailability, out of specification, etc.
- (c) **Appointment slots for on-site troubleshooting (for customer complaints):**
 - (i) there are shared appointment slots across all Access Seekers;
 - (ii) there are delays in attending on site troubleshooting due to slots being fully taken up; and
 - (iii) Celcom suggested that the formula to calculate Mandatory Standard on Quality of Service (**MSQoS**) for customer complaint handling needs to be revisited.
- (d) **Unreasonable charges for appointments:**
 - (i) the Access Seeker is charged RM200 if the appointment is changed within 3 days from the installation date;
 - (ii) the Access Seeker is charged RM200 for any relocation; and
 - (iii) the Access Seeker incurs installation charges for a new area and for port charges, etc. (high cost).
- (e) **Termination cost:**
 - (i) the Access Seeker needs to incur costs to send its own installer to collect the Access Provider's customer premise equipment (**CPE**) and return it to the Access Provider's warehouse; and
 - (ii) if the Access Seeker fails to do the above, the Access Seeker is charged RM500.

(f) **Scenarios where customers face challenges in subscribing to the Access Seeker's service:**

- (i) a person who is already subscribed to the Access Provider's service is unable to subscribe to the Access Seeker's service at the same premises;
- (ii) a person is unable to subscribe to the Access Seeker's service because there is already another person in the same premises who has already subscribed to the Access Provider's service; and
- (iii) a person who moves into a new premises and intends to subscribe to the Access Seeker's service is required to initiate a transfer request process from the previous tenant, who was subscribed to the Access Provider's service.

MCMC discussion: Delays

- 5.30 Although several Access Providers reported that they do not currently comply with the obligation to notify the MCMC of third-party delays under section 4.5 of the MSA, the MCMC considers that this obligation remains appropriate, particularly given the extent of third-party delays reported by Access Providers. As noted by Maxis, the MCMC can use the information provided under section 4.5 of the MSA to assist both Access Providers and Access Seekers in resolving any issues with local or state authorities. The MCMC also anticipates that, as 5G networks are deployed around Malaysia, reliance on state and local authority approvals will become increasingly important, and accordingly it is important that the MCMC is aware of any issues.
- 5.31 Further, taken together with the proposed amendments to the negotiation timeframes set out in section 5.4.1 of the MSA (as described in paragraphs 9.7 to 9.27 below), the MCMC considers that there will be fewer instances of non-compliance with the MSA timeframes, and accordingly Access Providers will be better placed to notify the MCMC of delays under section 4.5 of the MSA.
- 5.32 In response to Celcom's submissions, the MCMC notes that:
- (a) it is proposing improvements to transparency and commitments from Access Providers in relation to port availability, as discussed in section 27 below;
 - (b) in addition to the existing limits on Order cancellation charges under subsection 5.7.26 of the MSA, the MCMC is proposing to include a new provision preventing Access Providers from charging penalties beyond the costs necessarily incurred by the Access Provider as a result of the Access Seeker's act or omission, as discussed in paragraph 27.49 below; and

- (c) it is proposing improvements to the churn processes for HSBB Network Services, as set out in paragraph 27.72 below, which it intends will address the appointment slot and service transfer issues reported by Celcom and other operators.

5.33 In response to submissions by PPIT and TM regarding the onerousness of section 4.5 of the MSA, the MCMC notes that it has, to date, not received any reports under this section, and accordingly, it is unclear to the MCMC how often operators would be subject to this reporting requirement. However, the MCMC is proposing to make a number of amendments to the timeframes set out in the MSA, primarily in response to submissions from Access Providers, as set out in paragraphs 9.7 to 9.27. The MCMC is accordingly inclined to retain section 4.5 of the MSA without amendment, and to instead address any issues with specific timeframes in the MSA to which Access Providers object due to the likelihood of third-party delays in respect of the relevant matter.

Restriction on re-supply

5.34 Several stakeholders commented on the application of subsection 4.4.2 of the MSA, which prohibits exclusivity arrangements and prohibits restrictions on re-supply of Facilities and Services:

- (a) Astro submitted that subsection 4.4.2 of the MSA should indicate the specific services where the prohibition on the restriction of resale is applicable due to technical infeasibility for simple resale i.e., HSBB;
- (b) Celcom requested that subsection 4.4.2 of the MSA be revised to reflect that the re-supply of facilities or services be limited to Access Provider's and Access Seeker's customers only. To avoid any complicated issues that jeopardise network security arising from third parties not covered under the access agreement between the Access Provider and Access Seeker;
- (c) Maxis submitted that the meaning of "re-supplying" and "person" be clarified in subsection 4.4.2 of the MSA. It submitted that certain Access Providers interpret this provision such that the Access Seeker is not allowed to re-supply or resale facilities or services to other operators;
- (d) PPIT submitted that subsection 4.4.2 of the MSA should not apply to PPIT as an Access Seeker cannot be allowed space in PPIT's towers and then sub-license or sub-rent part of that space to another Access Seeker;
- (e) Sacofa understands that there cannot be any restriction on prohibition of resale to end users pursuant to subsection 4.4.2 of the MSA but submitted that Access Seekers interpret this prohibition to also apply to the resale of services to other Access Seekers. Sacofa considers that the provision is unclear due to the reference made to "person";

- (f) TTdC submitted that Access Seekers often misunderstand the MSA's provision on the resale of services and their limitations. TTdC raised as an example HSBB services which it considers to be both transmission and access in nature. When accessed by an Access Seeker, TTdC considers that HSBB can be resold to subscribers but cannot be resold in a wholesale arrangement to another licensee, because the Access Provider will not be able to guarantee the service level agreement (**SLA**) and assurance for a network which is not connected to its own network but only to the Access Seeker's network. Additionally, reselling to a third party through wholesale arrangements will also not guarantee the Quality of Service to the subscriber according to the MSQoS. In TTdC's view, the main principle of network facilities provider and network service provider licences is to build facilities and provision telecommunications equipment over those facilities; and
- (g) TM submitted that subsection 4.4.2 of the MSA should be removed. In TM's view, it does not support the aspiration for higher broadband penetration and nationwide coverage for mobile and fixed services and does not provide more options to end users in terms of market choices. TM commented that:
 - (i) the simple resale of transmission services to end users does not add value to the industry and is not a bottleneck service; rather, such arrangements simply allow the Access Seeker to become a sales channel for the Access Provider;
 - (ii) in the case of HSBB services, the Access Provider should not be permitted to resell HSBB Layer 2 or Layer 3 in itself, as the intention of HSBB services is to allow the Access Seeker to use the service as an input to provide their own value-added service such as high-speed internet and Internet Protocol Television (**IPTV**);
 - (iii) simple resale arrangements are not possible as the network operator will need to have control over the network service including the virtual local area network (**VLAN**); and
 - (iv) simple resale arrangements are subject to abuse by Access Seekers who have the capital to buy in large volumes and resell to other smaller Access Seekers.

5.35 The MCMC notes that the majority of submissions on subsection 4.4.2 of the MSA were from Access Providers seeking clarification as to the meaning of "person" in subsection 4.4.2 of the MSA. The MCMC notes that "person" is already defined in the interpretive sections of the MSA as including a "firm, body corporate, unincorporated association or an authority". Subsection 4.4.2 of the MSA was intentionally drafted so as to prohibit a restriction on resale to both end users and other Access Seekers. In respect of a submission from Maxis that the definition of "Customer" in subsection 4.3.2 of the MSA is unclear, while the definition of Customer refers to a "person"

who has a contractual relationship with the relevant operator (whether an individual end user or a wholesale customer such as another operator), the relevant distinction is that in the case of an Operator who supplies Facilities or Services to another wholesale Operator, any Operators to whom the second Operator supplies Facilities or Services will not be the Customers of the first Operator, as specified in subsection 4.3.1 of the MSA.

5.36 More generally, the MCMC does not propose to take up suggestions that restriction on prohibition of resale should be removed or limited to certain types of customers or not apply to certain Access Providers. The MCMC or the Access Provider are not in the position to prescribe to the industry of which is the ideal type of competition as there are many different types of competition. Moreover, to the extent that Access Providers have any concerns regarding the third parties to whom access is re-sold or the ability to guarantee quality of service, the MCMC notes that:

- (a) it is widely used industry practice that parties to supply arrangements are required to bear responsibility for the acts and omissions of their sub-contractors;
- (b) similarly, it is widely used industry practice for Access Seekers to “back-to-back” their arrangements with end users and other Access Seekers to ensure that any downstream services are subject to terms of access no less onerous than those to which the first Access Seeker is subject to under its arrangements with the Access Provider; and
- (c) fundamentally, the contractual relationship between an Access Seeker and any downstream operator to whom that Access Seeker agrees to provide services is limited only to those two parties. It is unclear to the MCMC how the downstream operator would have any right of action against the Access Provider regarding quality of service. Further, the MCMC does not consider there to be any basis upon which to distinguish or diminish the quality of service-related obligations of the Access Provider merely due to the party to whom the Access Seeker is on-supplying the service.

5.37 Accordingly, the MCMC’s preliminary view is that there does not appear to be any justification for the removal of this prohibition from the MSA, whether in whole or in part. Further, the MCMC notes that some Access Provider RAOs still contain terms prohibiting the resale of certain Facilities and Services. As noted in section 6, a key area of focus of the MCMC as part of its enforcement priorities will be compliance with these provisions.

Other submissions

5.38 PPIT submitted that subsection 4.1.3 of the MSA, which provides that “this Standard does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act”, is contradictory to subsection 5.4.11 of the MSA, which sets out specified grounds upon which an Access Provider may refuse an access request.

- 5.39 The MCMC's preliminary view is that it does not agree with PPIT that subsection 4.1.3 of the MSA contradicts subsection 5.4.11 of the MSA. While subsection 5.4.11 of the MSA sets out circumstances in which an Access Provider may refuse an access request, these are not exhaustive; subsection 5.4.11 of the MSA specifies that, in addition to the circumstances set out in subsection 5.4.11 of the MSA, an Access Provider must not refuse an access request "except where expressly permitted otherwise under the Act or section 6 of [the MSA]".
- 5.40 Meanwhile, subsection 4.1.3 of the MSA clarifies that an access request may not be reasonable (for the purpose of the reasonableness criteria in subsection 4.1.2 of the MSA) if one or more of the criteria in subsection 5.4.11 of the MSA are satisfied. Again, subsection 4.1.3 of the MSA clarifies that this is not intended to narrow the application of the CMA itself, such that the MCMC is satisfied these provisions effectively complement (rather than partially or wholly replace) the relevant CMA provisions.
- 5.41 TTdC submitted that the general principles in section 4 of the MSA should only be applicable to incumbent and dominant operators as such operators would have already realised their investments and expanded their networks, while smaller operators need more time to achieve these goals. TTdC considers that smaller operators should be given access holidays for a certain growth period or upon reaching a certain amount of market share within the relevant markets.
- 5.42 TM similarly submitted that the principles behind imposing access obligations through the Access List and Mandatory Standards of Access should be based on evidence of market failure or abuse of market position by a dominant player.
- 5.43 The MCMC's preliminary view is that it disagrees with any suggestion that the general principles in section 4 of the MSA should only apply to incumbent and dominant operators. As noted above, the CMA does not contemplate an asymmetric regulatory scheme and the MCMC does not intend to implement any regulation which applies solely to incumbent or dominant Access Providers.

MCMC preliminary views

- 5.44 Based on operator feedback on the issue of equivalence, the MCMC proposes to bolster the EOI obligations in the MSA. However, the MCMC considers that this would be more effective through the inclusion of more detailed service-specific EOI obligations in the MSA (e.g. in relation to the HSBB Network Service and MVNO Access service), rather than by amending the existing EOI obligation in subsection 4.1.6 of the MSA, which the MCMC considers is adequate. The MCMC's proposed changes to Service Specific Obligations, including in respect of EOI (where relevant) are set out in sections 22 to 35.
- 5.45 The MCMC also proposes to make an amendment to the existing non-discrimination principle in the MSA by adding Churn and technical parameters to the examples of matters to which the non-discrimination obligations apply.

- 5.46 The MCMC also proposes to amend certain timeframes under the MSA. Those amendments are discussed in the context of the sections of this PI Paper in which those timeframes are set out. The MCMC does not otherwise propose to amend the General Principles set out in section 4 of the MSA.

Questions

Question 1:	Do you agree with the MCMC's proposal to strengthen the EOI obligations in the current MSA by focusing on the application of the EOI principle under the Service Specific Obligations, rather than amending the General Principles? Why or why not?
Question 2:	Do you, or would you, notify the MCMC of third-party delays under section 4.5 of the MSA? If not, should section 4.5 of the MSA be removed?
Question 3:	Should the prohibition on the restriction of re-supply continue to apply to resale to both end users and downstream service providers, or should it apply only to end users?
Question 4:	Do you consider any change not discussed above is required to the General Principles in section 4 of the MSA? If so, please specify what change you consider is required and explain why.

6 Reference Access Offers

Overview

- 6.1 In its 2016 MSA Review, the MCMC implemented a RAO model, pursuant to which Access Providers must make their standard terms available as an RAO as a standing offer to grant access to Facilities and Services to any Access Seeker on the terms of the RAO. The RAO model replaced the previous ARD model.
- 6.2 As noted by the MCMC at the time, the RAO model provides a number of benefits including:
- (a) enabling Access Seekers to request immediate access under an RAO, minimising negotiation;
 - (b) making fast-track negotiation more meaningful; and
 - (c) enhancing industry certainty and transparency.

Discussion

- 6.3 Based on the initial responses to the informal questionnaire, the MCMC notes that although operators did not raise substantive concerns with the RAO model itself, several operators commented that RAOs maintained by some Access Providers are inconsistent with or otherwise do not comply with the MSA.

- 6.4 For instance:
- (a) YTL commented that some Access Providers do not include in their RAOs all Facilities and Services that they offer based on the Access List;
 - (b) NETZONE submitted that some terms and conditions in RAOs are "over and above" the parameters set out in the MSA;
 - (c) TM noted that there are instances where an Access Provider's RAO does not have sufficient information pertaining to the service description, citing as an example MNOs who do not explicitly mention that application-to-person (**A2P**) SMS Termination is not allowed to be part of the Mobile Network Termination service. While TM accepted that most Access Provider RAOs contain the exact information required under the Access List and MSA, this is "for the sake of compliance", and during the negotiation process, some of the items listed in these RAO are not actually available (e.g. OSS); and
 - (d) REDtone and MY Evolution each commented that RAOs generally contain sufficient information from an MSA perspective. However, REDtone submitted that some RAOs are inconsistent with the MSQoS requirements, and REDtone needs to negotiate further in relation to service details and pricing, while MY Evolution needs to negotiate pricing for machine-to-machine services.
- 6.5 Along similar lines, PPIT submitted that, in some instances, strict compliance between the RAO and the MSA may have at times been dispensed with by parties, and despite such dispensation, have resulted in long term agreements, proving that commercial negotiations work.
- 6.6 While the MCMC appreciates the "hybrid" flexibility afforded by the RAO model when taken together with commercial negotiation (as noted by PPIT), the MCMC reminds Access Providers that RAOs must:
- (a) contain only terms and conditions which are consistent with the rights and obligations set out in the MSA;
 - (b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in this standard; and
 - (c) be prepared for each Facility and Service listed in the Access List that the relevant Access Provider provides to itself or to third parties.
- 6.7 The MCMC will increase its compliance and enforcement activities in respect of Access Provider RAOs to ensure they are compliant with the MSA, including to incorporate any amendments made by the MCMC to the MSA in the course of the current review. However, the MCMC is also reliant on industry to report these issues to the MCMC as they arise.
- 6.8 Astro commented that instead of RAO, MSA should be more detailed and supported by network diagram and table of comparison. Astro stated its

difficulties in differentiating the Layer 2 and Layer 3 HSBB Services without network diagram.

- 6.9 A number of operators made submissions with which the MCMC disagrees, as they would undermine the benefits of the RAO regime more generally or impose an undue burden on Access Providers. In particular:
- (a) Astro submitted that the MCMC should maintain a “model” access agreement for all parties since the agreement is regulated and not agreed on a commercial basis;
 - (b) Celcom submitted that paragraph 5.4.7(a) of the MSA should be deleted, because in its experience, operators prefer to negotiate access agreements rather than accept RAOs given access agreements can be used by employees as guidance for implementation and monitoring of service provision, including technical and operations manuals;
 - (c) U Mobile commented that the MCMC should develop a standard template RAO that minimises the effort and subjectivity by the licensee in order to ensure the timely publication of the RAO and the easy navigation of the document by an Access Seeker;
 - (d) edotco submitted that an RAO should not be given the same legal status and treatment as an access agreement, but should instead only be treated as stipulating the broad framework and principles that the parties may consider when negotiating an access agreement (or equivalent);
 - (e) PPIT submitted that paragraph 5.3.3(a) of the MSA, which requires RAOs to include the rates, charges, charging principles, methodologies and applicable fees and rebates, is burdensome, and that only the rates should be indicated, with the remaining matters to be negotiated between the parties; and
 - (f) TTdC and YTL each submitted that RAOs should be subject to approval by the MCMC. TIME specifically commented that MCMC’s involvement in amending RAOs while negotiations may still be underway on access agreements may deter the parties from reaching a commercial bargain.
- 6.10 The MCMC’s preliminary view is that it does not agree with these proposals.
- 6.11 Taking together Astro, Celcom and U Mobile’s submissions, the MCMC’s preliminary view is that it has not been presented with a sufficient case to suggest that it is necessary to mandate the complete terms and conditions for access to Facilities and Services in the Access List. In particular, certain operational, process and technical matters may be operator-specific and may need to change over time. Moreover, the MCMC considers that such flexibility is necessary to support downstream product and service differentiation, which is a key element of competition. Accordingly, the MCMC does not propose to consider it appropriate to move to a model or

precedent access agreement model or for the MCMC to itself maintain a template RAO for use by operators.

- 6.12 As the MCMC has noted in the past, the use of a reference offer model broadly aligns with a number of other jurisdictions, such as industry-wide codes with regulated Interconnection Offers / Standard Access Obligations in Singapore and the Standard Form of access agreement model in Australia.
- 6.13 In response to edotco and PPIT, as noted in paragraph 6.2 above, the primary benefits of an RAO include allowing Access Seekers to request immediate access under an RAO and making fast track negotiation more meaningful. It would undermine the objectives of the RAO model should an RAO no longer be required to set out full terms and conditions capable of execution, including as to charging principles and methodologies and other matters set out in subsection 5.3.3 of the MSA.
- 6.14 Regarding TTdC and YTL's submissions that RAOs should be subject to approval by the MCMC, the MCMC acknowledges that if the MCMC were required to approve each Access Provider RAO, this may deter Access Providers from including within their RAOs terms which are inconsistent with the MSA. However, the MCMC considers that such an approach would also undermine the benefits of the RAO model. In implementing the RAO model, the MCMC sought to balance commercial and operational flexibility with the certainty and fairness of the terms set out under the MSA.
- 6.15 Adding a layer of regulatory approvals at the RAO stage (or simply requiring approvals to be obtained before access agreements are negotiated) may create an unnecessary administrative burden and the potential for operators to game or abuse such a process, for example by submitting multiple or frequent variations of RAOs to the MCMC for pre-registration. Further, one key advantage of the RAO model over other models is that it allows Access Providers to retain some flexibility in establishing the terms on which they are prepared to supply Facilities and Services. MCMC accordingly proposes to continue reviewing RAOs on a rolling basis to ensure ongoing compliance with the MSA and the CMA, rather than formally approving RAOs before publication.
- 6.16 Finally, Maxis, PPIT and YTL each commented on the process for RAO amendment under subsection 5.3.5 of the MSA, each of which is dealt with in turn below:
- (a) Maxis submitted that amendments to the RAO should not be automatically deemed to alter the relevant terms and conditions of an access agreement pursuant to paragraph 5.3.5(b)(iii) of the MSA, and that amendments to access agreements should be made via a supplemental agreement;
 - (b) PPIT submitted that the process to amend RAOs under subsection 5.3.5 of the MSA is cumbersome and adds burden on Access Providers, and that mere notification on the Access Provider's website should be sufficient; and

- (c) YTL proposed that any variations to approved RAOs could be set out in the form of a supplemental agreement rather than re-negotiating the whole access agreement, as is the current practice.
- 6.17 The MCMC notes that Digital Nasional Berhad (**DNB**) has proposed an alternative process for amending RAOs that relate to 5G Services. The MCMC does not have any objections to the alternative amendment process, however, invites operators to provide feedback on this proposal.
- 6.18 The MCMC notes that the deeming provision referred to by Maxis applies only to the extent that:
- (a) an Access Seeker has entered into an access agreement that is identical to the existing (old) RAO; and
 - (b) the Access Seeker does not exercise its right to dispute the change to the RAO.
- 6.19 In practice, the MCMC understands that Access Seekers and Access Providers rarely enter into access agreements that are identical to the RAO, and the MCMC accordingly expects that only smaller Access Seekers are likely to take up supply on the terms of an RAO without amendment. Removing the deeming provision in paragraph 5.3.5(b)(iii) of the MSA could accordingly add undue burden on both Access Providers and such smaller Access Seekers.
- 6.20 The MCMC considers that this section is capable of operating as intended. However, to avoid confusion, the MCMC proposes to make clear that any amendments to an RAO would only be deemed to alter an access agreement if the Access Seeker has not disputed such changes within the applicable 20 Business Day notice period for those RAO amendments.
- 6.21 Meanwhile, the MCMC disagrees with PPIT's submission that RAOs can be amended through mere notification on the Access Provider's website. The RAO model, and the reporting and disclosure obligations set out in section 5 of the MSA more generally, are intended to promote transparency and the provision of information between Access Seekers and Access Providers, which would be undermined if an Access Provider could change its RAO without even being required to notify Access Seekers proactively.
- 6.22 Finally, the MCMC does not agree that amendments to RAOs should be in the form of supplementary agreements. If an RAO is amended, it is appropriate that the amended RAO be provided in full to Access Seekers for their proper consideration. The MCMC considers that a supplementary agreement could lead to confusion for Access Seekers, particularly where changes are extensive, or the arrangements are complex.

MCMC preliminary views

- 6.23 The MCMC's preliminary view is that the current RAO requirements are working well and do not require material amendments.

- 6.24 Generally, operators reported that RAOs set out all terms and conditions required to enter into an access agreement, although there are potential areas for improvement from an MCMC enforcement perspective. As noted above, a key focus area for the MCMC moving forward will be ensuring that Access Provider RAOs comply with the MSA, which the MCMC anticipates will also result in greater interest / take-up of the fast-track negotiation process.
- 6.25 The MCMC proposes to carve-out 5G Services from the previous process and add a separate process under paragraph 5.3.5(c) – (e) of the draft MSA to align with DNB’s RAO for 5G Services. The MCMC also proposes a minor change to paragraph 5.3.5(iii) of the MSA in order to clarify the time period within which an Access Seeker must dispute an amended RAO in order to avoid the deeming of alterations to its access agreement. The MCMC also proposes amendments to paragraphs 5.3.3(e) and (f) of the MSA to expand the scope of the obligation for RAOs to comply with applicable standards on quality of service (**QoS**), as discussed further in section 27.

Reference	Summary of proposed change	MCMC rationale
5.3.3(e) and (f), 5.3.4(e)	The MCMC proposes to expand these requirements to ensure that all Access Provider RAOs comply with any applicable mandatory standards on QoS. This is an expansion of the current obligation in subsection 6.6.12 of the MSA.	The MCMC is concerned by complaints from operators who claim that Access Provider RAOs do not comply with the MSA or MSQoS. The MCMC considers that the existing obligation for RAOs to comply with any applicable MSQoS under the Service Specific Obligations for HSBB Network Services should accordingly be expanded to cover all RAOs and set out in the General Obligations. Refer also to the MCMC’s comments in section 27.
5.3.5(c)-(e) (new)	The MCMC proposes to add an alternative process for amendments to RAOs which relate to the provision of 5G Services.	The Access Provider for 5G Services has proposed a different process for amendments to the RAOs that relate to 5G Services to enable consultation between the parties before such amendments are made.
5.3.5(iii)	The MCMC proposes to clarify that an Access Seeker must dispute an amended RAO within 20 Business Days following the date of provision of that amended RAO, to avoid the amended RAO being deemed to alter the Access Seeker’s access agreement.	There is currently some ambiguity regarding the period within which an Access Seeker must dispute changes proposed to an RAO in order to avoid those changes being deemed to alter the Access Seeker’s access agreement.

Question 5: Should Access Providers be required to submit their RAOs to the MCMC before publication, to ensure compliance with the MSA?

7 Reporting and Information Disclosure

Overview

- 7.1 In addition to RAO requirements (which are discussed separately in section [6] above), section 5.3 of the MSA also sets out a number of reporting and information disclosure obligations, which are designed to improve transparency across the industry, including between Access Providers and Access Seekers, and between Access Providers and the MCMC.
- 7.2 In section 2 above, the MCMC identified the promotion of transparency as a key focus area to be considered and addressed in the current MSA review.

Discussion

- 7.3 Most operators submitted that the disclosure obligations set out in section 5.3 of the MSA are useful in drafting RAOs or in negotiating access agreements. However, operators also proposed a number of improvements to the reporting obligations.

Further reporting obligations

- 7.4 Access seekers also proposed a number of additional services that they considered should be subject to reporting to the MCMC under subsection 5.3.13 of the MSA, including:
 - (a) Duct and Manhole Access (including sub-ducts)
 - (b) dark fibre services;
 - (c) Voice-over-LTE (**VoLTE**) origination and termination services;
 - (d) national roaming;
 - (e) IP interconnection;
 - (f) unbundled HSBG data-only services;
 - (g) Metro-E, Integrated Services Digital Network (**ISDN**), IP-based networks, and Ethernet interfaces and technologies;
 - (h) In-Building Common Antenna Systems and Common Equipment Room including sharing of multiplexes; and
 - (i) fronthaul services.
- 7.5 Meanwhile, Maxis proposed that MVNO Access should be removed from the list of services to which reporting obligations apply.
- 7.6 As stakeholders are aware, the MCMC seeks to achieve an appropriate balance between transparency and the administrative burden on Access Providers. The MCMC's preliminary view is that, in light of the amendments it has proposed to the Access List, it is appropriate for the following Facilities

and Services to be added to the list of Facilities and Services to which reporting obligations apply, as set out in subsection 5.3.13 of the MSA:

- (a) Infrastructure Sharing Service (only to the extent it relates to the provision of access to poles and street furniture);
- (b) Domestic Inter-Operator Roaming Service;
- (c) 5G Standalone Access;
- (d) 4G Evolved Packet Core (**EPC**) with 5G Radio Access Network (**RAN**); and
- (e) IP Transit.

7.7 Regarding the other Facilities and Services requested by stakeholders, the MCMC's view is that:

- (a) the CMA does not allow the MCMC to introduce reporting obligations for services that are not set out in the Access List; and
- (b) the CMA and the instruments are technology-neutral, hence it would be inappropriate to report based on technologies used. It would also unduly burden Access Providers.

7.8 Finally, in response to Digi's submission that sub-ducts should be included within the scope of the reporting obligations attaching to the Duct and Manhole Access service, the MCMC notes that given the amendments to the service description for that service pursuant to the Access List Review, sub-duct access now forms part of the reporting obligations that already apply under paragraph 5.3.13(d) of the MSA and no further amendments are required.

Onerousness of reporting obligations

7.9 Some Access Providers commented that the reporting obligations in the MSA are too onerous:

- (a) TTdC is of the opinion that reporting should be reduced as excessive reporting represents regulatory burden where resources could otherwise be channelled to other nation building purposes. For example, records of agreements should be reported to MCMC only if there are disputes and MCMC can request for them by applying Section 73 of the CMA;
- (b) TM submitted that the requirement to report twice yearly is administratively burdensome as larger Access Providers enter into numerous access agreements with various Access Seekers, and that subsection 5.3.12 of the MSA can accordingly be removed or limited in scope to providing updates on ongoing disputes, given:
 - (i) each Access Provider already publishes its RAO and the MCMC would be able to ascertain which services are offered or not in the RAO;

- (ii) each access agreement is submitted for registration, therefore MCMC would already have those particulars and terms and conditions including duration, security requirements, point of interconnections (**POIs**) etc. Some of these information are already in the register of access agreements; and
 - (iii) with respect to ongoing negotiation, there is a timeline to complete negotiation under the MSA and it would be cumbersome to update on the progress of each negotiation if an Access Provider is negotiating with multiple operators within that timeline.
- (c) U Mobile also submitted that the requirement to submit reports twice a year is onerous and time consuming to the major operators with extensive operations, and that the MCMC should only require a simplified template report to be submitted once a year or when there are material changes. U Mobile suggested that tick boxes could be to indicate updates rather than manual/subjective updates; and
 - (d) Webe proposed that paragraph 5.3.12(c) of the MSA is redundant, given all signed access agreements are already submitted to the MCMC for registration and accordingly set out all the details requested under paragraph 5.3.12(c) of the MSA.
- 7.10 The MCMC acknowledges the administrative burden, particularly for larger Access Providers, arising from the reporting obligations under the MSA. While the MCMC considers that the information provided by Access Providers is critical in promoting transparency and assisting the MCMC's compliance and enforcement functions, the MCMC's preliminary view is to amend subsection 5.3.12 of the MSA such that operators must report any required information annually, rather than bi-annually.
- 7.11 TM also complained that the requirement to notify the MCMC of entry into certain agreements pursuant to paragraph 5.3.1(a) of the MSA is cumbersome and administratively burdensome, given each operator enters into various agreements on a day to day basis which contain confidentiality obligations. TM submitted further that:
- (a) paragraph 5.3.1(a) of the MSA is not required due to the existence of paragraph 5.3.1(b) of the MSA; and
 - (b) if there is an exclusion under the confidentiality clause of the relevant agreement which allows the Access Provider to disclose confidential information of another party if required under law or by regulatory authorities, then that would address MCMC's concern.
- 7.12 While the MCMC acknowledges that operators (and particularly larger operators) may regularly enter into agreements with confidentiality clauses which prohibit the disclosure of information, the MCMC is concerned to ensure the ongoing transparency of information flow between Access Seekers, Access Providers and the MCMC. If paragraph 5.3.1(a) of the MSA were to be removed, the MCMC would have no visibility over the existence

of the relevant agreement and would not be aware of the possibility of information asymmetry between the operators affected by that agreement; in other words, paragraphs 5.3.1(a) and 5.3.1(b) of the MSA are designed to work together. The MCMC accordingly proposes to retain both sections.

Other submissions

- 7.13 Digi, edotco and Maxis each submitted that the MCMC should provide a template for the submission of reports, as a guideline to licensees to ensure that information needed by the MCMC from the relevant licensee is incorporated in the report for review. The MCMC has prepared and issued a template to the relevant licensees which outlines the information required by the MCMC in response to the submissions made by Digi, edotco and Maxis. The MCMC will revise the template based on the amendments to the MSA.
- 7.14 Astro proposed that Access Providers should be required to submit their queuing policy to MCMC as part of the reporting obligations under subsection 5.3.12 of the MSA, to ensure non-discriminatory behaviour.
- 7.15 The MCMC refers to subsections 5.7.31 and 5.7.32 of the MSA, which set out obligations on Access Providers in respect of their Capacity Allocation Policy. In particular, Access Providers are required to provide this information on request to Access Seekers in the event of any insufficient capacity issues. The MCMC does not propose to expand this to a general obligation for Access Providers to provide their Capacity Allocation Policy to the MCMC, as the existing obligation is sufficient without imposing undue burden on the Access Provider. If Access Seekers think that there is non-compliance by Access Providers either in providing their Capacity Allocation Policy or the contents of such policies, Access Seekers should raise this with the MCMC.
- 7.16 Maxis proposed that the requirement to provide technical information in subsection 5.3.7 of the MSA should include Proof of Concept (**POC**) information. The MCMC proposes to amend this section such that POC information must be provided by Access Providers where it is available, but the MCMC will not require Access Providers to develop a POC in all circumstances. Such an approach would be unduly burdensome and may not be practical in all cases. Further, it is not the MCMC's intention to mandate the technical design steps that parties must take in finalising arrangements for the testing and provision of services; rather, the MCMC considers that such arrangements are more appropriately agreed between operators.
- 7.17 Maxis also proposed that the definition of "good faith" in paragraph 5.4.2(b) of the MSA be amended to include not imposing unreasonable "costs". The MCMC does not propose to make this amendment, given the question of what constitutes an "unreasonable cost" is likely to arise in the context of many (if not all) access agreements, and including such a requirement would not assist in minimising disputes. The MCMC notes that disputes regarding compliance with MSAP rates can be submitted to the MCMC as part of the

MCMC's dispute resolution function, and the MCMC does not consider it appropriate to include terms in the MSA that may undermine or otherwise interfere with the MSAP rates. Further, subsection 5.16.11 of the MSA already provides that each party must bear its own costs in relation to the preparation, negotiation and execution of an access agreement.

7.18 Despite generally positive feedback from other operators, YTL Communications reported that the disclosure obligations in section 5.3 of the MSA are not useful in drafting RAOs or negotiating access agreements. In YTL's experience, most Access Providers have refused to adhere to these obligations, such as in respect of the disclosure of POI locations or infrastructure routes. In YTL's view:

- (a) Access Providers should report on all access requests, whether accepted or not, along with any reasons for rejection;
- (b) Access Seekers should also be required to report on any Facilities and Services that they have requested from an Access Provider and the status of such a request; and
- (c) the MCMC should proactively check with Access Seekers whether the information provided by Access Providers in response to access requests is accurate.

7.19 The MCMC notes that it has not previously received any complaints from YTL regarding Access Providers not complying with the disclosure obligations set out in the MSA. While the MCMC seeks to play an appropriately proactive role in regulation, the MCMC is largely dependent on Access Seekers (and Access Providers) providing it with all relevant information through complaints filed to the MCMC. The MCMC encourages YTL and other stakeholders to report issues to the MCMC as they arise to allow appropriate and effective regulatory intervention where relevant.

7.20 Regarding YTL's specific suggestions, the MCMC considers that:

- (a) it would be unduly onerous for the MCMC to require Access Providers or Access Seekers to report on all access requests, particularly given the volume of access requests that a typical Access Provider is likely to receive, and the extensive reporting requirements for Access Providers that are already set out in the MSA. In this regard, the existing obligation set out in section 5.4.19 of the MSA (which required Access Providers to report on all refusals) is sufficient; and
- (b) as noted above, in order to properly exercise its functions and responsibilities, the MCMC is reliant on Access Seekers raising any particular concerns with the MCMC as they arise from time to time.

7.21 PPIT submitted that there are many types of services in the Access List, and different sizes and categories of Access Providers and Access Seekers. PPIT considers that a "one size fits all" MSA may not be appropriate and raised as an example that insurance requirements under subsection 5.3.10 of the

MSA should be related to the type of service offered or required by the parties respectively.

- 7.22 The MCMC agrees with PPIT, in that the MSA should remain drafted in broad terms to ensure that it is capable of covering all Access Providers and Access Seekers, subject to the Service Specific Obligations which are tailored based on the particular Facility / Service. The MSA is not intended to be “one size fits all” document, but rather set a baseline for the industry, from which Access Providers and Access Seekers can agree different arrangements as long as they are not inconsistent with the MSA.
- 7.23 TTdC submitted that operators regularly provide all required updates periodically on the Communications Infrastructure Information Management System (**CIMS**) and that the MCMC may consider adding an intelligence layer to the current CIMS to monitor and validate all compliance requirement. The MCMC is open to any further submissions from operators regarding this proposal.
- 7.24 Finally, TM commented that some Access Providers impose unreasonable additional obligations on Access Seekers to negotiate access agreements, including to cover the cost of external counsel, technical experts or otherwise in attending the negotiation or drafting of the access agreement. TM proposed that the MCMC include a requirement for each party to bear their own cost of access agreement negotiations.
- 7.25 The MCMC notes that subsection 5.16.11 of the MSA already requires each operator to bear its own costs and expenses in relation to the preparation, negotiation and execution of an access agreement to which they are parties. For clarity, this means that to the extent that a party engages technical experts or external counsel solely for its own benefit, it is not permitted to require the other party to contribute to the costs of such engagement.

MCMC preliminary views

- 7.26 The MCMC considers that the existing reporting and information disclosure obligations are operating to encourage compliance and transparency and enabling more effective monitoring of compliance issues and targeted enforcement by the Commission.
- 7.27 The key changes to the MSA that are being proposed to clarify and update the current reporting and information disclosure requirements are as follows:

Reference	Summary of proposed change	MCMC rationale
5.3.7(c)	The MCMC proposes to clarify that, as part of the technical information required to be provided under this section, the Access Provider must also POC information where that information is readily available.	The MCMC acknowledges that, where a POC is available, it may contain information that is useful to an Access Seeker. However, the MCMC does not wish to mandate the provision of a POC as this may not be appropriate in all circumstances and depends on a number of factors, including the nature and complexity of the services being supplied.
5.3.12	The MCMC proposes to clarify that the information provided by an Access Provider under this section must be in the form approved or notified by the MCMC from time to time (if any) and provided on an annual basis only.	<p>As some Access Providers have submitted, it would be beneficial for the MCMC to develop a template for the reporting obligations set out in subsection 5.3.12 of the MSA, and the MCMC has accordingly developed and circulated such a template.</p> <p>The MCMC has drafted its proposal in a way that retains some flexibility for any interim period during which a template may not yet have been developed and finalised by the MCMC.</p> <p>Additionally, considering the administrative burden on operators in respect of reporting, the MCMC proposes to reduce such obligations to occur annually only (rather than bi-annually).</p>
5.3.13	<p>The MCMC proposes to clarify that reporting obligations also apply to:</p> <ul style="list-style-type: none"> ▪ Infrastructure Sharing Service; ▪ Domestic Inter-Operator Roaming Service; ▪ 5G Standalone Access; ▪ 4G EPC with 5G RAN; and ▪ IP Transit Service. 	The MCMC considers that, given the nature of the amendments to the Access List relating to these services, it is appropriate that Access Providers be required to report on the supply of these services to the MCMC.

Questions

Question 6:	Do you have any comments on the proposed amendments to the reporting and information disclosure obligations in section 5.3 of the draft MSA?
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8 Security, Insurance Requirements and Creditworthiness

Overview

- 8.1 Subsections 5.3.9 to 5.3.11 of the MSA set out requirements relating to security, insurance and creditworthiness information. The MCMC received a number of submissions in relation to the security and insurance requirements, and limited comments on the creditworthiness information provisions.
- 8.2 Generally, feedback was received in relation to the following:
- (a) the amount of security sums and the circumstances in which they can be required; and
 - (b) the maximum limits for insurances required by an Access Provider and whether Access Seekers should be required to name Access Providers as beneficiaries; and
 - (c) the circumstances in which creditworthiness information can be required of an Access Seeker.

Discussion

Security requirements

- 8.3 Astro submitted that Access Seekers should be exempt from security requirements as long as they can prove to the Access Provider that they are of strong financial standing and have the ability to pay the Access Provider.
- 8.4 Digi considers that security requirements are commercially driven and depend on a number of factors, including the Access Seeker's creditworthiness, forecast provided (if any), past transactions experience, Access Seeker's payment history, etc. As such, Digi considers that the formula of the security requirements should be mutually agreed between the parties and not regulated under the MSA.
- 8.5 Further, Digi proposed that security payments or guarantees for MVNO Access:
- (a) should be updated annually based on the MVNO's business volume, as the guaranteed amount will change based on the MVNO's business performance; and
 - (b) should be provided to the Access Provider within at least 21 days from the notification date, to ensure there is no credit risk exposure to the Access Provider and service disruption for its customers, should the Access Seeker experience payment issues.
- 8.6 Maxis considers that the amount of security for Facilities and Services without a minimum period of access in paragraph 5.3.9(b)(i) of the MSA should be amended to 3 months, to align with current industry practices.

- 8.7 MyKRIS, Myren Network and PPIT each reported that they do not experience any issues with security requirements. While PPIT submitted that it usually negotiates such requirements commercially, it considers that the requirements in the MSA provide useful guidance.
- 8.8 REDtone observed that while some Access Providers are more stringent than others in terms of their risk assessments, overall, it experiences no major issues in relation to these requirements.
- 8.9 TTdC considers that the current security requirements are flexible enough to allow parties to negotiate and conclude an access agreement. Security requirements are often addressed reciprocally, but that where the parties have had long term relationships with each other, they may decide not to include security sums in the access agreement. Further, many Facilities and Services require parties to make upfront payment, which does not align with the purpose for acquiring the security sum.
- 8.10 TM submitted that the security requirements should account for timing issues in the event of default/termination. In particular, TM submitted that currently, an operator can only suspend or terminate if there is a breach that is not remedied within one month. However, suspension and termination can only occur with MCMC consent, which may take additional time. If the Access Seeker does not remedy the breach and MCMC provides consent to suspend or terminate, the Access Provider would have debts accruing over the original billing period (which could be monthly, quarterly or yearly), the one-month remedy period, and the time it takes for MCMC consent. In TM's view, the amount of security must take into account these timing issues otherwise the Access Provider would be at a disadvantage of not being able to collect the charges without being able to suspend or terminate, pending remedy (if at all) and MCMC consent.
- 8.11 U Mobile noted that the security requirements do not address reciprocal-style agreements where each party is both an Access Seeker and an Access Provider. In U Mobile's experience, in these scenarios, the dominant party typically demands the provision of security by the other party.
- 8.12 Webe submitted that security requirements should apply to new access agreements or arrangements only. For existing arrangements, Webe submitted that security requirements should be exempted, especially when a track record of payment has been proven over a certain time period, e.g. one year. In Webe's view, the required security based on the minimum period of access can be huge, e.g. for Infrastructure Sharing where the minimum contract period is 3 years and the value for each month is substantial. Webe accordingly requested that the security requirements be reviewed so that security charges be derived based on a 90-day minimum period for all Facilities and/or services.
- 8.13 YTL submitted that there are reasonable efforts by Access Providers and Access Seekers to not impose unreasonable security deposit requirements.

- 8.14 The MCMC notes that most operators consider the existing security requirements are adequate and allow sufficient flexibility for parties to reach agreement. In response to the above submissions, the MCMC notes that:
- (a) the security requirements under the MSA are not intended to be a “perfect” or “one-for-one” solution that entirely de-risks an access agreement from an Access Provider’s perspective. Rather, the security requirements are intended to reduce risk for Access Providers while ensuring that the associated costs or requirements are not prohibitive for Access Seekers. On that basis, the MCMC does not propose to increase or reduce the security requirements at this stage in the absence of compelling evidence from a wider cross-section of operators that the requirements are insufficient or too onerous; and
 - (b) paragraph 5.3.9(a) of the MSA prevents an Access Provider from imposing security requirements unless it determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk. The MCMC notes that this prohibition applies on an ongoing basis. Accordingly, to the extent that a party has a demonstrated track record of payment and good credit, the MCMC expects that Access Providers would perform an updated risk assessment at least on an annual basis such that where security requirements are no longer permitted by section 5.3.9(a), they must no longer be imposed.
- 8.15 The MCMC notes U Mobile’s submission that security requirements do not address reciprocal-style arrangements. The MCMC considers that the MSA is drafted broadly enough to contemplate parties being both an Access Seeker and Access Provider under a single access agreement. However, the MCMC notes that the right to impose security requirements under paragraph 5.3.9(a) of the MSA is likely to vary from operator to operator, based on the internal risk profile of the Access Provider and the credit risk posed by a particular Access Seeker. Accordingly, the MCMC expects that even in a reciprocal security arrangement, security requirements may at times be one-sided. Ultimately, whether security requirements can be imposed depend on an assessment of paragraph 5.3.9(a) of the MSA from the perspective of both parties to the reciprocal arrangement.

Insurance requirements

- 8.16 Allo recommended that minimum amounts be specified for the insurance requirements in subsection 5.3.10 of the MSA.
- 8.17 Digi submitted that Access Providers have interpreted the limit on comprehensive general liability insurance of RM20 million as the default amount rather than the maximum amount. In Digi’s view, this amount may not be practical if an Access Seeker is only requesting to access to only 1 service or facility of the Access Provider. Digi proposes that that there should

not be a specific amount provided in the MSA and that parties should negotiate and mutually agree on the amount insured.

- 8.18 Maxis submitted that an additional clause be included in subsection 5.3.10 of the MSA to prohibit the Access Provider from requiring that the Access Provider be named as a beneficiary in insurance policies. Further, Maxis considers that comprehensive general liability insurance is not necessary, and that general liability insurance is sufficient.
- 8.19 Myren Network reported that the insurance requirements are not necessary.
- 8.20 Ohana commented that insurance requirement burdens a smaller Access Seeker as the premium for obtaining insurance for that sum is exorbitant. Ohana experienced this situation during the access agreement negotiations with TM and added that HSB services should not result in huge losses or claims as customer premises will only be accessed during installation.
- 8.21 REDtone suggested that Access Seekers be given flexibility on the amount of general liability insurance depending on the size of the Company, its activities and facilities.
- 8.22 TTdC considers that Access Providers should be named as beneficiaries in insurance policies.
- 8.23 TM submitted that the current RM20 million maximum for comprehensive general liability should be allowed to be increased for certain high-risk facilities or services with high risk exposure to the Access Provider, such as Network Co-Location and Duct and Manhole Access.
- 8.24 Webe commented that the current insurance requirements are sufficient.
- 8.25 The MCMC does not propose any amendments to the insurance requirements based on the above comments. In particular:
 - (a) the MCMC does not consider it necessary or appropriate to include minimum amounts for insurances, as the risk profile of the supply of each Facility or Service is likely to vary;
 - (b) subsection 5.3.10 of the MSA requires that insurance requirements imposed by an Access Provider must not extend further than the "reasonable insurable interest that the circumstances require" and the RM20 million cap on comprehensive liability insurance coverage is intended to be (and clearly expressed as) a maximum, rather than a default amount. In other words, Access Providers must not require insurance beyond that which is required in the circumstances within the scope of subsection 5.3.10 of the MSA. The MCMC will make minor amendments to this section to clarify this point; and
 - (c) the MCMC considers that whether Access Providers should be named as a beneficiary in insurance policies is a matter that should be addressed by negotiation between the parties, rather than proscribed (or prescribed) in the MSA.

- 8.26 Most operators were silent on insurance issues or expressed only minor comments. The MCMC has interpreted this as meaning that the industry is relatively satisfied with the insurance requirements in the MSA.

Creditworthiness information

- 8.27 There were only two submissions on the creditworthiness information provision in subsection 5.3.11 of the MSA.
- 8.28 First, Digi submitted that the provision of creditworthiness information could be made compulsory for new Access Seekers with no existing business relationship with the Access Provider, but that where the Access Seeker has an existing relationship with the Access Provider, this requirement can be waived by the Access Provider at its discretion.
- 8.29 Meanwhile, Maxis submitted that the MSA should clarify the specific creditworthiness information that can be requested from the Access Seeker.
- 8.30 Regarding Digi's submission, the MCMC does not consider it appropriate to make the provision of creditworthiness information mandatory for new Access Seekers. In any event, subsection 5.3.11 of the MSA is drafted on a voluntary basis, such that Access Providers may dispense with this requirement should they wish to do so (e.g. for Access Seekers with whom they have an existing relationship). Digi's proposal would inevitably result in Access Providers seeking the provision of creditworthiness information for all new Access Seekers, even where it would not be permitted under the current regime. Further, the MCMC reiterates that the Access Provider may only request creditworthiness information in the circumstances outlined in paragraph 5.3.11(a) of the MSA. This restriction applies on a rolling basis, such that if there is no longer a basis for an Access Provider to request creditworthiness information from an Access Seeker, the Access Provider must not do so.
- 8.31 The MCMC also does not propose to exhaustively define the types of creditworthiness information that may be requested by Access Providers, as the types of relevant publicly available information may differ between Access Seekers.
- 8.32 Again, given the limited submissions on the creditworthiness information provisions in the MSA, the MCMC is inclined not to amend these provisions.
- 8.33 The MCMC also notes that edotco requested that the security requirements (subsection 5.3.9), insurance requirements (subsection 5.3.10) and creditworthiness information provisions (subsection 5.3.11) should each be removed from the MSA, as these requirements can be commercially negotiated on a case-by-case basis. edotco also submitted that the Malaysian telecommunications and multimedia industry is represented by only a handful of players and that accordingly, business requirements do not differ greatly. The MCMC does not propose to make these changes, given the general support across the industry for these provisions.

MCMC preliminary views

- 8.34 The MCMC's preliminary view is that it does not propose any changes to the MSA security, insurance or credit provisions. Given the relatively limited number of comments on these provisions, the MCMC considers that the changes proposed in the course of the last MSA review appear to remain appropriate and sufficient in the context of current industry requirements.

Questions

Question 7:	Do you consider that any changes are required to the security, insurance and creditworthiness provisions of the current MSA? Why or why not? If so, please specify what change you consider is required and explain why.
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9 Negotiation Obligations

Overview

- 9.1 The MSA sets out a number of negotiation obligations in section 5.4. These obligations are intended to broadly regulate the key elements of the negotiation process where an Access Seeker requests access to Facilities or Services offered by an Access Provider.
- 9.2 At a high level, the current negotiation regime under the MSA can be broadly summarised as follows:
- (a) an Access Seeker makes an Access Request, which includes notice of whether the Access Seeker desires access on the terms set out in an RAO, an amended form of the RAO, or under an access agreement on alternative terms;
 - (b) the Access Provider then notifies the Access Seeker that it:
 - (i) is willing to provide access in accordance with the RAO (where requested);
 - (ii) is willing to proceed to negotiate amendments to the RAO or an access agreement on alternative terms; or
 - (iii) rejects the Access Request, along with providing reasons for the rejection; and
 - (c) where agreed by the parties, the Access Provider and Access Seeker commence negotiating an access agreement (if applicable).
- 9.3 A fast-track application and agreement process is also available under subsections 5.4.20 and 5.4.21 of the MSA. This process is designed to allow an Access Seeker to request quick access under a fast-track agreement that is on the terms of the Access Provider's RAO.
- 9.4 The MCMC received many submissions from operators on the negotiation obligations set out in the MSA.

Discussion

- 9.5 Most operators submitted that the negotiation obligations in the MSA are helpful in concluding access agreements. TTdC noted that the negotiation obligations provide a “clear and easy reference framework that all Access Providers and Access Seekers should abide by”. In TTdC’s view, both negotiating parties are able to manage required resources and plan towards the conclusion of the negotiation.
- 9.6 However, several operators proposed amendments to the obligations, mainly regarding the prescribed timeframes for negotiation, common reasons for delays, and on the fast-track application mechanism. These matters are discussed below.

Negotiation timeframes

- 9.7 Astro proposed that the MSA should set out diagrams or visual timelines for any processes or timelines outlined in the MSA. Astro also proposed that these be provided by Access Providers in their RAO, e.g., in relation to ordering. Astro considers that these will assist in quickening the negotiation process for both parties (especially the Access Seeker), and Access Provider will be able to use these to ensure that they are clear and there are no gaps/broken processes when comparing with the MSA. In Astro’s experience, during negotiations, the processes/timeline are sometimes unclear to the relevant representative of the Access Provider, because the negotiations on RAO/access agreement are not necessarily being spearheaded by the right subject matter expert. Astro also proposed specific timelines for negotiation in a series of flow charts, which are set out in Annexure 4.
- 9.8 Celcom Timur (Sabah) submitted that the timeframes in paragraphs 5.4.1(a) and (b) of the MSA are too rigid, given not all negotiations can be completed within 3-4 months depending on the scope and extent of the negotiation. Celcom Timur (Sabah) considers that it is unreasonable for the MSA to assume in paragraph 5.4.1(c) of the MSA that there is a dispute if the MCMC refuses to grant an extension to the original timeframe. Celcom Timur (Sabah) proposed instead that the MSA should omit timeframes altogether and allow parties to negotiate and conclude the access agreement within mutually agreed timeframes, with flexibility on time extensions.
- 9.9 Digi does not face any issues any issues in meeting the prescribed timeframes for negotiation (section 5.4 of the MSA), ordering and provisioning (section 5.7 of the MSA) and decommissioning (section 5.9 of the MSA). Thus far, Digi has been able to amicably resolve issues and come to an agreement in matters relating to meeting the timeframes with Access Seekers.
- 9.10 Digi is of the view that there should not be a timeline as to how soon parties must conclude an access agreement, and that there should not be an obligation to report the negotiation to the MCMC and seek the MCMC’s consent to extend the timeline. As it is very much dependent on the negotiation process, the matter should be referred to the MCMC as a dispute

instead, if parties are unable to conclude within a reasonable duration. Digi requested that the MCMC clarify the reason the MSA requires parties to inform MCMC on the commencement of a negotiation and also mandated timeline for a negotiation and any extension of the timeline is subject to MCMC's approval.

- 9.11 edotco considers that the timeframes for conclusion of access agreements are not practical. Terms in the agreement, including commercial terms, may be sensitive and require considerable discussion between the parties. In edotco's view, it is not practical to adopt in the MSA timelines for concluding access agreements. Any time periods mentioned in the MSA should either be able to be extended or should not be specified at all.
- 9.12 As an example, the timeline taken for edotco to conclude an access agreement with customers has been recorded to be more than 3 months. For its agreements with Digi, Webe and TM, the period of finalisation was 9 months, while with Celcom and Maxis, edotco's agreements took more than 1 year to conclude. This does not include the access agreement registration process, which also took approximately one year due to extensive sessions of queries and responses jointly between edotco, its customers, and the MCMC.
- 9.13 While edotco agrees with the requirement to notify the MCMC of the commencement of negotiations under paragraph 5.4.1(a) of the MSA, edotco considers that the periods specified in paragraphs 5.4.1(b) and (ii) of the MSA should be at least 9 months, with the Access Provider and Access Seeker to jointly approach the MCMC if any extension is required.
- 9.14 Fibrecomm considers that the timeframes mentioned in sections 5.4, 5.7 and 5.9 of the MSA are sufficient and that Access Providers and Access Seekers alike have the freedom to negotiate for longer timeframes should the need arise.
- 9.15 Maxis proposed that paragraph 5.4.1(b) of the MSA should clarify that the 4 or 3 month period (as relevant) is a reference to calendar months and not Business Days. Maxis also proposed that this period should start from the date that a complete Access Request is submitted by the Access Seeker and received by the Access Provider.
- 9.16 Ohana commented that there should be a better way to conclude access agreements with Access Providers and register the agreements with MCMC. Ohana cited a situation in the past where prolonged negotiations with Access Provider and lengthy registration process by MCMC had adversely affected its cash flow as Access Provider continued to charge prices in the commercially agreement instead of newly negotiated prices in the access agreement. Ohana also commented its negotiations for its previous access agreement with an Access Provider has been ongoing since July 2018 and that it has exceeded MSA timelines which stipulates 3 to 4 months to conclude.
- 9.17 TTdC suggested that the timeframes for negotiation, ordering and provisioning and decommissioning be applicable only to items and/or

services with regards to the MSA, MSAP and Access List. All other terms and conditions required by either the Access Provider or Access Seeker, which do not fall under the aforementioned determinations, should not be bound by the stipulated timeframes. TTdC does foresee that it may face possible delays in obtaining approvals from specific authorities or individual parties with regards to Right of Way (**ROW**) and Right of Entry (**ROE**), in which case the MCMC will be duly notified on the delays.

- 9.18 PPIT stated that prescribed timelines for negotiations and procedures under section 5.4 of the MSA add to the stress of negotiations and should be dispensed with. While these provisions do provide for the parameters for negotiations which are beneficial, to PPIT the challenge in concluding negotiations lies in the willingness of parties to work together towards a common goal. An area of possible concern is new licensees who may not have the expertise in access agreement negotiations, which may be a factor in the delay to conclude negotiations.
- 9.19 PPIT submitted that it makes no business sense for PPIT to delay entry to its infrastructure where there is availability. However, where the timelines are not able to be met, PPIT considers it burdensome to need to notify the MCMC in the event of any requested extensions under paragraph 5.4.1(c) of the MSA. Further, PPIT submitted that the requirement to notify the MCMC under subsections 5.4.17 and 5.4.18 of the MSA if there are technical infeasibility or capacity constraints are also burdensome, and that it should be enough that PPIT informs the Access Seeker.
- 9.20 TM considers that the time period in paragraph 5.4.1(b) of the MSA is not currently sufficient if an Access Provider is dealing with several Access Seekers at the same time. For example, TM commented that if an Access Provider like TM has to deal with more than five Access Seekers simultaneously, it would be a challenge to complete all negotiations within that timeline as all negotiations are utilising the same resources. In TM's view, the timelines need to be adjusted based on the number of Access Seekers with which the Access Provider is concurrently negotiating.
- 9.21 U Mobile considers that the MSA should distinguish between a situation where parties are negotiating to enter into an access agreement for the first time, compared to when parties are negotiating for the procurement of a new service that has not been previously sought before or simply where there have been changes in the Access List or MSA relating to an existing service provided/sought. These should be governed by different timeframes and monitored accordingly. Typically, negotiations on supplemental agreements take 1 to 2 years or even longer. This has been U Mobile's experience in the previous MSA review, where renewal of some access agreements has been considerably delayed.
- 9.22 Webe submitted that there should be no need for parties to inform the MCMC on the start of negotiations under subsection 5.4.1 of the MSA, and that instead information should only be provided in the event that either party feels that the negotiation is being delayed for unnecessary reasons.

- 9.23 YTL Communications submitted that it is easier to base access on the RAO to remove the laborious negotiating process.
- 9.24 The MCMC thanks operators for their detailed submissions regarding the negotiation timeframes set out in the MSA. On one hand, Access Seekers have commented that the timeframes are useful in concluding access agreements, but on the other, Access Providers are concerned that some of the timeframes do not reflect commercial practice. Despite the breadth of submissions from Access Providers that the existing negotiation timeframes are not adequate or appropriate, the MCMC proposes to retain the timeframe in paragraphs 5.4.1(b)(i) and 5.4.1(b)(ii) of the MSA.
- 9.25 It would not be appropriate to remove the timeframes set out in paragraph 5.4.1(b) of the MSA, as proposed by some operators. As noted in paragraphs 9.28 to 9.38 below, delays in negotiations remain quite common and in the absence of a mandated timeframe under the MSA, parties would have no reference point as to the reasonableness of any negotiating window. In addition, the timeframes in this section are already expressed to be a "best endeavours" obligation, rather than an absolute obligation.
- 9.26 However, the MCMC understands that negotiation timeframes will vary based on the complexity of the services and the particular requirements of the Access Seeker. For this reason, the MCMC proposes to introduce a provision that requires parties to refer any delays to negotiation to the MCMC for the MCMC to assess whether it can facilitate the negotiation or whether such negotiations should be resolved in accordance with the Dispute Resolution Procedures.
- 9.27 The MCMC also proposes to retain paragraph 5.4.1(a) of the MSA such that parties will still be required to notify the MCMC when negotiations commence. The MCMC considers that this provision is still important to increase transparency and minimise the scope for disputes regarding the length of time over which negotiations take place.

Delays

- 9.28 Cubic Telecom reported mostly positive experiences in its negotiations as an Access Seeker. In particular, Cubic Telecom noted that:
- (a) the Access Provider MNO entered into and proceeded with negotiations in good faith;
 - (b) any slight delays were explained by the MNO trying to understand the nature of Cubic Telecom's services;
 - (c) the MNO was helpful and open in terms of technical integration, and the MNO was keen to ensure regulatory and licensing compliance and compliance with any Determinations and Guidelines of the MCMC; and
 - (d) while negotiations were rigorous, the MNO was proven to be a trustworthy and serious partner and Cubic Telecom was secure that

an agreement was capable of being reached on the basis of equality, mutuality, trust and confidence.

- 9.29 Maxis submitted that delays in access agreement negotiations are typically due to unreasonable terms and conditions imposed by the Access Provider in the access agreement, such as:
- (a) a refusal to comply with the terms and conditions in the Access List, MSA and MSAP – e.g. service description, timeline for fulfilment, EOI, portal, pricing, timeline for fault restoration, contention ratio, terms of agreement, etc.; and
 - (b) inclusion of unreasonable terms and conditions in the access agreement that are not clearly specified in the Access List, MSA and MSAP – e.g. refuse to offer HSBB network services above 100Mbps, not flexible to the changes in the market, requirements to put Access Provider's name as the beneficiary in the Access Seeker's insurance policy, additional charges for VLANs, refusal to include the rates for Value Added Services (e.g. Multicast, Unicast) in the access agreement, unreasonable charges for ancillary services, etc.;
- 9.30 MY Evolution commented that as an MVNO, it must keep up with all network technologies such as 5G, and Access Providers do not incorporate MVNOs in their early deployment strategy. Therefore, further modifications are often required to Access Provider systems to enable new technologies for MVNOs, and this generates long delays. In MY Evolution's experience, Access Providers usually provide reasons such as technical challenges, or planned changes of supplier solutions to quote the impacts, and this will delay for months the commencement of negotiations on a service enhancement. Access providers also claim unavailability of approval people or legal people to delay progress on contract negotiations and thus it usually takes 1 year to get a new service or feature negotiated.
- 9.31 MYTV submitted that Access Providers should be more transparent and provide detailed information to Access Seekers in the event of delays.
- 9.32 Webe noted that most of the time, Access Providers are responsive to any delays to ordering and provisioning or negotiation of agreements, but sometimes there is a lack of commitment especially on the expected timeline. For example, Webe noted that in the migration of conventional interconnectivity using E1 links to IP-based interconnection, one Access Provider is refusing Webe's request for total migration even though the Access Provider has the means to offer the service. If an Access Provider is providing IP-based interconnection to themselves, Webe submitted that it should be mandatory for the Access Provider to provide the Access Seeker with access, on a non-discriminatory basis.
- 9.33 YTL submitted that common reasons for delays in negotiating access agreements include:
- (a) the Access Provider requiring more time to study the existing infrastructure to confirm capacity, availability and ordering;

- (b) the Access Provider being unable to follow the MSAP price for some services (i.e. transmission) as the Access Provider claims that the provided service will be in better network quality and higher SLA due to the network setup; and
 - (c) terms and conditions not being agreeable.
- 9.34 In YTL's experience, discussions are often delayed due to different interpretations of the MSA and the Access List and there should be a mechanism to resolve this dispute for parties to jointly submit and attend discussions with the MCMC for clarification and resolution.
- 9.35 One operator complained that an Access Provider is insisting on having physical meetings during negotiations, despite the ongoing COVID-19 pandemic. The operator considers that negotiations have been stalled and delayed by the Access Provider due to the following reasons:
- (a) non-preference of virtual meetings during movement control order (**MCO**)/conditional movement control order (**CMCO**), despite virtual meetings being part of the norm especially for telecoms/infra providers during the COVID-19 pandemic, where most companies are heeding the Government's call by working from home to contribute in curbing the pandemic. The operator noted that virtual meetings had replaced physical meetings since last MCO as a work from home measures; and
 - (b) limited manpower for negotiation, with the Access Provider claiming that the same numbers of staff are required to address negotiation with all Access Providers, hence, they are only able to speed up the negotiation if Access Seekers agree to bear their cost of hiring external counsel to assist the process. This is conflicting with a few requirements in MSA section 5.4 in regards of negotiation timeline and negotiation cost to be borne by both operators themselves. The operator does not face such issues with its other Access Providers and both parties were willing to work together in negotiation process by meeting virtually as frequent as possible without any limitation such as one meeting per week set by the Access Provider.
- 9.36 Another operator cited as an example its request to access to an Access Provider's HSBB Network services, which has not been successful even after more than two years of negotiations due to unfavourable terms and conditions imposed by the Access Provider that do not comply with the Access List, MSA and MSAP. The Access Provider has also not been compliant to timelines of dispute resolution in the MSA and MCMC itself found evidence of vexatious behaviour.
- 9.37 Although several stakeholders commented on delays in negotiations, there were many reasons reported for such delays, including delays caused by third parties (which are discussed in section 5 above). The MCMC is pleased to note that Access Providers appear to have generally been forthcoming and transparent with Access Seekers on the reasons for any delays.

- 9.38 Some Access Seekers reported that delays sometimes arise due to a failure by Access Providers to comply with the terms in the MSA, the service descriptions set out in the Access List or the MSAP rates. The MCMC considers that, to the extent a party considers that the other party is in non-compliance with an MCMC Determination, that party should first seek to resolve the matter with the other party, failing which the Dispute Resolution Procedures should be initiated.

Fast-track application

- 9.39 Most operators responded that they do not use the fast-track application process and Access Providers have not received any requests for this process. While some operators considered that the process could be removed from the MSA, others responded that they would like to use the process but only if the Access Provider complies fully with the Access List, MSA and MSAP in compiling its RAO. One operator submitted that the fast-track mechanism will enable the Access Seeker to rollout services to end users, provided that the RAOs are consistent with the MSQoS for Wired Broadband.
- 9.40 Even where the Access Provider complies fully with those provisions, operators submitted that Access Seekers will still need to negotiate other terms and conditions of the Access Provider that are not addressed by the MSQoS for Wired Broadband, meaning the fast-track application may still not be suitable.
- 9.41 YTL similarly submitted that the fast-track mechanism is invoked if the arrangements are limited to those services. However, the fast-track mechanism also involves acceptance of other terms and conditions in the RAO. YTL accordingly suggested that the RAO be made modular for each category of Facilities and Services.
- 9.42 In response, as noted by the MCMC in section 6 above, a key focus area for the MCMC going forward will be ensuring that Access Provider RAOs comply with MCMC determinations, including the Access List, MSA and MSAP. Moreover, Access Provider RAOs are already required to be made modular, pursuant to subsection 5.3.4 of the MSA. The MCMC considers that there is still some (albeit limited) demand for the fast-track application process, and given the process remains voluntary, the MCMC is inclined to retain the process and review whether any improvement in RAO compliance with the MSA results in greater take-up of this process in the upcoming regulatory period.

Negotiation generally

- 9.43 A small number of operators also provided more general comments in respect of negotiation requirements, each of which the MCMC addresses in turn below.
- 9.44 Astro has not yet commenced operations under any access agreements but submitted that it does not find negotiation obligations helpful in concluding its access agreements.

- 9.45 Fibrecomm submitted that the requirements under section 5.4 of the MSA should not apply in respect of Facilities and Services that are not regulated by the Access List, as stated under subsection 5.4.14 of the MSA. In response, the MCMC notes that subsection 5.4.14 of the MSA applies to unlisted Facilities and Services only to the extent agreed by both parties, and accordingly the MCMC does not propose to amend this provision.
- 9.46 REDtone submitted that the MCMC should be present on the final negotiation as a neutral advisory party to assist the finalisation of items that cannot be resolved between the parties. The MCMC notes that to the extent parties are unable to conclude negotiations within the (updated) timeframes (including any agreed period of extension between the parties), either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures;
- 9.47 TM commented that, as an Access Provider, it requires an additional ground for refusal in subsection 5.4.11 of the MSA in circumstances where there is negative financial or economic viability on the investment to provide the facility or service in the Access List.
- 9.48 The MCMC does not agree with this proposal. The MCMC adopts an industry-wide approach to regulation, and accordingly, it is primarily concerned with ensuring that telecommunications markets in Malaysia, particularly for bottleneck services, are operating competitively, or regulated such that the effects of competition are replicated. As part of this mandate, the MCMC always seeks to balance the burden on Access Providers with the benefits of providing access to Access Seekers in order to promote downstream competition and ultimately contribute to the long-term benefit of the end user (**LTBE**).
- 9.49 It would be contrary to the MCMC's objectives of promoting competition if Access Providers could refuse to provide access to a regulated facility or service merely because provision would have a negative financial impact on the Access Provider. The MCMC considers that it could significantly harm transparency across the industry if Access Providers were incentivised to only provide access to those services that are financially beneficial for the Access Provider. It would also be impractical to enforce such a provision from a regulatory perspective.
- 9.50 TM also commented on the following challenges faced during negotiation of access agreements as an Access Seeker:
- (a) inability to seek access to regulated facilities/services because an Access Provider does not publish certain regulated facilities / services in its RAO;
 - (b) unfair and unequitable terms and conditions which appear to be least favourable to the Access Seeker, with the Access Seeker's request for normal buying arrangements not being entertained or being ignored; and

- (c) the Access Provider imposing “cost of negotiations” on the Access Seeker for any access agreement negotiations which caused a burden to Access Seeker.
- 9.51 As the MCMC has noted earlier in this PI Paper:
- (a) the MCMC is concerned to ensure that Access Provider RAOs comply with the requirements set out in the MSA, and this will be a key focus area for the MCMC going forward;
 - (b) parties may request resolution of disputes in accordance with the Dispute Resolution Procedures if they are unable to conclude negotiations within the updated timeframes for negotiation or where a party does not comply with the MSA; and
 - (c) subsection 5.16.11 of the MSA already provides that each party must bear its own costs in relation to the preparation, negotiation and execution of an access agreement.
- 9.52 TTdC submitted that the MCMC should emphasise limiting negotiation to only the negotiating parties and prevent any intervention from third parties while negotiations are ongoing.
- 9.53 The MCMC notes that:
- (a) the proposed revisions to the negotiation timeframes will allow the parties to mutually agree an extension of no greater than 3 months without seeking the MCMC's approval; and
 - (b) the Dispute Resolution Procedures also contemplate resolution of disputes between the parties, prior to escalation to a third party such as the MCMC or a Technical Expert.
- 9.54 One operator complained that it is very challenging to negotiate with Access Providers in respect of certain matters particularly if the Access Provider is not cooperative/willing to negotiate even though the Access Provider has accepted the request to negotiate amendments to the RAO or an access agreement on alternative terms. To have a more effective negotiation process, the operator suggested that the MSA specify a minimum number of discussion hours in a week/month to be fulfilled once negotiation process have commenced. This is also a good measure to prevent Access Providers from delaying/stalling the negotiation process. As Malaysia moves towards IR 4.0, the operator considers that internet service providers should be the first to adopt digitalisation. Further, during uncertain times such as with the COVID-19 situation, virtual meetings should take priority over physical meetings and not be used as a reason for not having a meeting.
- 9.55 Another operator submitted that having the MCMC present on the final negotiation would allow the Access Seeker to complain to the MCMC, which may be preferable to a dispute as Access Seekers may be dependent on a particular provider and it may disrupt the business relationship to initiate a dispute.

MCMC preliminary views

9.56 The MCMC proposes to amend the Negotiation Obligations under subsection 5.4 of the MSA as follows:

Reference	Summary of proposed change	MCMC rationale
5.4.1(c)	The MCMC proposes to require parties to refer all delays in negotiating an access agreement within the applicable timeframes to the MCMC so that the MCMC can either facilitate negotiations which are capable of resolution, or direct parties to resolve matters under the Dispute Resolution Procedures.	The MCMC wishes to increase efficiency and the timely resolution of negotiations of access agreements.
5.4.6(c)	The MCMC proposes to add relevant licences to the list of information that an Access Request must contain.	A few Access Providers have requested that this be added to the list of information required within an Access Request.
5.4.18 (new)	The MCMC proposes to include an obligation for the Access Provider to increase capacity on its 5G RAN if the Access Provider has refused an Access Request for 5G Services on the basis that the Access Provider's 5G RAN has insufficient capacity to accommodate the Access Seeker's Request.	The MCMC wishes to ensure the Access Provider is actively expanding its 5G RAN to encourage increased access to 5G Services which will ultimately be in the LTBE as it would foster increased competition among downstream service providers.
5.4.22 (new)	The MCMC proposes to include a requirement that meetings under subsection 5.4 may take place either in person, or virtually by conference call, video conference or other communications technology with participants in one or more geographical places.	The MCMC notes that given the ongoing COVID-19 pandemic and the implementation of MCOs, traditional negotiation in a face-to-face setting may not always be appropriate. The MCMC is concerned to ensure that Access Providers do not seek to delay negotiations by insisting on a particular form of negotiation.

Questions

Question 8: Do you agree with the MCMC's proposed changes to the Negotiation Obligations set out at subsection 5.4 of the draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

10 Content Obligations

Overview

- 10.1 As described in section 6 above, paragraph 5.3.3(e) of the MSA provides that Access Providers must include terms and conditions in their RAOs and Access Agreements which are consistent with certain principles and terms specified in the MSA. These content obligations target a wide ranging number of areas where Access Providers may otherwise attempt to undermine the intent of access. They also apply to the Service Specific Obligations that were introduced in the 2016 MSA Review, as set out in section 6 of the MSA.

Discussion

- 10.2 TM proposed that the Content Obligations only prescribe key requirements and principles and not set out detailed terms, conditions and processes. TM considers this will allow operators some flexibility to modify terms to best suit their requirements, as the Content Obligations (including amendments) have been in place for more than 10 years and operators are more experienced in managing the process. This change will help each operator to make customisations which may be beneficial to both sides without hindrance in registration, because certain operational processes are not strictly in line with the MSA. TM submitted that the MSA should support operational efficiency rather than operations being changed merely to comply with MSA even though it may not be optimal.
- 10.3 U Mobile commented that in general, the Service Specific Obligations should allow more effective reference by parties, and that other relevant Content Obligations should be subsumed into the Service Specific Obligations to avoid confusion and for easy reference. In addition, a user-friendly version of the soft copy of the MSA must be made available for all parties to navigate.
- 10.4 YTL Communications submitted that most Access Providers have refused to adhere to the Content Obligations (specifically with regard to subsection 5.8.2 of the MSA, regarding POI procedures) and that the Content Obligations should also clarify QoS issues.
- 10.5 In relation to YTL's comments, the MCMC notes that it has not previously received any complaints from YTL regarding Access Provider non-compliance with the Content Obligations. The MCMC is reliant on operators raising issues with the MCMC so that the MCMC can consider and address such issues. Matters relating to QoS issues are set out in the relevant mandatory

technical standards and discussed below in the context of the relevant Service Specific Obligations to which those standards apply.

- 10.6 The MCMC considers that, given the limited submissions on the Content Obligations themselves, the Content Obligations are operating effectively and should remain unchanged. To the extent that any further provisions are required to address stakeholder concerns, the MCMC considers that these can be addressed in the Service Specific Obligations.
- 10.7 The MCMC's preliminary view is that the Content Obligations set out in subsection 5.5.1 of the MSA should remain unchanged.

11 Forecasting Obligations

Overview

- 11.1 Under subsection 5.6 of the MSA, Access Providers have the ability to request forecasting information from an Access Seeker, which is intended to assist the Access Provider with network management and capacity planning. However, the MSA also sets out specific requirements that must be complied with by both the Access Provider and the Access Seeker to ensure such information is collected safely and not misused.

Discussion

- 11.2 A number of respondents to the MCMC's initial informal questionnaire commented that the service-specific forecast requirements were adequate. However, some Access Providers requested longer forecast periods in order for the forecast to be useful.
- 11.3 Celcom Timur (Sabah) commented that, from an Access Provider's perspective, a forecast that is longer than 1 year is much preferred, as this will be beneficial for Access Providers to design, plan and invest in network expansion or new technologies if necessary. In the access agreement for Layer 2 HSBB Network Service with QoS between Celcom Timur (Sabah) and Maxis, the parties agreed for the forecast to be 3 years, however, this was questioned by the MCMC as the MSA only allows the forecast to be for a maximum period of 1 year. Celcom Timur (Sabah) also proposed more generally that forecasting obligations can be commercially negotiated and can be removed from the MSA, including in respect of HSBB Network Services (subsection 6.6.3 of the MSA) and Transmission Services (subsection 6.7.2 of the MSA).
- 11.4 edotco submitted that while forecasts can help Access Providers plan and design their networks, forecasting obligations should not be heavily regulated, as decisions made on such matters are contingent on the operational requirements of the individual party and Project. edotco considers it would be more expedient if forecasts are made voluntary, so that parties are given sufficient flexibility to decide between themselves the best form to be employed to meet these obligations.
- 11.5 Maxis proposed that:

- (a) subsection 5.6.4 of the MSA, which allows parties to agree on an alternative procedure for forecasting and ordering procedures, be removed. Maxis prefers that a standard forecasting and ordering procedure should apply under the MSA, to ensure there are no changes to the procedure to the disadvantage of the Access Seeker; and
 - (b) under subsection 5.6.9 of the MSA, only heads of divisions/departments be entitled to certify the records of persons who are provided with forecast information if requested by the MCMC, rather than the Access Provider's Chief Executive Officer or Chief Operating Officer.
- 11.6 MY Evolution commented that the forecasting obligations are complicated to implement, as they are dependent on the projects of customers, as well as the market conditions, which are rapidly changing.
- 11.7 MyKRIS submitted that most of its business requirements are ad-hoc and spontaneous, depending on customers' needs, and accordingly, it does not get involved in forecast requirements.
- 11.8 PPIT commented that the maximum period of 1 year for forecasts in respect of the Infrastructure Sharing Service is inadequate, given contracts for this service are typically long-term, of up to 10 years or more. In PPIT's view, a maximum period of 1 year does not facilitate the planning of services and may even be a redundant provision. In any event, PPIT has not requested forecasts and has not been provided forecasts by its Access Seekers. PPIT considers that forecasts may not apply to Infrastructure Sharing Services unless Access Seekers are actually bound by them.
- 11.9 Sacofa noted that forecasting is very difficult to implement as it is subjective based on the Facilities and Services, and it has never been utilised in practice. Based on Sacofa's experience, forecasting obligations are not imposed on the Access Seeker, particularly for certain services such as Infrastructure Sharing. Sacofa implements a first-come first-served basis, which it considers is working well.
- 11.10 Sacofa submitted that Access Providers should have the right to either dispense with or impose the forecasting obligations under section 5.6 of the MSA. Further, Sacofa considers that it should be exempt from the requirement to mitigate its losses through its own usage in the event of over-forecasting, as Sacofa does not utilise its own services.
- 11.11 TM submitted that the forecasting procedures in the MSA are not adopted in practice as operators tend to provide forecasts for non-binding information purposes only. Furthermore, the terms are very strict on the Access Provider, not the Access Seeker. Most Facilities and Services on the Access List are provided on supply-driven and excess capacity basis, as such TM considers that this does not necessitate a forecast from the Access Seeker.
- 11.12 TM accordingly proposes removing the forecasting obligations so as to allow operators to set their own processes.

- 11.13 The MCMC has considered the initial feedback from operators and considers that the arguments in favour of continuing the regulation of forecasting obligations and removing the forecasting obligations are finely balanced.
- 11.14 On one hand, the MCMC considers that where provided, an Access Seeker's forecast information allows an Access Provider to undertake network planning to ensure sufficient capacity is available to meet the demands of one or more Access Seekers for a particular Facility or Service. On the other hand, in practice, the forecasting obligations are either not being utilised or not proving useful to Access Providers.
- 11.15 At this stage, the MCMC proposes to amend the forecasting obligations for HSBB Network Services to allow Access Providers to request a forecast period of up to 3 years. However, the MCMC intends that only the first 12 months of this forecast can be made binding for the purposes of subsection 5.6.16 of the MSA, with the remaining two years of the forecast to be non-binding.
- 11.16 The MCMC also proposes to introduce a new provision expressly clarifying that parties may agree mutually to dispense with forecasting obligations. The MCMC also reminds stakeholders regarding the operation of subsection 5.6.4 of the MSA, which already gives parties the flexibility to agree to an alternative forecasting procedure to that set out in the MSA.
- 11.17 The MCMC considers that, as submitted by many operators, forecasting obligations are very service or project specific. It would not be appropriate to mandate that parties follow a particular forecasting procedure under the MSA as proposed by some operators. However, the MCMC considers that the MSA should continue to set out at least some forecasting processes, which parties may choose to use and adapt where relevant and useful.
- 11.18 The MCMC also proposes that subsection 5.6.9 of the MSA, which requires that records of access to Access Seeker forecasting information must be certified by the Access Provider's Chief Executive Officer or Chief Operating Officer should remain unchanged. It is in recognition of the sensitivity of such information that the MCMC requires Access Providers to maintain strict confidentiality protocols in relation to this information, which the MCMC considers is aided by the levels of accountability required under this section. In any event, these obligations only apply where such records are requested by the MCMC, and accordingly do not impose an undue burden on Access Providers.

MCMC preliminary views

- 11.19 The MCMC intends to continue regulating the forecasting obligations in the MSA. However, in an effort to address preliminary operator feedback regarding the usefulness of these obligations, the MCMC proposes to make the following amendments to subsection 5.6 of the MSA:

Reference	Summary of proposed change	MCMC rationale
5.6.4	An amendment is proposed to subsection 5.6.4 to clarify that parties may mutually agree to dispense with the forecasting obligations in the MSA.	<p>The MCMC considers that there is limited evidence of the provision of useful forecasting information in the industry at the moment. Many Access Providers have submitted that the forecasting requirements can be removed.</p> <p>Although the existing forecasting obligations are already voluntary for Access Providers, the MCMC proposes to expressly clarify that parties may dispense with the forecasting obligations, which the MCMC anticipates may save time and costs for the parties.</p>
5.6.16	The MCMC proposes to amend this section to clarify that an Access Provider may not recover costs in respect of any non-binding forecast period.	<p>The MCMC proposes to extend the minimum forecast period for HSBB Network Services to 3 years to make forecast information more useful to Access Providers.</p> <p>However, in acknowledgement that Access Seekers may find it challenging to commit to forecasts beyond 12 months, the MCMC proposes to prohibit Access Providers from recovering costs from Access Seekers in respect of any period after the initial 12-month period covered in a forecast for HSBB Network Services.</p>

Questions

Question 9: What changes (if any) could be made to subsection 5.6 of the MSA in order to make the provision of forecasting information simpler (for Access Seekers) or more useful (for Access Providers)?

12 Ordering and Provisioning Obligations

Overview

- 12.1 Subsection 5.7 of the MSA sets out ordering and provisioning obligations relating to the supply of Facilities and Services listed under the Access List.
- 12.2 Ordering and provisioning are central to an Access Seeker's ability to plan for and supply in a downstream market, and it is accordingly critical for Access Providers to treat each Access Seeker (including an Access Provider's own retail arm) in a non-discriminatory and equivalent manner to ensure no Access Seeker is given an advantage over another and that Access Providers do not favour their own orders.

Discussion

- 12.3 In relation to submissions received in respect of the negotiation obligations, there were many submissions which stated that the timeframes set out in

the ordering and provisioning obligations are not appropriate. Operators also commented on the provisions relating to fees, penalties and rebates. These matters are discussed below.

Ordering and provisioning timeframes

- 12.4 In its informal questionnaire on the MSA, the MCMC asked the operators opinion about the indicative delivery times under subsection 5.7.14 of the MSA remained adequate. In particular, the MCMC requested feedback on whether any facilities and infrastructure required a longer or shorter timeframe than currently stipulated.
- 12.5 Commercial Radio Malaysia commented that the timeframes in subsections 5.4, 5.7 and 5.9 of the MSA are reasonable and that it notifies the MCMC of delays caused or contributed to by third parties.
- 12.6 edotco submitted that ordering and provisioning timelines should not be heavily regulated, as decisions on these matters are contingent on the operational requirements of the individual party and project. In edotco's view, it would be more expedient if parties are given sufficient flexibility to decide between themselves the best form to be employed to meet these obligations. edotco considers that the timelines for the delivery of orders for Infrastructure Sharing in the MSA are very general and do not take into consideration the different types of telecommunication structures built or ordered for Access Seekers, e.g. apart from 3 or 4-legged ground-based towers, edotco also provides rooftop structures, monopole structures, temporary structures such as rapoles and masts, and special structures, such as minarets, water tanks, billboards and pylons. The delivery timeline differs according to the different structures.
- 12.7 In edotco's opinion, the requirement on ordering of services and provisioning process is acceptable within the standard commercial practices of edotco's operations. However, edotco builds and provides towers nationwide and every build order received by edotco has challenges that may cause delays. These challenges vary from one state to another, for example:
 - (a) exclusivity by State-backed Companies (**SBC**) lead to delays in customer (Access Seeker) Orders. edotco is unable to accept any orders for site towers at locations controlled by SBC. For example, in Melaka and Pahang, edotco is unable to build site towers, hence edotco has no choice but to decline the order requests. In such situations, edotco shall propose an alternative location for newly built sites or co-location of sites where possible, before rejecting any orders due to exclusivity issues. Orders from customers are normally to address capacity requirements and patch coverage gaps, which allow for a very small search radius. Acquiring a site to meet these stringent requirements, while ensuring compliance to authority policy and guideline, is a challenge;
 - (b) onerous and stringent policy and guidelines by Local Authorities for each state lead to delays in fulfilling Access Seeker orders. Meeting local authorities' requirements that are laborious, which also vary

from one state to another, pose challenges to Access Providers and are highly likely to cause delays in delivering orders to Access Seekers. Additionally, some states, such as Kota Kinabalu, Sabah, where the policy is a work in progress, pose uncertainty to site selection;

- (c) most state authorities or agencies have different and dissimilar application procedures prescribed in applying for consent to access a site or to construct the necessary infrastructure. In Malaysia, there are over 150 local councils and municipalities, each having its own requirement and process, including SLA on response time to applicants. A normal timeline to obtain permits for tower and structure will be approximately 3 to 4 months. There have also been situations where the period takes more than 4 months, especially when the land involves Kampung Orang Asli settlement. For example, in dealing with certain sites in Kuala Lumpur, edotco has experienced challenges in the past where the town council's consent entailed a 3-months' waiting period. Moreover, the period of land acquisition also differs according to the different types of owners. Commercial land, private individual land and state land each have their own acquisition processes. It will normally take approximately 2 to 3 months for edotco to conclude tenancy agreements with these owners, however, it will take longer for state land as this requires consent at the state level, especially on commercially negotiated terms; and
- (d) other matters, including issues related to land owned by corporate and private individuals, agreement with temporary occupancy licence (**TOL**) status, public complaints and weather conditions.

12.8 edotco confirmed that it gives sufficient information accompanied with justifications to its customers for any delays, which is normally caused by third parties and is beyond edotco's control. edotco ensures its delivery to customers through its internal monitoring management via weekly progress meetings lead by edotco's project managers.

12.9 In light of the above, edotco proposed that:

- (a) subsections 5.7.14 (indicative delivery times) and 5.7.33 (late delivery) of the MSA be amended to take into account delays which are caused by external factors such as delays in obtaining state authority consent(s) and/or approval(s) and the land acquisition process by landowners. In determining the delivery timeframe, edotco proposed that the MCMC factor in the following elements:
 - (i) land access from landowners;
 - (ii) local authorities approvals for permit;
 - (iii) the location of where the towers are to be constructed and built - rural, urban sites, East Malaysia and West Malaysia locations have different sets of challenges; and

- (iv) the types of towers - different towers and structures will have a different timeline for erection and dependencies;
- (b) a new provision allowing the Access Provider and the Access Seeker to agree on a different delivery timeframe for different services/products. For example, Greenfield projects generally take longer than 40 business days to be ready for active equipment installation in comparison to colocation where there is already an existing tower/infrastructure in place;
- (c) that the MSA distinguish non-standard sites which (unlike standard sites) may require additional layer(s) of approvals and consent before access is granted. Examples of such sites that typically require more time are remote sites, skyscrapers, government land/high security (Ministry of Defence-owned) sites. Without distinguishing between the different types of sites, this provision should be removed as it is otherwise impracticable in its implementation;
- (d) additional delays resulting from the MCO and the COVID-19 pandemic may need to be addressed - such delays are not attributable to the Access Provider and/or Access Seeker. Concessions should accordingly be made to exclude such delays from the computation of the other delays caused by the Access Provider and/or the Access Seeker;
- (e) the MSA be amended to take into account delays from the approval and acquisition process mentioned above, which will indirectly contribute to a longer timeline of execution for 5G deployment. Therefore, the 40 business days to deliver orders to Access Seekers as per the MSA is not reasonable. However, regardless of 5G, 4G or any other telecoms requirement for active equipment, the local authorities' processing timeline will be the same. edotco welcomes any initiatives where the MCMC can provide Access Providers like edotco an exception to fast track local authorities' process for 5G application;
- (f) the inclusion of a separate provision on land process approvals by the landowner and the relevant authorities that are responsible to issue permits with specified SLA/timeline. The provision would expedite the processes that are outside the Access Provider's jurisdiction and enable the Access Provider to deliver its services to its Access Seekers (customers/mobile operator). This provision is critical come 5G when the number of infrastructures required for coverage and QoS greatly intensifies, compared to the current 4G requirement. Accelerating deployment of infrastructure for 5G is imperative and inevitable; and
- (g) specific amendments to the indicative delivery timeframes for Infrastructure Sharing set out in subsection 6.8.5 of the MSA, as discussed in section 29 below.

- 12.10 TM similarly submitted that, generally, facilities and infrastructure that require wayleave and/or governmental authority approval (such as the provision of duct and manhole, end-to-end transmission or infrastructure sharing) require a longer timeframe. TM proposed that parties be given the flexibility to agree on the delivery timeframe or, alternatively, the time stipulated in the MSA apply after third-party wayleave and government approval is obtained (as it is out of Access Provider's control). Some of the deliverables in the MSA, which require approval by other Ministries and government agencies must be excluded from the delivery timeframe. TM also suggested that the charges outlined in the Access Provider's Notice of Acceptance to the Access Seeker expressly specify the charges for works, such as additional wiring, right of way, land rental, local authority and third-party deposits.
- 12.11 Fiberail submitted that, generally, there were no major issues. Fiberail did find that the delivery timeframe is too short, however Fiberail considers these to be only indicative delivery timeframes, which allows for further negotiation and agreement between the parties.
- 12.12 As mentioned above in paragraph 9.17, TTdC suggested that the timeframes for negotiation, ordering and provisioning and decommissioning be applicable only to items and/or services with regards to the MSA, MSAP and Access List.
- 12.13 MyKRIS submitted that, in its dealings with Access Providers, it prioritises the availability of the infrastructure followed by pricing. Most of the time, the Access Provider can meet the default delivery lead time. While there are still cases of long delays, customers are willing to extend the delivery time frame in such cases.
- 12.14 PPIT suggested that, generally, the current ordering and provisioning process is in order. However, the period for the provision for new built sites may vary where section 4.5 may come into play.
- 12.15 Sacofa found the delivery of new infrastructure/service within a certain time frame difficult to implement. The delivery timeframe is subject to the types of infrastructure/services and some of the prescribed delivery dates in the MSA are too short. Sacofa proposed to amend the delivery timeline to be reasonable or to be mutually agreed by the Access Provider and Access Seeker.
- 12.16 Webe submitted that, in normal circumstances, the timeline set out is served as a guide and, more often than not, the delivery is ahead of the stipulated timeline. It is not an issue for the Access Provider to fulfil MSA requirements on acknowledgement of receipt of an order, time for acceptance or rejection of an order, and the indicative delivery timeframe on normal /"business as usual" circumstances. However, in circumstances which involve new POI, new equipment, migration of existing call/SMS traffic (e.g. migration from time division multiplexing (**TDM**)/E1 to IP interconnect) or for a request to build a new site, then the indicative delivery timeframes may not be applicable.

- 12.17 The MCMC thanks operators for their submissions on the ordering and provisioning timeframes set out in the MSA, which are covered under subsections 5.7.13 to 5.7.14 and in the various Service Specific Obligations set out in section 6.
- 12.18 The indicative delivery timeframes were amended by the MCMC in its 2016 MSA Review to reflect that a one-size-fits-all approach to delivery timeframes was not appropriate given the inherent differences in delivery timeframes for different services. Following that review, the MSA now sets out general principles for compliance with delivery timeframes in subsection 5.7, with specific timeframes applying to any particular service set out in the Service Specific Obligations for that service.
- 12.19 In responding to the MCMC's informal questionnaire in the context of this review, most operators submitted that the existing delivery timeframes were too short in circumstances where Access Providers are reliant on third parties, e.g. landowners, local and state authority approvals, etc. While the MCMC notes that subsection 5.7.33 of the MSA already excludes from the Access Provider's obligation to pay rebates any delays caused by a lack of authorisation by a third party, the MCMC understands based on operator submissions that there are broader circumstances in which late delivery may occur.
- 12.20 On this basis, the MCMC considers that it would be appropriate to amend subsection 5.7.33 of the MSA to reflect that there may be other circumstances in which the Access Provider may not be responsible for delays, in which event it would be inappropriate for the Access Provider to be liable to pay a late delivery rebate. In particular, the MCMC proposes to exclude circumstances where a delay is caused by a third party that is not acting under the direction or control of the Access Provider. The MCMC also proposes to include related provisions which ensure that delays caused by employees and contractors (who are deemed to act under the direction or control of the Access Provider) are not captured by this expanded exclusion.
- 12.21 The MCMC does not consider there to be any justification to amend subsections 5.7.13 or 5.7.14 of the MSA, which set out the framework for the application of the indicative delivery timeframes set out under the various Service Specific Obligations in section 6 of the MSA. In particular:
- (a) subsection 5.7.13 of the MSA specifies that the indicative delivery timeframe set out in the Service Specific Obligations apply, unless the Access Provider takes a shorter time to deliver services to itself. The MCMC considers that this overarching principle remains appropriate in order to ensure that the indicative delivery timeframes operate as a regulatory "backstop"; and
 - (b) subsection 5.7.14 of the MSA establishes the date of commencement for delivery timeframes, being from the date of an Access Seeker's confirmation (where relevant) or the date of the Notice of Acceptance. Operators did not comment on this commencement date, suggesting that it is generally acceptable to the industry.

- 12.22 Rather, most submissions related to the actual service-specific delivery timeframes set out in section 6 of the MSA. In relation to those timeframes, the MCMC refers to its comments in its discussion of the Service Specific Obligations in sections 22 to 37 of this PI Paper, particularly in respect of Infrastructure Sharing (section 29), being the service in respect of which the MCMC received the most submissions relating to the indicative delivery timeframes.
- 12.23 In response to edotco, the MCMC does not propose to amend the MSA in pre-emption of the ongoing imposition of MCOs, given the uncertainty regarding the duration of the COVID-19 pandemic. Further, the MCMC does not have jurisdiction to regulate under the MSA landowners who are not also Network Facilities Providers (**NFPs**) or Network Service Providers (**NSPs**). Accordingly, the MCMC cannot mandate any specific timeframes on such parties, but can provide Access Providers with greater flexibility, as the MCMC is proposing to do through amending subsection 5.7.33 of the MSA.

Fees, penalties and rebates

- 12.24 Astro proposed that rebates/reimbursement be provided by the Access Provider to the Access Seeker for compounds imposed on the Access Seekers due to faults not attributable to the Access Seekers. Additionally, Astro is also of the view that customers of the Access Seekers who were affected by the said faults and experienced loss of service during the period should also be reimbursed/provided with rebates by the Access Provider. For example, in the case of HSBB Network Services, even if it is a wholesale relationship between the Access Provider and the Access Seeker, the service is provided to the individual customers via the Broadband Termination Unit. Thus, the service availability of individual end-customers can be identified and the rebates from the Access Provider to the Access Seeker can also be based on individual end-customers.
- 12.25 Astro further submitted that while the current MSA does not provision for rebates on late delivery, Astro proposed that it would be more efficient to have the floor of the percentage rate for such rebates to be set in the MSA.
- 12.26 edotco proposed, in reference to paragraph 5.7.26(b)(ii) of the MSA, that the penalty charge that the Access Seeker is required to pay should cover all the associated costs incurred to cancel the order, rather than limiting it to the sum of charges that would have been payable by the Access Seeker in the six months immediately following the cancellation or variation had the Order not been cancelled or varied. If a cancellation is made near the completion of delivery of a site, the Access Provider would have expended the entire cost for the site, which will not be sufficiently recovered with only 6 months' charges.
- 12.27 REDtone suggested that the terms and conditions imposed by Access Providers on Access Seekers should be reciprocal. For example, any fees charged to Access Seekers on any violation/incompliance of requirements should be bilateral.

- 12.28 Maxis proposed the insertion of a new paragraph 5.7.28(c) of the MSA, where the resource charge shall be reasonable to the Access Seeker, computed based on direct costs incurred, and disclosed upfront in the access agreement by the Access Provider.
- 12.29 TM referred to resource charges under subsection 5.7.28 of the MSA, where the Access Provider is required to include the methodology and unit costs for the fees. In operation, these charges set by Access Providers are mutually agreed by both Access Seekers and Access Providers before such works are carried out. Details around the methodology and unit costs are not required to be revealed as such information is confidential.
- 12.30 The MCMC does not accept Astro's proposals. First, the MCMC does not propose to require rebates to be paid on an End User level. In implementing and refining the MSA, the MCMC has regard to balancing the benefit against the regulatory compliance burden on Access Providers. The MCMC considers that any regime requiring Access Providers to provide rebates to End Users would likely come at a significant cost to Access Providers. Access Providers may ultimately be incentivised to pass those costs on to Access Seekers, which may result in cost impacts on End Users, undermining the very purpose of such a regime.
- 12.31 Secondly, the MCMC does not consider that rebates for late delivery should be set out in the MSA. The appropriate rebate amount is likely to vary greatly depending on the nature of the Facility or Service being acquired. Accordingly, the MCMC proposes to retain the existing requirement for the methodology and unit rates for calculating such rebates to be set out in the Access Provider's RAO.
- 12.32 The MCMC also does not agree with edotco's submission that the cancellation or variation penalty under paragraph 5.7.26(b)(ii) of the MSA should, in all events, cover all costs incurred to cancel the order. Paragraph 5.7.26(b) of the MSA operates to set a "ceiling" for cancellation or variation penalties to the benefit of Access Seekers, but also takes into account the fact that Access Providers may re-deploy infrastructure even where an order for infrastructure at a particular site is cancelled or varied close to the delivery date. In those circumstances, if the Access Provider could impose a penalty for the entire construction cost, while simultaneously re-deploying the infrastructure for itself or for other Access Seekers, the Access Provider may be able to obtain a windfall at the expense of the initial Access Seeker. This would also deter new market entrants and hamper competition, which would not be in the LTBE.
- 12.33 The MCMC requires further information to respond to REDtone's submissions that any terms imposed by Access Providers should be reciprocal, as a one-size-fits-all reciprocity requirement may lead to unintended outcomes. The MCMC instead invites specific submissions on any particular terms that Access Seekers consider should be required to operate on a reciprocal basis.
- 12.34 In relation to Maxis and TM's submissions regarding resource charges under subsection 5.7.28 of the MSA:

- (a) the existing protections set out in paragraph 5.7.28(a) of the MSA already require the Access Provider to “justify” its resource charges to the Access Seeker. However, the MCMC proposes to clarify that such justification must be to the reasonable satisfaction of the Access Seeker, to provide an objective layer to how the reasonableness of resource charges can be assessed; and
- (b) given the methodology and unit costs for resource charges are required to be specified in each Access Provider's RAO, to the extent an Access Provider does not disclose these because it considers these matters to be confidential, the Access Provider would be in breach of paragraph 5.7.28(b) of the MSA. However, the MCMC is interested to understand from the industry whether the methodology and unit costs are typically disclosed in practice. If they are not provided due to confidentiality, the MCMC proposes to make amendments to this section to require Access Providers to provide this information subject to the Access Seeker entering into a confidentiality agreement with the Access Provider. However, if other Access Providers have provided this information, the MCMC does not see any basis for TM to refuse to provide the same information as required under the MSA.

Other comments

12.35 Maxis proposed a number of amendments as follows:

- (a) paragraph 5.7.1(c) of the MSA, which requires Access Providers to designate and notify a mechanism for Orders for access to Facilities and Services, should be amended to add that the mechanism shall be provided by the Access Provider to the Access Seeker on an Equivalence of Input basis as provided to/used by the Access Provide itself;
- (b) paragraph 5.7.17(e) of the MSA, which allows Access Providers to reject orders where an Access Seeker has not obtained necessary related agreements from the Access Provider, should be removed as it can be misused by the Access Providers to the disadvantage of the Access Seekers. When the access agreement is executed, all the terms and conditions are already agreed between the parties. Hence, Maxis does not foresee that there will be a situation where the Access Seeker has not obtained the necessary related agreements from the Access Provider; and
- (c) a new paragraph 5.7.27(c) of the MSA should be inserted where the Access Provider shall agree to implement the POC if requested by the Access Seeker to test and provision the new facilities/services.

12.36 In response, the MCMC notes that:

- (a) it has proposed a new requirement in the amendment to subsection 6.6.17 of the MSA requiring Access Providers to allow API integration with their OSS, which will facilitate the EOI sought by Maxis in this regard – see section 17.15;

- (b) the MCMC's preliminary view is to remove paragraph 5.7.17(e) of the MSA for the reasons outlined by Maxis, however the MCMC is interested to understand from the industry whether there are any circumstances in which Access Providers have relied on this section to reject an Order; and
- (c) given TM's RAO requires the completion of a successful POC in the context of the Layer 3 HSBB Network Service, it is clear that POCs are already a requirement in at least the context of some Facilities and Services. The MCMC invites submissions from operators on their views regarding any proposal to amend subsection 5.7.27 of the MSA to require Access Providers to implement a POC if requested by the Access Seeker, or alternatively whether such a requirement should be set out in Service Specific Obligations instead.

12.37 TM suggested that the establishment of a single queue and the provision of the position of the Order in the Access Provider's queue for all Orders and Service Qualifications for a given type of Facility and/or Service be removed. TM noted that, in practice, most of the operators (including TM) do not have a queue system. In fact, the "first come first serve" basis seems to be much more practical. TM also suggested that where the relevant Facility and/or Service is below the capacity required to provide the relevant Facility and/or Service to the Access Provider, notification of the available capacity and timeframe for fulfilment of an Order at the available capacity should occur at the same time as notification of Service Qualification.

12.38 The MCMC notes that it did not receive any submissions from other operators on the queuing policy requirements in subsections 5.7.29 and 5.7.30 of the MSA. The MCMC is interested to understand whether most operators do not have a queuing policy as required under the MSA, however the MCMC has not received any information which suggests that this is the case. On that basis, the MCMC does not propose to remove these requirements.

MCMC preliminary views

12.39 After reviewing the initial feedback from operators, the MCMC proposes to make the following amendments to the ordering and provisioning obligations under section 5.7 of the MSA:

Reference	Summary of proposed change	MCMC rationale
5.7.6(c) → 5.7.9(b) (moved)	The MCMC proposes to move the provision that was previously under paragraphs 5.7.6(c) to 5.7.9(b).	The MCMC considers it appropriate to notify the Access Seeker of the available capacity when such Service Qualification is complete.
5.7.12	The MCMC proposes to add a requirement for the Access Provider to advise the Access Seeker of the grounds of rejecting an Order.	The MCMC consider that this will enhance transparency between the parties during the ordering process.
5.7.13(c)	The MCMC proposes clarifying that the charges to be specified in an	The MCMC has received a request to further clarify the charges to be specified under an

Reference	Summary of proposed change	MCMC rationale
	Access Provider's Notice of Acceptance to the Access Seeker's Order may include charges for works such as internal wiring, ROW, land rental, permit, and third-party deposits.	Access Provider's Notice of Acceptance and has no material objections to making this change.
5.7.17(e)	The MCMC proposes to remove this sub-section, which allows Access Providers to reject Orders where the Access Seeker fails to obtain a necessary related agreement from the Access Provider.	The MCMC understands that, once an access agreement is executed, no further terms are required to be agreed between the parties to facilitate supply of a Facility or Service, so this provision may have no practical effect.
5.7.24(a)	The MCMC proposes to amend this section to expand the scope of this provision to allow the Access Provider and Access Seeker to agree on the extension of the delivery timeframe where the delay is caused by a third party.	The MCMC has received many submissions regarding the impact of third party delays and considers it appropriate to add this provision to encourage the parties to agree on changes to the delivery timeframes where delay is caused by a third party.
5.7.27(a)	The MCMC proposes to amend this section to introduce a requirement that Access Providers must implement a POC if requested by the Access Seeker.	In practice, the MCMC understands that POCs may be undertaken for certain projects and are a critical phase of testing for both Access Providers and Access Seekers. The MCMC is interested to understand from operators whether the requirement to implement a POC would align with industry practice, or alternatively if there are particular Facilities and Services for which POCs should be mandated on request by Access Seekers.
5.7.27(c) (new)	The MCMC proposes to add this section to allow the Access Provider to request that the Access Seeker co-operate with any testing or provisioning especially where the Access Seeker requests that the Access Provider implement a POC.	The MCMC has received submissions for the MSA to clarify that the Access Provider may require co-operation from the Access Seeker during testing and provisioning. The MCMC considers that this should be added to allow the Access Provider to request co-operation from Access Seekers in circumstances where Access Providers must implement a POC requested by an Access Seeker.
5.7.28(a)	The MCMC proposes to clarify this section to reflect that the justification of resource charges must be to the reasonable satisfaction of the Access Seeker.	Currently, this section merely requires resource charges to be "justified to" the Access Seeker. The MCMC considers that this is subjective and open to some ambiguity and should be clarified by reference to an objective standard of reasonableness.
5.7.28(b)	The MCMC proposes to clarify that the unit costs to be specified for resource charges may include any potential or contingent unit costs,	The MCMC has amended this provision to take into account TM's submission that this information should be subject to confidentiality. However, the MCMC is

Reference	Summary of proposed change	MCMC rationale
	and that the Access Provider may require that the information provided under this section be subject to a confidentiality agreement.	interested to understand from the industry whether the methodology and unit costs are typically disclosed in practice
5.7.33	The MCMC proposes to expand the scope of exclusions for late delivery rebates to cover other circumstances where delays are caused by third parties who are not acting under the control or direction of the Access Provider.	The MCMC has received many submissions regarding the impact of third-party delays on the ability of Access Providers to meet the timeframes set out under the MSA. Currently, subsection 5.7.33 only exempts Access Providers from providing late delivery rebates where delays are caused solely by an Access Seeker or due to a lack of authorisation by third parties. The MCMC considers that this should be extended to cover delays caused by other third-party events.
5.7.34 (new)	This section will clarify that, for the purposes of subsection 5.7.33, an employee or contractor of the Access Provider will be deemed to be acting under the direction or control of the Access Provider.	The MCMC considers this new provision necessary to ensure that delays caused by contractors and employees of the Access Provider are not captured by the expanded exclusions in subsection 5.7.33, and instead remain the responsibility of the Access Provider.

Questions

Question 10:	Have Access Seekers experienced any issues with an Access Provider rejecting an Order on the grounds that the Access Seeker had not obtained the necessary related agreements from the Access Provider (under paragraph 5.7.17(e) of the MSA)? Should this rejection right be removed from the MSA?
Question 11:	Do Access Providers typically implement a POC or do Access Seekers face difficulty in obtaining this from Access Providers where required? Would any impediments be addressed by including a new requirement that the Access Provider must provide a POC on request?
Question 12:	Do Access Providers typically pay late delivery rebates pursuant to subsection 5.7.33 of the MSA or are the consequences of any delays negotiated through commercial channels?
Question 13:	Do you agree with the MCMC's proposed changes to the ordering and provisioning obligations set out at subsection 5.7 of the draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.

13 Point of Interface Procedures

Overview

- 13.1 Section 8 of the MSA sets out a number of obligations relating to POIs, including as to POI locations and requests for POIs.

Discussion

- 13.2 Astro commented that Access Providers do not cause any issues as to the number and location of POIs, as long as Access Seekers pay for this. To ensure good redundancy of network and transmission, Astro proposed that at least two POIs should be available.
- 13.3 Celcom submitted that while Access Seekers have the option to connect to a non-central POI, for example at the regional, state or local level, in Celcom's experience, Access Provider POIs are not always available at the prescribed POI locations, meaning Access Seekers do not, in reality, actually have this option. Celcom seeks greater certainty on Access Provider POI locations and would like the service description revised to allow Access Seekers to build in-span interconnection instead of allowing Access Providers to mandate full-span interconnection.
- 13.4 Maxis proposed that, in addition to network co-location, the Access Provider must (on request by the Access Seeker) ensure that the access route within the Access Provider's POI compound area and the Access Provider's ducts and manholes leading to the POI is offered to the Access Seeker. Maxis also proposed that the POI provisions under section 5.8 of the MSA should also apply to the interconnection of other facilities/services in the Access List, including HSBB Network Services, Wholesale Local Leased Circuit, Trunk Transmission Service and Domestic Connectivity to International Service.
- 13.5 In relation to the POIs for HSBB services in particular, Maxis proposed that:
- (a) for Layer 2 HSBB Network Service with QoS, Access Providers must offer (but not require) POIs for this service at either state, regional (e.g., central, southern, northern, eastern, Sabah, Sarawak) or central POI levels, to be selected by the Access Seeker. In Maxis's experience, some Access Providers take the position that their POIs are at the optical line terminal (**OLT**)/local level, creating barriers for the Access Seeker as it would be costly and not technically viable for Access Seekers to have a POI at each Access Provider's OLT/Local level (which Maxis considers a Layer 1 service). If Access Seekers were required to connect to OLTs, Maxis submitted that this would lead to a "dramatic increase" in transmission capacity requirements and associated costs for the Access Seeker, given transmission is dimensioned for each link rather than aggregated.
 - (b) for Layer 3 HSBB Network Service, Maxis submitted that Access Providers must offer centralised POIs in Peninsular Malaysia, Sarawak and/or Sabah. In Maxis' view, Access Seekers should

generally be able to choose the POI location, whether at the Access Seeker's premises or the Access Provider's premises.

- 13.6 TM proposed that the Access Provider not be required to publish the POIs on a publicly accessible website, due to security concerns. TM submitted that terrorists or other persons with bad intentions would easily be able to obtain information of key exchanges or national critical sites through the website, and accordingly POIs should only be made available upon request by the Access Seeker.
- 13.7 TM also submitted that the requirement to offer POI locations at every Closed Number Area in paragraphs 5.8.6(a) and (c) of the MSA is no longer relevant given the transition to IP-based interconnection, including single rates nationwide and centralised handover. TM proposed that the reference to "Closed Number Area throughout Malaysia" in these sections be removed.
- 13.8 YTL submitted that most Access Providers have refused to adhere to subsection 5.8.2 of the MSA, including as to the disclosure of POIs or the location/route of infrastructure, which makes it difficult for planning, negotiations etc.
- 13.9 The MCMC agrees with Celcom that Access Seekers should be allowed to build in-span interconnection when interconnecting with Access Providers and proposes to amend subsection 6.9.13 of the MSA accordingly, as described in section 30 of this PI Paper. The MCMC also refers to its amendments to the service description of Network Co-Location Service in the Access List.
- 13.10 In relation to submissions by Maxis, the MCMC notes again its proposal to expand the scope of the Duct and Manhole Access service, which it considers will address the issues raised by Maxis in relation to access routes. The POI procedures in section 5.8 of the MSA are also described in a Service/Facility-neutral manner, so they already apply to all Facilities and Services under the Access List.
- 13.11 Separately, in relation to Celcom and Maxis' comments, the MCMC agrees that Access Providers should be required to provide POIs at more central / regional locations, rather than local areas. The MCMC notes however that the MSA already requires Access Providers to offer POIs:
- (a) for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities; and
 - (b) at each other "technically feasible point".
- 13.12 The MCMC accordingly considers that the MSA already requires Access Providers to offer POIs at the prescribed locations sought by Access Seekers. Access Seekers should inform the MCMC if they experience any difficulties in obtaining POI access so that the MCMC can investigate any non-compliance with the terms set out in subsection 5.8 of the MSA. Without reporting of these issues by Access Seekers, for example issues of the type reported by Maxis in paragraph 13.5 above, the MCMC does not consider

that any amendments to the MSA will address the underlying non-compliance by Access Providers.

13.13 In response to TM's comments, the MCMC notes (as it has done in the past) its concern that the failure to provide details about a point of interface on the grounds of security, or the requirement that an Access Seeker comply with overly prescriptive and onerous security requirements may be used to indirectly deny an Access Seeker with physical interconnection. In the 2016 MSA Review, the MCMC included security and critical national information infrastructure (**CNII**) provisions in subsection 6.9.31 of the MSA, which the MCMC considers remain adequate to address the concerns raised by TM.

13.14 Operators did not otherwise comment on the POI requirements, suggesting that they are generally acceptable to industry.

MCMC preliminary views

13.15 The MCMC proposes to retain the point of interface procedure requirements under subsection 5.8 of the MSA however, in response to submissions that in an Next-generation Network (**NGN**) environment, Closed Number Areas may not be relevant, the MCMC invites the operators to provide feedback on whether there are any alternative models that are preferred. This is because this provision is a key protection for Access Seekers as far as POI availability is concerned and therefore the MCMC does not agree to remove this provision without a suitable replacement.

Questions

Question 14: Have Access Seekers experienced any difficulties in obtaining POI access at the prescribed locations published by Access Providers? In addition, do Access Providers typically publish POI locations that are in compliance with subsection 5.8.6 of the MSA? Please comment on whether you would report such non-compliance to the MSA (as an Access Seeker) or the reason you may not offer POIs at the prescribed locations (as an Access Provider).

14 Decommissioning Obligations

Overview

14.1 The MCMC received a small number of comments from operators in relation to the decommissioning obligations under section 5.9 of the MSA.

14.2 Primarily, operators commented on the applicable notice periods for decommissioning and the compensation required to be paid by Access Providers in the event of decommissioning.

Notice periods for decommissioning

14.3 Allo submitted that it is difficult to commit to the notice periods of 1 year and 6 months set out in paragraphs 5.9.1(a) and (b) respectively of the MSA, as Allo is using third party facilities. In circumstances where the

government or other third party with control of the facilities directs Allo that it wishes to take back the infrastructure immediately, Allo may breach its agreement with the Access Seeker. Accordingly, Allo proposed that the decommissioning notice period should be shorter or other period agreed between the parties.

- 14.4 Celcom Timur (Sabah) proposed that the notice periods set out in subsection 5.9.1 of the MSA be reduced to 3 months.
- 14.5 edotco initially submitted that the period to notify Access Seekers prior to decommissioning facilities should be aligned with the period granted by the landlord or local council, as 6 months may not be practical depending on the reason for which the site is being decommissioned. However, in its response to a supplementary informal questionnaire issued by the MCMC, edotco submitted that it agrees to the timeframes stipulated in subsection 5.9.1 of the MSA, and that in any event it immediately notifies Access Seekers when any decommissioning events occur, after taking all necessary steps with the relevant local authority or landowner to renew occupation.
- 14.6 Fibrecomm proposed that the notice period under paragraph 5.9.1(a) of the MSA should be reduced from 1 year to 6 months, and the period in paragraph 5.9.1(b) of the MSA be reduced from 6 months to 3 months.
- 14.7 As mentioned above in paragraph 9.17, TTdC suggested that the timeframes for negotiation, ordering and provisioning and decommissioning be applicable only to items and/or services with regards to the MSA, MSAP and Access List.
- 14.8 PPIT stated that it may be impossible to comply with the timeline for notice under paragraph 5.9.1(b) of the MSA, and that the period specified in this section should align with any period granted by the landlord/local authority.
- 14.9 Sacofa also commented that it may be impossible to give 1 years notice under paragraph 5.9.1(a) of the MSA where landlords issue a shorter notice period. Sacofa proposed that the MSA allow flexibility for decommissioning notice periods to be agreed flexibly on a case-by-case basis, rather than set out in the MSA.
- 14.10 YTL requested that the notice period in paragraph 5.9.1(b) of the MSA be increased to 1 year, like paragraph 5.9.1(a) of the MSA.
- 14.11 The MCMC notes that most Access Providers are concerned with their ability to comply with the notice periods set out in subsection 5.9.1 of the MSA in circumstances where they are reliant on third party notice of decommissioning, such as from a landlord or local authority. Notably, no Access Providers commented that they are unable to comply with these notice periods where they themselves are the party responsible for decommissioning.
- 14.12 However, the MCMC notes that subsection 5.9.1 of the MSA already accounts for the scenarios outlined by operators. In particular, subsection 5.9.1 of the MSA specifies that the decommissioning notice periods apply except where

the Access Provider is required to vacate a site as a result of a third party landlord's notice or a local authority's notice. Further, the section provides that in these circumstances, the Access Provider must provide "as much notice as possible". Accordingly, the MCMC considers that the specific decommissioning notice periods set out in the MSA would already not apply in those circumstances.

- 14.13 Given the existing provisions already address the substantive matters raised by stakeholders, the MCMC's preliminary view is to not propose to make any amendments to the decommissioning notice periods at this stage.

Compensation for decommissioning

- 14.14 Allo proposed that there should be a cap on the compensation required to be provided by Access Providers under subsection 5.9.4 of the MSA.
- 14.15 Celcom Timur (Sabah) requested that subsections 5.9.4 and 5.9.5 of the MSA allow parties flexibility to negotiate payment of the costs incurred.
- 14.16 Fibrecomm submitted that Access Seekers should bear the costs associated with moving or re-arranging Access Seeker equipment from decommissioned facilities to alternative facilities.
- 14.17 Maxis submitted that paragraph 5.9.4(c) of the MSA should be amended to include the costs incurred in carriage of data, as a POI may be used for other Facilities and Services beyond voice/messaging services, such as HSBB Network Service, Wholesale Local Leased Circuit, Trunk Transmission Service or Domestic Connectivity to International Service, etc.
- 14.18 PPIT submitted that the requirement to provide compensation under subsection 5.9.5 of the MSA is unwarranted where PPIT complies with paragraph 5.9.3(b) of the MSA, particularly as such decommissioning is not within PPIT's control.
- 14.19 The MCMC does not propose to make any amendments in response to these submissions. In particular:
- (a) a cap on compensation may not be appropriate as the amount of compensation may vary significantly depending on the extent and nature of the Facilities and Services affected by the decommissioning;
 - (b) it would not be appropriate for Access Seekers to pay costs associated with moving their equipment from decommissioned facilities, given Access Seekers are entitled to some degree of certainty when incurring the capital expenses required to interconnect with Access Providers and have less visibility than Access Providers as to the possibility of any future decommissioning; and
 - (c) subsection 5.9.5 of the MSA has no application where decommissioning is caused by Force Majeure, and accordingly where a facility or service is being decommissioned beyond the reasonable

control of an Access Provider, the Access Provider already is not required to pay the Access Seeker's costs under that section.

14.20 Further, in relation to Maxis' comments, the MCMC does not have enough information to determine the impacts of including the carriage data within the scope of paragraph 5.9.4(c) of the MSA, but given no other operators have commented on this, the MCMC is interested to know from operators their views on this proposal.

Other comments

14.21 TM requested that the timeline for the provision of alternative arrangements under paragraph 5.9.3(b) of the MSA should be for a period of the lesser of 3 years and the date of readiness of the new facility or service, so that Access Providers have an opportunity to migrate Access Seekers onto the new Facilities and Services rather than being bound to three years in all circumstances.

14.22 The MCMC notes that the provision of alternative arrangements for 3 years is designed to give Access Seekers sufficient certainty to allow them to manage their own facilities or services as appropriate in the event of a decommissioning notice from an Access Provider. Even if new facilities or services become available, they may not be a "perfect" replacement, and in any event, Access Seekers would require a minimum period for the decommissioning and reinstallation of their own equipment. Given there were no other operator submissions on this requirement, the MCMC does not intend to make any changes to this timeframe.

MCMC preliminary views

14.23 The MCMC does not propose to make any changes at this juncture to the decommissioning obligations under section 5.9 of the MSA. The MCMC, however, invites other operators' views in relation to the issue raised by Maxis on the impacts of including the carriage of data within the scope of paragraph 5.9.4(c) of the MSA.

Questions

Question 15: Do you agree with the MCMC's preliminary view that the current decommissioning obligations in the MSA continue to operate well and do not require any substantive changes or updates? If not, please specify what change you consider is required and explain why.

15 Network Change Obligations

Overview

15.1 Section 5.10 of the MSA sets out obligations where an operator proposes to implement certain types of changes to its network which necessitate changes in the hardware or software of the other operator's network.

- 15.2 As part of its 2016 MSA Review, the MCMC determined that a Change Notice was required to expressly include the expected completion date of a Relevant Change.

Discussion

- 15.3 As was the case in the 2016 MSA Review, there were only limited submissions in respect of the network change obligations, which the MCMC responds to below.
- 15.4 Celcom Timur (Sabah) and Sacofa each commented that the minimum notice periods set out in subsection 5.10.3 of the MSA should only be set out as a guideline, rather than as a mandatory requirement, so that parties can agree to shorter periods where desirable on a case-by-case basis.
- 15.5 Maxis submitted that "OSS Changes" under paragraph 5.10.2(d) of the MSA should include changes to portals for service fulfilment, service assurance and network and home passed information. Maxis submitted that alternatively, the Access Provider can permit interfacing between the Access Seeker's portal and the Access Provider's Operational Support Systems.
- 15.6 Maxis also proposed that paragraph 5.10.4(a) of the MSA should set out specific timeframes within which the parties should meet to discuss Relevant Changes, rather than "as soon as practicable".
- 15.7 TTdC considers that Network Change Obligations should be a part of the Operations and Maintenance Manual, as it is based on industry practice on operational matters.
- 15.8 There were limited submissions on the Network Change obligations, which suggests that operators are generally satisfied with these provisions. The MCMC accordingly proposes to retain the Network Change Obligations in the MSA, subject to the following amendments:
- (a) to clarify that parties may agree shorter notice periods on a case-by-case basis, provided that where no agreement is reached, the notice periods set out in subsection 5.10.3 of the MSA shall apply, to give parties greater flexibility where a shorter period is preferable; and
 - (b) to clarify that portals for service fulfilment, service assurance and network and home passed information are included within the scope of "OSS Changes" for the purposes of paragraph 5.10.2(d) of the MSA, to ensure Access Seekers are given appropriate notice of changes that may affect their ordering and provisioning processes.

MCMC preliminary views

- 15.9 The MCMC does not propose to make any substantive changes to the network change obligations under section 5.11 of the MSA, other than to clarify that parties may agree alternative notice periods for the purposes of subsection 5.10.3 of the MSA, and to clarify the types of operator systems captured within the meaning of "OSS Change" in paragraph 5.10.2(d) of the MSA:

Reference	Summary of proposed change	MCMC rationale
5.10.2(d)	The MCMC proposes to clarify that portals for service fulfilment, service assurance and network and home passed information are included within the scope of OSS Changes for the purpose of this section.	The MCMC has received several submissions from operators regarding difficulties experienced in interfacing with Access Provider Operational Support Systems. In addressing this pain point, the MCMC considers that changes to Access Provider OSS should also be drafted broadly to ensure that Access Seekers are not disadvantaged by changes over which they have no control or visibility.
5.10.3	The MCMC proposes to allow parties to agree notice periods for changes that are shorter than those set out in subsection 5.10.3.	<p>The MCMC does not foresee any issues if parties are able to agree shorter notice periods than those set out in subsection 5.10.3, noting that where an Access Seeker does not agree to a shorter notice period, the notice period set out in sub5.10.3 shall apply.</p> <p>The MCMC expects that these shorter notice periods would be agreed upfront in an Access Agreement, as it is unclear how the shorter change period would otherwise be operationalised.</p>
5.10.5	The MCMC proposes to amend paragraph 5.10.5(a) to include the requirement to implement POC.	The MCMC expects a POC to be implemented where applicable during the testing of procedures for any relevant network changes.

Questions

Question 16: Do you have any comments on the MCMC's proposed amendments to subsection 5.10 of the draft MSA?

16 Billing and Settlement Obligations

Overview

- 16.1 Following the 2016 MSA Review, the MCMC made minor amendments to the billing and settlement obligations in section 5.11. Of note, the MCMC added billing cycle timeframes as part of Service Specific Obligations, clarified that billing errors must be notified promptly and expanded on the provisional billing provisions to incorporate the concept of an "Adjustment Period".
- 16.2 The MCMC also acknowledged that regulating the withholding of disputed amounts remained an important protection for Access Seekers in case a dispute arose with an Access Provider. The MCMC noted that parties may agree to a longer withholding period where accepted by both parties, which appeared to be common practice in the industry. A minor amendment was made to provide this flexibility.

Discussion

- 16.3 Most Access Seekers commented that they had no issues with the existing billing cycles set out in the MSA. The majority of submissions related to the withholding of disputed amounts under subsection 5.11.11.
- 16.4 Celcom Timur (Sabah) and Fiberail also commented that billing and settlement obligations can be commercially negotiated and should be removed from the MSA.
- 16.5 In relation to disputed amounts:
- (a) Digi submitted that this should be commercially negotiated and agreed between the parties, and that based on industry practice, there is no withholding of disputed payments;
 - (b) Maxis submitted that withholding of payments for disputed amounts should only be allowed if:
 - (i) the Access Seeker provides evidence for why the invoice is disputed; and
 - (ii) the dispute is not resolved within 3 months from the date of the notice of dispute. In Maxis' view, the existing 15 Business Day period set out in the MSA is not sufficient to allow investigation, discussions and dispute resolution;
 - (c) Maxis also proposed that the requirement to provide a traffic data report under paragraph 5.11.13(d) of the MSA should be limited to voice and messaging services only;
 - (d) TM submitted that operators should be allowed to agree whether the disputed amounts of invoices must be paid. TM believes that it is administratively more effective to pay disputed amounts and adjust them after the dispute is settled. TM's current process requires disputed amounts to be paid but allows Access Seekers the ability to withhold future invoices if disputes are not resolved in a certain period. If the dispute resolution favours the invoiced Party, then the Invoicing Party has to return the disputed amount together with interest;
 - (e) Webe submitted that the right to withhold disputed amounts should take into account the actual amount that is disputed, given the amount that is withheld for Infrastructure Sharing Service invoices may be quite substantial compared with amounts withheld for origination and termination services.
- 16.6 In relation to billing cycles:
- (a) PPIT submitted that billing cycles have always been commercially negotiated with Access Seekers to be within 7 days of commencement of a month, rather than at the end of the month, in line with normal tenancy agreements at sites; and

- (b) TM submitted that billing cycles should be mutually agreed by the Access Provider and Access Seeker.
- 16.7 Finally, edotco submitted that subsection 5.11.16 of the MSA, regarding backbilling, is ambiguous. In particular, edotco submitted that the definition of backbilling should take into consideration genuine errors and purposeful actions which are designed to avoid the Access Provider's reasonable fees and charges. edotco also proposed that parties should be given the right to negotiate the backbilling period.
- 16.8 There were only a few submissions on the billing and settlement obligations, indicating that most operators are satisfied with their operation. Although Digi commented that withholding of disputed amounts does not occur in practice, this is contrary to submissions by other operators who indicated that withholding of disputed amounts does occur in some circumstances.
- 16.9 Regarding Maxis' submissions that the Access Seeker should be required to provide evidence for disputed amounts, the MCMC notes that paragraph 5.11.13(d) of the MSA already requires such evidence to be provided. Moreover, the MCMC does not consider it appropriate to limit the provision of evidence only to voice and messaging services but agrees that paragraph 5.11.13(d) of the MSA should be clarified to reflect that traffic data may not always be relevant to a disputed amount.
- 16.10 The MCMC also notes that operators are free under subsection 5.11.11 of the MSA to agree in their access agreements a period that is different to the 15 Business Day period cited by Maxis as insufficient. Accordingly, the MCMC does not consider that this provision requires further amendment. The same principle applies in respect of proposals by PPIT and TM for billing cycles to be agreed commercially, given subsection 5.11.3 of the MSA allows parties to agree a different billing cycle in an access agreement.
- 16.11 Finally, in relation to backbilling, the MCMC does not have enough information to determine the specific ambiguity to which edotco refers. However, the MCMC notes that subsection 5.11.16 of the MSA is drafted intentionally broadly to prevent Access Providers from charging Access Seekers after three Billing Cycles has passed. The MCMC considers that this provision is important to ensure that Access Seekers have some degree of certainty as to the charges they are required to pay, and in any event, charging is in the sole control of the Access Provider. Again, subsection 5.11.16 of the MSA allows parties to agree a different backbilling period in an access agreement, so the MCMC does not intend to make any changes in this regard.
- 16.12 Given that several operators have aligned their access agreements with the MSA and there were very limited comments on the billing and settlement provisions generally, the MCMC does not propose to substantially amend section 5.11, other than a minor amendment to clarify the evidence that must be provided in the event of a disputed invoice.

MCMC preliminary views

16.13 The MCMC's preliminary view is that the existing billing and settlement obligations under section 5.11 continue to remain appropriate. As discussed above, the MCMC only proposes to make a minor amendment to section 5.11 as follows:

Reference	Summary of proposed change	MCMC rationale
5.11.13(d)	The MCMC proposes to replace "the relevant traffic data" with "any relevant traffic data" to account for circumstances in which traffic data may not be relevant to the settlement of a disputed invoice, and accordingly should not be required by Access Providers in those circumstances.	As noted by Maxis, the provision of traffic data is likely to be relevant only to a disputed invoice for voice and messaging services, whereas section 5.11 applies across all Facilities and Services.

Questions

Question 17:	Do you agree with the MCMC's proposed changes to the billing and settlement obligations set out at section 5.11 of the MSA? Why or why not? If not, please specify what change you consider is required and explain why.
Question 18:	Are billing cycles typically commercially negotiated, or do you follow the billing cycles set out in the MSA? Please provide details, including the particular Services and Facilities for which the MSA billing cycles are not used.

17 Operations and Maintenance Obligations

Overview

17.1 Following the 2016 MSA Review, the MCMC made a number of amendments to the operations and maintenance obligations in section 5.12 of the MSA, notably:

- (a) to subsection 5.12.12 of the MSA, to require operators to respond and rectify faults within the lesser of:
 - (i) timeframes set out in a relevant Service Specific Obligation or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table in subsection 5.12.12 of the MSA;
 - (ii) timeframes which will result in compliance by all affected operators with any applicable Mandatory Standards that apply to service availability and restoration; and

- (iii) timeframes equivalent to that which the Access Provider provides to itself;
 - (b) MNP issues was added as a new line item in the Priority Level 2 category; and
 - (c) the interval for routine testing was reduced to "annual" from "half yearly".
- 17.2 In its informal questionnaire on the MSA for this review, the MCMC asked operators whether any changes were required to section 5.12. The key points of the limited submissions received are summarised below, along with the MCMC's preliminary responses.

Discussion

- 17.3 Only 3 stakeholders made submissions on the operations and maintenance obligations in subsection 5.12 of the MSA.
- 17.4 Celcom Timur (Sabah) commented that the operations and maintenance obligations can be commercially negotiated and should be removed from the MSA.
- 17.5 Digi submitted that Access Providers must allow their OSS to be integrated with Access Seekers' OSS in a secure manner via API to enable functions including exporting serviceable addresses and port availability status, order management and scheduling, service assurance, customer port-out/in-process management and network statistics/performance.
- 17.6 Digi also submitted that end-to-end installation of services at customers' premises by the Access Provider will ensure timely provisioning and good customer experience. Currently, in Digi's experience, both Access Seekers' and Access Providers' installers must be present at the customer's premises at the same time, and sometimes due to unforeseen circumstances, this does not occur.
- 17.7 edotco proposed that the target times to respond and rectify faults should be removed or amended so as to be non-mandatory. edotco has in place its own SLAs and key performance indicators (**KPI**) which have been agreed with Access Seekers, some of which may have commercial implications.
- 17.8 The MCMC notes that, like Digi, a number of Access Seekers made comments in the initial operator information sessions regarding the importance of API integration with Access Providers' OSS in order to enable and improve the performance of a number of functions relating to the Facilities and Services supplied by the Access Provider. In particular, the MCMC understands that currently, the existence of two different portals leads to mismatch of information, and complexities in making bookings, etc. However, the MCMC has only received limited feedback from operators regarding API integration in the informal questionnaire itself and does not have sufficient information to understand the potential impacts of such a requirement.

- 17.9 Currently, interface to the Access Providers' OSS is addressed under section 6.4.9 and paragraph 6.6.17(c) of the MSA, which require Access Providers to ensure that Access Seekers can access the Access Provider's OSS on an EOI basis. The MCMC is interested to understand from the industry its views if the MCMC were to expand this obligation to include API integration where requested by the Access Seeker, including whether this is desirable for only some services or whether API integration is desirable for all services.
- 17.10 At this stage, the MCMC considers that mandating API integration may be beneficial given the informational and operational issues raised by Digi likely demonstrate non-compliance Access Providers with subsection 6.4.9 and paragraph 6.6.17(c) of the MSA.
- 17.11 The MCMC notes that no other Access Seekers have commented on any difficulties experienced in the absence of end-to-end installation of services by Access Providers. In any event, the MCMC considers that such matters are more appropriately dealt with in operations and maintenance manuals, rather than in the MSA itself.
- 17.12 Similarly, the MCMC proposes to retain the target timeframes in subsection 5.12.12 of the MSA, which were the subject of extensive consultation in the 2016 MSA Review and in respect of which only one stakeholder provided any comments in the informal questionnaire, suggesting that they are acceptable to the industry.
- 17.13 However, the MCMC does not agree to remove the operations and maintenance obligations from the MSA, as these obligations continue to prove useful in allowing the industry to negotiate Access Agreements.

MCMC preliminary views

- 17.14 The MCMC is interested in understanding from operators their views on a proposal to require Access Providers to enable API integration with their OSS, either across all facilities or services or in respect of only certain Facilities and Services.
- 17.15 To aid in this discussion, instead of amending the operations and maintenance obligations in section 5.12 of the MSA, the MCMC proposes to make changes to paragraph 6.6.17(c) in the draft MSA, as summarised below.:

Reference	Summary of proposed change	MCMC rationale
6.6.17(c)	The MCMC proposes to expand this provision to require Access Providers to allow API integration with Access Provider OSS, where requested by an Access Seeker.	<p>The MCMC understands from its initial informal discussions with operators that that API integration with Access Provider OSS will reduce complexity and information mismatch that currently exists in the industry, where Access Providers are not allowing API integration.</p> <p>The MCMC considers that in providing access to their OSS on an EOI basis, Access Providers should also offer integration if desired by Access Seekers.</p>

Questions

Question 19: Should Access Providers be required to allow integration with their OSS where requested by an Access Seeker? As an Access Seeker, please comment on whether this would be beneficial to you. As an Access Provider, please describe any impacts of such a requirement.

18 Technical Obligations

Overview

- 18.1 In the course of the 2016 MSA Review, the MCMC moved the QoS obligations from the provisions relating to Technical Obligations to apply as Service Specific Obligations.
- 18.2 In its informal questionnaire on the MSA for this review, the MCMC requested operator feedback on the remaining technical obligations, considering the functional and marketplace changes which are currently taking place or foreseeable in the future.

Discussion

- 18.3 Celcom Timur (Sabah) commented that technical obligations can be commercially negotiated and should be removed from the MSA.
- 18.4 In respect of "Pelan Jalinan Digital Negara" (**JENDELA**) and the transition to IP interconnection, Digi submitted that the technical obligation in the MSA should remain on a "best efforts" basis as each operator has its own set of capabilities. There may be operators that would not be able to meet the technical obligation parameters set; other operators that require higher technical parameters should continue to be allowed to negotiate commercially.
- 18.5 Fiberail commented that current terms and conditions in the MSA are sufficient to support JENDELA.

- 18.6 REDtone commented that the MSA should address that the SLAs to be met by the Access Provider for Services supplied to the Access Seeker must comply with the CMA and all guidelines and standards issued thereunder, given there are some instances where the Access Provider is unable to comply with these standards.
- 18.7 In response to Digi's submission, the MCMC does not consider there to be any need to reduce the standard to which Access Providers must comply with the technical obligations in the MSA to a "best efforts" standard. The MSA acts as a baseline which provides a minimum standard of service to the Access Seeker, while allowing parties to negotiate technical parameters that exceed those set out in the MSA. As the industry aims towards the JENDELA targets, the MCMC considers it important that the existing technical obligations should not be relaxed or removed, as proposed by Celcom Timur (Sabah).
- 18.8 The MCMC has no major objections to include the requirements proposed by REDtone, however compliance with the CMA and the instruments issued thereunder is already a requirement under the CMA itself, so the MCMC does not see the utility in merely repeating this requirement under the MSA (which in any event already requires Access Providers to comply with mandatory standards). The MCMC instead encourages operators to come forward to report non-compliance to the MSA.
- 18.9 U Mobile commented that transmission routes by Access Providers is essential to enable high speed services to the end users apart from bandwidth leasing, lambda (wavelength) leasing and the provision of dark fibre over backhaul transmission. U Mobile added that no specific parameters are required in such instances.
- 18.10 No other stakeholders commented on any issues with the technical obligations set out in subsection 5.13 of the MSA, suggesting that the industry is satisfied.

MCMC preliminary view

- 18.11 The MCMC proposes to retain the technical obligations in subsection 5.13 of the MSA without any amendments.

Questions

<p>Question 20: Do you agree with the MCMC's proposal to retain the technical obligations in subsection 5.13 of the MSA without any amendments? If not, please provide details of any required changes.</p>

19 Term, Suspension and Termination Obligations

Overview

- 19.1 Following the 2016 MSA Review, the MCMC amended the term, suspension and termination obligations in subsection 5.14 of the MSA in a number of ways, such as including 12-month minimum default terms for HSBB Network

Services and ANE, clarifying the insolvency and winding up type events in which termination is permitted and requiring a notice of suspension to be provided to the MCMC. A new ability for an Access Seeker to respond to an Access Provider's notice, which the MCMC would consider during its review of the notice, was also included.

- 19.2 In the informal questionnaire on the MSA that was circulated to operators, the MCMC requested feedback on the term, suspension and termination obligations under section 5.14 of the MSA, considering the technical, functional and marketplace changes which are currently taking place or foreseeable in the future. Additionally, the MCMC asked operators to comment on:
- (a) the termination circumstances under subsection 5.14.3 of the MSA; and
 - (b) the suspension circumstances under subsection 5.14.5 of the MSA.
- 19.3 Given the importance of the term, suspension and termination obligations in the MSA and the high level of operator feedback on specific topics under section 5.14 of the MSA, the MCMC is continuing to consider the degree to which changes may be required to address the issues raised by operators. The MCMC has proposed some initial amendments below but welcomes further feedback to determine whether further changes are necessary to balance the interests of Access Providers and Access Seekers under subsection 5.14 of the MSA.

Discussion

Term of access agreements

- 19.4 Celcom Timur (Sabah) commented that section 5.14 of the MSA can be commercially negotiated in an access agreement and should be removed from the MSA.
- 19.5 edotco submitted that the minimum term of 3 years for access to network facilities be increased, as generally the investment recovery period takes about 10 years.
- 19.6 Fibrecomm proposed increasing the minimum term for Transmission Services from one year to two years, particularly where the Access Provider has invested in building new infrastructure in order to supply the Transmission Services to the Access Seeker.
- 19.7 Fiberail submitted that the term of supply for Transmission Services should be increased to 2 years to ensure financial viability.
- 19.8 Maxis commented that the term of access agreements should be perpetual unless terminated earlier in accordance with the access agreement. Maxis considers that a short-term access agreement could cause potential service disruption to end users, such that the Access Seeker may have to terminate their end user services after the term (e.g. 3 years).

- 19.9 TM submitted that it requires a longer minimum term for transmission services and HSBB Network Services (currently 12 months for each), and that parties must be allowed to negotiate the contract term commercially. TM requires a minimum term of 2 years to prevent the Access Seekers from entering the market on a trial and error basis and exiting the market, which could potentially affect the end user. This will also enable TM to further invest in building and extending its infrastructure and enable the Access Provider to obtain a positive return on the service. In a worst-case scenario, TM reported that where the requirements and take-up are very low, it is not financially viable for TM to deploy the service especially when the requested contract term is only for 12 months.
- 19.10 In relation to Access Provider requests for longer minimum terms for Transmission Services, the MCMC is mindful that in the period since the 2016 MSA Review, Access Seekers have still not been able to successfully acquire access to Transmission Services on an unbundled basis. However, the MCMC acknowledges that longer minimum terms may incentivise Access Providers to invest in and upgrade their transmission networks. For this reason, the MCMC is open to allowing Access Providers to prescribe minimum terms of 12 months or 24 months at their election.
- 19.11 In relation to edotco's request for longer minimum term for network facilities access, the MCMC notes that "network facilities" intentionally covers a broad range of network facilities, so the default minimum term must not be excessive, as it may not be appropriate to have a longer minimum term in many cases. The MCMC also notes that subsection 5.14.2 of the MSA allows the Access Provider and Access Seeker to agree on a different period to apply to the supply of services under an Access Agreement, which may be longer than the minimum periods prescribed in subsection 5.14.2 of the MSA.
- 19.12 The MCMC otherwise notes the relatively limited number of submissions in respect of the prescribed minimum access agreement terms suggests that these minimum terms remain largely acceptable to the industry. In any event, Access Providers are already given the flexibility to agree to different minimum terms in their access agreements, and accordingly to the extent an alternative minimum term is appropriate for a particular service or facility, the parties are free to agree such a term on a commercial basis.

Termination rights

- 19.13 Allo proposed that another termination right in subsection 5.14.3 of the MSA and suspension right in subsection 5.14.5 of the MSA be added for a circumstance where Government, an authority or the owner of infrastructure "take up" the infrastructure.
- 19.14 Astro proposed that the termination circumstances set out in subsection 5.14.3 of the MSA should be exhaustive.
- 19.15 Celcom has experienced challenges in relation to nominated facilities providers who depend heavily on the owner of a network facility where the owner is a non-licensee. Celcom considers that in these circumstances, the

non-licensee should be obliged to comply with the termination and suspension requirements set out in the MSA, to protect the consumers who would be affected by this.

- 19.16 Celcom Timur (Sabah) considers that the MCMC's consent should not be a mandatory requirement for the Access Provider to give effect to its proposed termination or suspension under subsection 5.14.6 of the MSA. Further, Celcom Timur (Sabah) considers that subsection 5.14.8 of the MSA, which sets out obligations regarding post-termination fees, should be subject to the Access Provider's right to claim for compensation arising from the termination or suspension in question.
- 19.17 Digi proposed that termination circumstances should not be limited to those set out in subsection 5.14.3 of the MSA, and that more circumstances should be able to be agreed by the parties, such as if either party's licence is revoked, a party is wound up, etc. Accordingly, Digi proposes removing termination and suspension circumstances from the MSA and allowing the parties to agree these commercially. Digi also proposed to remove the requirement for the Access Provider to obtain the MCMC's consent to terminate an access agreement where the parties mutually agree not to renew the access agreement. Digi also proposes non-renewal be included as one of the factors for termination.
- 19.18 edotco submitted that there should be a distinction between termination on a site-by-site basis and termination of the entire access agreement. edotco considers that often, issues affecting a particular site will not necessarily affect other sites under the same access agreement. For example, if a force majeure event occurs at one site and the site can no longer be used, the termination should only affect that particular site. Accordingly, edotco considers that Access Providers should have the right to negotiate other, more specific termination triggers, which should be specifically defined so as to avoid any ambiguity.
- 19.19 Maxis submitted that the Access Provider should not have the right to terminate the provision of access to facilities or services where there is a change in law and the parties cannot agree to the provision of access on different terms and conditions. Maxis accordingly proposed deleting the last line of subsection 5.14.4 of the MSA.
- 19.20 Sacofa submitted that instead of obtaining the MCMC's prior consent for a suspension or termination, the Access Provider should just keep the MCMC in the loop and issue prior written notice to the Access Seeker. If the Access Seeker fails to remedy its breach, the Access Provider should be entitled to suspend and terminate the service. Typically, Sacofa does not immediately suspend the service and will give Access Seekers reasonable timeframes to rectify their failure, for instance Sacofa sometimes allows non-payment for up to 90 days even though an agreement specifies a 30-day payment term.
- 19.21 Sacofa also submitted that subsection 5.14.3 of the MSA be amended to allow the Access Provider to partially terminate the Access Agreement. In Sacofa's experience, an Access Seeker may default payment in respect of a

certain number of sites or services and therefore any termination would only be applicable to the affected sites or services. This will not affect sites or services which the Access Seeker has made regular payment.

19.22 TTdC submitted that the timeframe for the MCMC to provide a response to a proposed termination or suspension should be fixed at 10 Business Days under paragraph 5.14.6(a) of the MSA.

19.23 TM made a number of proposals in respect of the suspension and termination rights:

- (a) the events for termination under subsection 5.14.3 of the MSA should not be exhaustive, and operators should have the ability to include other reasonable events of termination depending on the operators' circumstances e.g., refusal to provide Security Sum on a timely basis or where an operator's licence is terminated or revoked;
- (b) the suspension events in paragraphs 5.14.5(a), (b) and (c) of the MSA require a right of immediate suspension to avoid possible death or damage to life and property, rather than on 5 Business Days' notice;
- (c) the MCMC should be required to provide a response to a proposed termination or suspension within 10 Business Days under subsection 5.14.6 of the MSA, to ensure the non-defaulting operator does not suffer further prejudice and loss. If the MCMC does not provide its response in that timeframe, the defaulting operator should be permitted to proceed with suspension and termination; and
- (d) the Access Provider should not be required to take steps to minimise disruptions and inconvenience to the customer of the defaulting Access Seeker under paragraph 5.14.6(c) of the MSA, as the Access Provider has no relationship with the Access Seeker's customers and would not be in the position to take those steps without visibility as to the scope of services agreed between the Access Seeker and its customer. This obligation should rest solely with the Access Seeker, who will be collecting money from its customers even where it is not paying the Access Provider.

19.24 U Mobile also suggested a firm 10 Business Day timeframe for the MCMC to respond to a proposed termination or suspension, as suggested by TM above.

19.25 The MCMC thanks operators for their submissions on the termination circumstances and associated obligations set out in section 5.14 of the MSA. The MCMC is considering the comments received, but its initial view is that:

- (a) the suspension and termination circumstances offer critical protections for Access Seekers; and
- (b) these provisions should remain largely in their current form, such that the MSA continues to set out the exhaustive circumstances in

which an Access Provider may terminate or suspend an access agreement.

- 19.26 However, given submissions received from edotco and Sacofa, the MCMC is considering amending subsections 5.14.3 and 5.14.5 of the MSA so that they contemplate the partial termination or suspension of an access agreement, e.g. termination or suspension in respect of only a particular site. The MCMC considers that such an amendment would give Access Providers flexibility to terminate an access agreement where they otherwise may not elect to take such an action, while simultaneously protecting the broader interests of Access Seekers. The MCMC intends that the existing termination and suspension circumstances would apply to this "partial" termination and suspension right.
- 19.27 Several parties commented on the requirement to obtain the MCMC's consent prior to suspension or termination. Although the MCMC appreciates that suspension or termination is typically used as a last resort by Access Providers, the MCMC considers that suspension or termination has the potential to harm not only Access Seekers but their end user customers. Accordingly, it is important that the MCMC plays a proactive role in the exercise of such a power.
- 19.28 Regarding the timeframe within which the MCMC must respond, as noted by the MCMC in its 2016 MSA Review, some events leading to termination or suspension may be particularly complex and may require the MCMC to spend more than 10 Business Days to perform a proper assessment. This is particularly necessary given the paramount importance of the interests of end user customers, who may be affected by the relevant termination or suspension. The MCMC accordingly proposes to retain the existing drafting in paragraph 5.14.6(a) of the MSA.
- 19.29 The MCMC agrees with Maxis that the last sentence of subsection 5.14.4 of the MSA can be deleted. The MCMC is concerned to ensure that Access Providers do not misuse a change in law as grounds to terminate an access agreement, and expects that in practice, parties will come to a negotiated agreement as to the impacts of any changes in law.
- 19.30 Finally, the MCMC does not agree with TM's proposal to remove the requirement in paragraph 5.14.6(c) of the MSA that the Access Provider must take all steps practicable to minimise end user disruptions. The MCMC considers that allowing Access Providers to disregard the interests of end users in taking actions under their Access Agreements would be contrary to the LTBE. In any event, the MCMC notes that Access Providers are only required to take all steps "practicable" rather than all steps possible.

Other issues

- 19.31 edotco proposed that the obligation to refund prepaid amounts to the Access Seeker under subsection 5.14.9 of the MSA should be subject to the Access Seeker having paid all amounts due to the Access Provider.

- 19.32 Maxis proposed that the MCMC clarify the meaning of "network facilities access" under subsection 5.14.2 of the MSA and commented that its understanding is that this is a reference to passive mobile and fixed infrastructure in the Access List.
- 19.33 The MCMC does not agree to that the obligation for Access Providers to refund prepaid amounts to Access Seekers in subsection 5.14.9 of the MSA should be made conditional in any respect. It is important that prepaid amounts be returned to Access Seekers, given the reason for termination or suspension may relate to a refusal by the Access Seeker to pay disputed charges, in which case it would be unreasonable for the Access Provider to hold prepaid sums effectively as ransom.
- 19.34 In relation to Maxis' submission, "network facilities access" is intended to mean access to network facilities as that term is defined under the CMA, being any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment. It is intentionally drafted broadly to cover a wide range of physical network services infrastructure, and where used in the MSA, is not intended to be limited to Facilities and Services in the Access List, which are defined relevantly under "Facilities" and "Services".

MCMC preliminary views

- 19.35 The MCMC's preliminary view is to amend subsection 5.14 of the MSA as follows:

Reference	Summary of proposed change	MCMC rationale
5.14.2	The MCMC proposes to allow Access Providers to prescribe a minimum term of 24 months for Transmission Services.	Some Access Providers commented that the current minimum term of 12 months for Transmission Services is insufficient to allow them to recoup their investments, especially where new infrastructure is required to be built. The MCMC considers that investment incentives would be maintained if Access Providers could specify a longer minimum term for these services but expects that longer minimum terms will come at a reduced charge (with any pricing details to be subject to a later MSAP inquiry).
5.14.3 and 5.14.5	The MCMC proposes to amend these sections to clarify that an Access Provider may also partially terminate or suspend an access agreement, e.g. in respect of a particular site.	In light of submissions received from operators, the MCMC considers that Access Providers should be given the flexibility to partially terminate or suspend access agreements. Relevantly, the MCMC does not intend to expand the scope of the termination or suspension rights themselves.
5.14.4	The MCMC proposes to remove the Access Provider's right to terminate the provision of access to the relevant Network, Services and Facilities where it is unable to agree to different terms in response to a change in law.	The MCMC considers that this provision has the potential of being misused by Access Providers and expects that parties should reach agreement on any amendments required in the event of a change in law.

Questions

Question 21: Do you agree with the MCMC's proposed changes to the term, suspension and termination obligations set out at section 5.14 of the draft MSA to allow partial termination or suspension of Access Agreements? Why or why not? If not, please specify what change you consider is required and explain why.

20 Churn Obligations

Overview

- 20.1 Subsection 5.15 of the MSA sets out several obligations in relation to churn processes, and these provisions have remained largely unchanged for several years since they were first introduced in 2005.
- 20.2 In the 2016 MSA Review, the MCMC made a minor clarification specifying that a Service Provider must not use information disclosed in a Churn request for marketing activities.

- 20.3 However, the MCMC notes that in the time since the 2016 MSA Review, the markets for HSBB Network services have matured and churn events have accordingly become more prevalent. It has become apparent to the MCMC based on submissions from operators that the churn obligations may accordingly require amendment to better align with processes for churn events in the HSBB Network services context.

Discussion

- 20.4 Astro submitted that the churn transfer obligations relating to HSBB Network services are helpful but still not sufficient. Astro proposed that the MCMC consider how to prevent a RSP from intercepting the customers who have decided to leave them in order to join another (e.g., GSP). The timeline provided to the RSP in settling all the bills and subscriber's obligations prior to transfer is helpful, but it has been/could be utilised by the RSP to win back these customers. This aggravates the situation further for the GSP if the RSP is also the GSP's Access Provider. For example, if the RSP is also the Access Provider, there are plenty of opportunities for the RSP to save their churning customers/undercutting GSP/preventing them from joining the GSP.
- 20.5 Astro opines that in order to prevent the abovementioned situation from occurring, the same practice in MNP should be imposed to fixed broadband churn transfers obligation where the RSP is not allowed to win over the customers during the period of transfer.
- 20.6 Celcom proposed that a churn process specifically for HSBB Network services be included as part of Service Specific Obligations for HSBB Network Services. The existing process proposed by a service provider takes a duration of 7 or 8 days before a customer can be ported out to another operator. This is inconsistent with the subsection 5.15.5 of the MSA, where the churn process should be completed within 2 business days from receipt of a Transfer Request. In order to establish a fair churn process, Celcom proposes that this be discussed at an industry level with the MCMC. According to Celcom, some of the prevailing issues that need to be addressed are:
- (a) a person who is already subscribed to the Access Provider's service is unable to subscribe to the Access Seeker's service at the same premises (as a second line);
 - (b) a person is unable to subscribe to Access Seeker's service because there is already another person in the same premises who is already subscribed to the Access Provider's service; and
 - (c) a person who moved into a premises and would like to subscribe to the Access Seeker's service is required to initiate a transfer request process from the previous tenant who subscribed to the Access Provider's service.
- 20.7 Digi also requested that the MCMC expand the current churn transfer obligations. Digi considers that the current process is complex and subject

to discipline from the Access Provider, RSP and Gaining Service Provider, and that commitment from all parties is essential to ensure the transfer is successful and implemented on time so as to fulfil the customer's request. Digi suggested a simplified process which can ensure the service installation meets the timeline and to ease the operation process.

20.8 Digi also proposed a longer grace period for HSBB service installation from a Gaining Service Provider, to ensure that customers have service continuity. More importantly, Digi submitted that customers should be allowed to acquire services from GSP before they have terminated their arrangements with the RSP.

20.9 Maxis made extensive submissions in respect of the churn obligations in section 5.15 of the MSA, which it considers are more relevant to a situation where the RSP, Access Service Provider and the GSP are different operators. Maxis submitted that:

(a) there should be different terms and conditions for the churn obligations process where:

- (i) the RSP and the Access Service Provider are the same operator, which Maxis considers the most crucial scenario; and
- (ii) where the RSP and the Access Service Provider are not the same operator.

(b) there should be new specific terms and conditions for Customer's Transfer Request under Service Specific Obligations for relevant facilities/services e.g. HSBB network services; and

(c) the MSA should clarify that churn obligations do not refer to Mobile Number Portability as those have their own provisions under the Numbering and Electronic Addressing Plan (**NEAP**).

20.10 Maxis considers that the current obligations in subsection 5.15 of the MSA are not sufficient and appropriate when applied to the churn/transfer of HSBB services from the RSP of the Access Service Provider to the Gaining Service Provider, whereby there are issues experienced by the GSP when the end user requests to transfer its existing HSBB services from the RSP/Access Service Provider to the Gaining Service Provider. In particular, Maxis complained about:

(a) the requirement for end users to visit the physical store of the RSP or Access Service Provider means that about 20% of end users are not able to walk-in due to accessibility and operating hours, frustrating churn and reducing competitive threats in the market;

(b) the grace period (e.g. 5 days) for the Releasing Service Provider and Access Service Provider to prompt the GSP to book the slot for installation, unnecessarily delaying the churn/transfer process and creating opportunity for the provision of counter-offers by the RSP/Access Service Provider during this period; and

- (c) unethical sales approaches by the RSP/Access Service Provider's reseller e.g. unethical pitching and over-targeting on the Gaining Service Provider's customers, unlike for Mobile Number Portability (and also proposed for Fixed Number Portability (**FNP**)), where the Gaining Operator fronts the entire process.
- 20.11 Ohana submitted that churn/transfer requests are currently taking 10 days to complete, despite the MSA requirement that the transfer should be completed within 2 Business Days. Due to this delay, many Gaining Service Providers are unable to acquire customers wishing to churn from their existing service provider, because of the long downtime. Ohana proposed that stronger governance towards Access Providers be implemented to avoid this.
- 20.12 TTdC submitted that there is a vast difference in the nature of mobile and HSBB services with regards to the porting of subscribers. In particular, while a HSBB subscriber may decide to change its service provider, the movement from HSBB provider A to B does not involve any handover of the same phone number. As such, TTdC submitted that there is no actual churn process in the movement of a HSBB subscriber from one provider to the other. A simple mechanism on subscriber movement allows for the GSP to install and provide service once the RSP confirms the subscriber's termination of service.
- 20.13 TTdC also suggested that churn obligations are viewed as a barrier to concluding access agreements as these obligations are currently more specific for mobile services. TTdC submitted that, as there is currently no standard process on churn obligations, parties during negotiations may find it difficult to arrive at agreed processes and terms for churn obligations for HSBB services.
- 20.14 TM submitted that current churn obligations do not suit all services, and that it has received feedback from Access Seekers to modify the current churn process to address potential gaps. TM considers that the MCMC should allow operators to agree alternative churn procedures.
- 20.15 U Mobile commented that the MCMC should consider developing relevant regulations, which are similar to regulations to guide implementation of MNP, to ensure that subscribers are able to port out effectively without being subject to delays designed to prevent churn.
- 20.16 The MCMC thanks operators for their submissions on the churn obligations set out in the MSA. The main theme emerging from these submissions is that the churn obligations currently set out in section 5.15 of the MSA are not appropriate for all services (particularly HSBB Network Services) and that these obligations do not reflect how churn/transfer processes are being adopted in practice.
- 20.17 For this reason, the MCMC proposes to amend the MSA to introduce new churn obligations for HSBB Network Services in the Service Specific Obligations for these services, currently set out in section 6.6 of the MSA. These obligations are aimed at preventing Access Providers from using the

churn process in an anti-competitive manner that some Access Seekers have complained about in their informal questionnaire responses.

20.18 While Maxis was the only operator to submit a specific proposed churn process, the MCMC appreciates that many operators may have a view on appropriate churn obligations for HSBB Network Services. For discussion purposes and to guide industry feedback, the MCMC has proposed draft churn obligations for HSBB Network Services in subsection 6.6.19 of the draft MSA.

20.19 In relation to other submissions by operators, the MCMC's view is as follows:

- (a) churn processes should continue to be set out in the MSA, given the demonstrated potential for these processes to be used to delay or ultimately restrict churn from an Access Provider; and
- (b) the MCMC will separately consider whether any other instruments should be developed or enhances for churn obligations.

MCMC preliminary views

20.20 The MCMC's preliminary view is that the churn obligations under section 5.15 in the draft MSA remain applicable for services other than HSBB Network Services and does not propose to amend this section.

20.21 However, the MCMC proposes to include in section 6.6 of the draft MSA new churn obligations specifically applicable to HSBB Network Services, as summarised in paragraph 27.72 below.

Questions

Question 22: Do you agree that the churn obligations under subsection 5.15 of the MSA are still appropriate for non-HSBB services? Please comment on any proposed changes.

21 Legal Boilerplate Obligations

Overview

21.1 Subsection 5.16 of the MSA sets out certain legal boilerplate provisions, including as to obligations to supply, assignment, intellectual property, reviews, costs and expenses, applicable laws and other general provisions governing the supply of Facilities and Services.

Discussion

21.2 The MCMC has reviewed the Legal Boilerplate Obligations under section 5.16 of the MSA and, as was its view in the 2016 MSA Review, the MCMC's preliminary view is that the current provisions should remain largely intact.

21.3 There were limited submissions by stakeholders on this section of the MSA.

- 21.4 Astro submitted that Access Providers should adhere strictly to the Legal Boilerplate obligations as there could be circumstances where Access Providers place Access Seekers in a disadvantaged position and pressure them to not deep dive into the negotiation process, especially small Access Seekers. In Astro's view, this defeats the whole purpose of negotiation when access regulations are meant to assist/facilitate for greater efficiencies and quicker processes for interested Access Seekers, helping the nation ensure connectivity.
- 21.5 Celcom Timur (Sabah) submitted that the dispute resolution provision in subsection 5.16.4 of the MSA should be amended to require that each Operator must comply with the Dispute Resolution Procedures should parties agree to adopt them in settling a dispute. Celcom Timur (Sabah) considers that the MSA should allow for flexibility and space to enable the parties to negotiate.
- 21.6 Digi considers that section 5.16 of the MSA should be entirely commercially negotiated by the parties and not fall under the scope of the MSA.
- 21.7 edotco submitted that subsection 5.16.14 of the MSA (Conditional Supply) be removed or be made non-mandatory, as sometimes commercial offers can have bundled services or be subject to volume requirements in order for edotco to accommodate the Access Seeker's needs, especially in terms of add-on services or commercials.
- 21.8 edotco also proposed that the MSA include a provision requiring Access Providers and Access Seekers to jointly bear costs where, owing to circumstances beyond the control of either party, that party incurs additional costs. An example of unplanned costs is where costs are imposed by directives, rulings and/or enactments made by local authorities i.e. the processing fee for the permit application.
- 21.9 On the other hand, edotco proposed that where additional requirements for a Facility or Service arise which can be classified as a variation order, e.g., a tower upgrade or requirement for additional space for new equipment, these costs should be borne solely by the Access Seeker.
- 21.10 Sacofa submitted that subsection 5.16.5 of the MSA should be amended to reflect that only an Access Provider may impose other costs, expenses or charges not set out in an access agreement, as in Sacofa's experience an Access Seeker has never specified any costs, expenses or charges.
- 21.11 TTdC submitted that the Legal Boilerplate Obligations should include the process for assessment of access agreement submitted to the MCMC for registration, including the timeline.
- 21.12 TM commented that the prohibition on requiring Access Seekers to acquire any "minimum or maximum quantity" under subsection 5.16.14 of the MSA should not be applicable to bandwidth. TM submitted that the Access Provider should be able to determine the minimum and maximum bandwidth it provides which at the minimum or at the maximum should be what they offer to their own self.

21.13 One operator suggested that when additional resources are required to be brought in for the purpose of expediting the negotiation process, each party should bear the cost respectively as per subsection 5.16.11 of the MSA instead of pressuring the Access Seekers to bear Access Provider's additional cost if the Access Seeker wants to expedite matters.

21.14 In response to these submissions, the MCMC notes that:

- (a) it agrees with Astro that access agreements must align with the Legal Boilerplate Obligations. To the extent an Access Seeker faces any difficulties in negotiating access agreements in accordance with the terms set out in the MSA, that Access Seeker may initiate the Dispute Resolution Procedures;
- (b) the MCMC's comments in respect of the Dispute Resolution Procedures are set out in section 39;
- (c) it does not propose to include a requirement that parties must jointly bear the impact of cost increases as suggested by edotco, as this may lead to unintended impacts and would be inconsistent with subsection 5.16.5 of the MSA, which requires Operators to specify all charges in an access agreement other than agreed work on a time and materials basis. To the extent edotco requires flexibility to share costs in the event of regulatory decisions, or to impose certain costs for variation orders, it may agree to do so with the Access Seeker on a commercial basis provided that any costs are in accordance with the MSAP;
- (d) the Legal Boilerplate Obligations should remain in the MSA rather than be left to commercial negotiation, as they offer critical protections for Access Seekers and set out an overarching framework for the supply of services in accordance with the MSA; and
- (e) the prohibition on conditional supply should remain unchanged as it protects against anti-competitive behaviour. In relation to TM's comments, the MCMC notes that subsection 6.6.17 of the MSA already clarifies the application of EOI provision such that an Access Provider needs to supply HSB Network Services with such speed tiers as it makes available to itself.

21.15 The MCMC agrees with Sacofa's view that subsection 5.16.5 of the MSA does not appear to have any application insofar as Access Seekers are concerned, and accordingly proposes to replace "Operator" with "Access Provider" in that section.

21.16 Finally, the MCMC notes that the access agreement registration process should not be specified in the MSA, given that process is governed under sections 90 - 93 of the CMA, as explained in the Guideline on Registration of Access Agreements issued by the MCMC.

MCMC preliminary views

21.17 The MCMC proposes to make the following change to the Legal Boilerplate Obligations under subsection 5.16:

Reference	Summary of proposed change	MCMC rationale
5.16.5	The MCMC proposes to clarify that only Access Providers (not all Operators) are required to specify all charges, costs and expenses in an access agreement, given this provision is unlikely to have any practical impact where the Operator is the Access Seeker.	The MCMC is interested to understand whether this section has any practical impact insofar as Access Seekers are concerned and proposes to replace "Operator" with "Access Provider" in the absence of any evidence to the contrary.
5.16.14(b)	The MCMC proposes to clarify that the prohibition on requiring an Access Seeker to acquire any Facilities or Services in any minimum or maximum quantity also applies to any element of those Facilities or Services and to any minimum or maximum quantity or ratios such as minimum bandwidth and ports-per-card.	The MCMC notes that some operators have complained that they are being forced to acquire certain service elements on a minimum quantity basis. The MCMC considers that the prohibition on conditional supply should be interpreted broadly and proposes to clarify this.

Questions

Question 23: Do operators have any comments on the MCMC's proposed changes to the legal boilerplate obligations in subsection 5.16 of the draft MSA? Please provide details of any suggested amendments.

22 Origination & Termination (O&T) Services

Overview

- 22.1 Section 6.1 sets out Service Specific Obligations in respect of O&T Services, being fixed and mobile origination and termination services.
- 22.2 There were extensive submissions from stakeholders on this section, indicating that the way these services are used and accessed continues to evolve despite their maturity.

Discussion

- 22.3 Celcom submitted that there are no impediments to accessing these services, but that as operators move towards IP interconnection over time, the handover principles under subsection 6.1.14 of the MSA must eventually be revised, with the existing terms to be maintained until then, as they provide discussion options to operators. In particular, operators will have

single POIs only, rather than POIs in each region. In addition, O&T charges are now at a flat rate, with no differentiation of local and national rates.

- 22.4 Digi, YTL and Webe submitted that the QoS parameters set out in subsection 6.1.17 of the MSA remain accurate. YTL submitted that these remain accurate in respect of future technologies as well.
- 22.5 Maxis submitted that, for the migration from Signalling System Number 7 (**SS7**) (TDM) to IP Interconnection for O&T Services, it does not foresee the need to amend subsection 6.1.14 of the MSA (Handover principles) or section 6.3 of the MSA (Interconnect Link Service). Both of these sections are applicable to either SS7 (TDM) or IP Interconnection.
- 22.6 Maxis made a number of submissions regarding section 6.1 of the MSA:
- (a) to clarify when subsections 6.1.3 to 6.1.5 of the MSA apply, given Maxis does not usually have order process for O&T Services;
 - (b) regarding subsection 6.1.8 of the MSA (Impact of retail commercial arrangements), Maxis submitted that the retail service is between the Access Seeker and its customers, and that the Access Provider should not dictate such a retail arrangement;
 - (c) subsection 6.1.12 of the MSA (Inter-Closed Number Area service) should be removed as it is not relevant for the O&T Services between the Access Provider and the Access Seeker;
 - (d) in subsection 6.1.16 of the MSA, the reference to the transit Network should be removed as it is not relevant for the O&T Services between the Access Provider and the Access Seeker; and
 - (e) in subsection 6.1.17 of the MSA, the QoS parameters may be changed when the industry transitions from SS7 to IP interconnection later, and that the MCMC should provide some guidelines on IP interconnection for the industry to adapt.
- 22.7 MY Evolution suggested that the MCMC pay special attention on maintaining Second Generation (**2G**) QoS and coverage as banking and utility devices are upgraded over the years.
- 22.8 REDtone requested that paragraphs 6.1.14(a) and (b) of the MSA (regarding Near End Handover and Far End Handover) be removed as this is no longer applicable. Handover will be done at the POI as agreed by the Access Seeker and Access Provider.
- 22.9 REDtone also proposed the following parameters in respect of IP Interconnect (Voice):
- (a) service level availability: 99.9%/month;
 - (b) packet loss: < 1%;
 - (c) latency: < 20ms (within peninsular), <40ms (peninsular to east Malaysia);

- (d) delivery of the services: 4 weeks upon receiving request from Access Seeker; and
- (e) restoration for link outage:
 - (i) response time: 1 hour;
 - (ii) update time: hourly; and
 - (iii) restoration time: 4 hours.

22.10 TTdC submitted that, with the industry moving towards IP Interconnection, the handover principle will also consequently change, e.g., all the handover (for Origination and Termination) will take place at the relevant POIs, e.g., at AIMS or Subang Hi-Tech, and no longer on the basis of Near or Far End Handover.

22.11 TM submitted that although there is currently no impediment in gaining access to O&T services, it faces issues in establishing interconnection for A2P SMS messages using short codes, as the industry forces TM to use other platforms. TM commented that it is being charged excessively per short code for each activity in relation to but not limited to code opening, deposit, monthly rental and one-time charge. TM accordingly proposed that amendment to be made to subsection 6.1.10 of the MSA so that it is consistent with paragraph 6.1.10(a) of the MSA.

- (a) Details of the code opening per Operator as in the table below:

Provider	Deposit (RM)		OTC (RM)		Monthly (RM)	
	Level 1	Level 6	Level 1	Level 6	Level 1	Level 6
Celcom	TBC	NA	TBC	[X]	TBC	[X]
Digi	NA	NA	[X]	[X]	[X]	[X]
Maxis	[X]	NA	[X]	[X]	[X]	Superblast package : [X] Recurring : [X]
U-Mobile	NA	NA	[X]	[X]	[X]	[X]
YTL	NA	NA	NA	NA	[X]	[X]
XOX	NA	NA	[X]	[X]	[X]	[X]
Tune Talk	NA	NA	[X]	[X]	[X]	[X]
Webe	NA	NA	[X]	[X]	NA	NA

22.12 TM suggested amending subsection 6.1.13 of the MSA (Costs) to allow parties to agree other cost arrangements, and to reflect that for IP Interconnection, Operators shall bear their own costs.

22.13 TM also proposed that the handover principles set out in subsection 6.1.14 of the MSA will no longer be necessary for IP interconnection, where traffic is routed and handed over to the centralised POI agreed by both parties,

rather than nationwide POIs. TM accordingly proposed a new paragraph 6.1.14(c) of the MSA as follows:

(c) Where IP Interconnection is implemented, the handover shall be on a centralised basis. However, for calls terminating to Tollfree/Freephone/Short Code Services, the terminating Operator (Access Seeker) may request the originating Operator (Access Provider) to provide identification to indicate location of the caller and the Access Provider shall not refuse such request without reasonable grounds.

22.14 U Mobile submitted that subsection 6.1.14 of the MSA should be removed since it is no longer applicable in an IP scenario and voice is not a significant contributor to bandwidth usage.

22.15 Webe commented that it does not face any impediments in gaining access to these services, but that subsection 6.1.14 of the MSA is not relevant given charges for termination services are no longer by region.

22.16 YTL submitted that, with respect to section 6.1.14 of the MSA, the MSAP already mandated the same standard pricing for Fixed and Mobile Network Termination regardless of Tandem. It accordingly suggested eliminating the near-end/far-end handover basis.

22.17 YTL also submitted that, in respect of O&T Services, the following technical specifications should be adopted:

(a) IP Interconnect should include interworking based on the precondition framework and adoption of AMR-WB as one of the media Codec; and

(b) Session Initiation Protocol (**SIP**) precondition should be adopted, which is a framework specified in 3GPP TS 24.229 and recommended in GSMA IR.92 specifically for VoLTE that enables the signalling endpoint to not alert the user until certain conditions are met. The condition in this case refers to the radio resources and bandwidth that are required by both calling and called party to exchange voice media successfully and reliably.

22.18 The MCMC agrees with submissions from operators that the handover principles set out in subsection 6.1.14 of the MSA may not be very clear as the industry transitions towards IP-based interconnection. Although subsection 6.1.14 of the MSA allows parties to agree handover principles on the basis requested by the Access Seeker (or to otherwise agree principles in an Access Agreement), under an IP-based interconnection model, handover may occur at any POI agreed between the Access Provider and the Access Seeker.

22.19 The MCMC proposes to address this ambiguity by removing the existing handover principles from subsection 6.1.14 of the MSA as proposed by some operators, given the industry-wide transition to IP-based interconnection.

22.20 In response to the other submissions by operators in respect of section 6.1 of the MSA, the MCMC notes that:

- (a) there is insufficient justification to amend subsections 6.1.3 to 6.1.5 or 6.1.8 of the MSA given the MCMC's position in respect of the importance of these sections has not changed since its 2016 MSA Review and no operators other than Maxis commented on these sections. However, the MCMC invites further submissions on this matter;
- (b) it proposes to remove subsection 6.1.12 of the MSA (in its entirety) and remove the reference to transit Networks in subsection 6.1.16 of the MSA for the reasons proposed by Maxis, and invites further submissions in this regard;
- (c) there is already sufficient flexibility under the existing subsection 6.1.13 of the MSA to permit the parties to bear their own costs in connection with IP-based interconnection where relevant;
- (d) the MCMC has already determined not to include A2P messaging termination services on the Access List; and
- (e) it does not have sufficient information at this time to determine whether the technical parameters proposed by REDtone and YTL are appropriate or required under the MSA and invites further submissions on these matters. The MCMC's initial view however is that the technical parameters for IP-based interconnection are more appropriately dealt with in a separate technical inquiry.

22.21 The MCMC did not consider submissions from operators with respect to MSAP, as these are outside the scope of this inquiry.

MCMC preliminary views

22.22 The MCMC's preliminary view is to make the following changes to the MSA:

Reference	Summary of proposed change	MCMC rationale
6.1.12	The MCMC proposes to remove this provision (Inter-Closed Number Area service) from the MSA.	The MCMC considers that this provision can be removed as it is no longer relevant.
6.1.14	The MCMC proposes to remove this provision (Handover principles) from the MSA.	As the industry continues to transition towards IP-based interconnection, the MCMC understands that handover of calls will no longer take place on a Near End Handover basis or Far End Handover Basis, but rather at any centralised POI selected by the parties. The MCMC considers that the ongoing relevance of the handover provisions is accordingly limited.
6.1.16	The MCMC proposes to remove the reference to transit Networks in this section.	The MCMC considers that this provision can be removed as it is no longer relevant.

Questions

- Question 24: Do you have any comments on the MCMC's proposed removal of subsection 6.1.14 of the MSA regarding handover principles in light of the transition to IP-based interconnection?
- Question 25: Do you agree that subsection 6.1.12 of the MSA (Inter-Closed Number Area service) and the reference to "transit Networks" in subsection 6.1.16 of the MSA be removed from the MSA? If not, please comment on why these provisions are required.

23 Wholesale Line Rental Service

Overview

- 23.1 Subsection 6.2 of the MSA currently sets out a series of Service Specific Obligations that apply for the Wholesale Line Rental Service.

Discussion

- 23.2 Only two operators commented on the terms governing supply of Wholesale Line Rental services, indicating that they are generally acceptable to the industry.
- 23.3 Maxis does not foresee any impediments in supplying access to the Wholesale Line Rental Service but commented that Fixed Number Portability is required to ensure the success and take-up of the Wholesale Line Rental Service.
- 23.4 The MCMC notes that, as operators are likely aware, the MCMC has carried out consultation on the implementation of FNP in Malaysia and has published a Public Consultation Report on Implementation of Fixed Number Portability on 21 July 2021.⁹
- 23.5 TM commented that there is limited demand for the Wholesale Line Rental service due to the availability of substitutes, such as Over-The-Top (**OTT**) services, live chat and voice over broadband services. In response, the MCMC notes that Wholesale Line Rental has now been removed from the Access List.

MCMC preliminary view

- 23.6 The MCMC proposes to remove subsection 6.2 from the MSA.

24 Interconnect Link Service

Overview

- 24.1 Subsection 6.3 of the MSA sets out the term' of access for the Interconnect Link Service.

⁹ [Malaysian Communications and Multimedia Commission \(MCMC\) | Suruhanjaya Komunikasi dan Multimedia Malaysia \(SKMM\) - Public Consultation Report on Implementation of Fixed Number Portability \("FNP"\) in Malaysia](#)

- 24.2 Most respondents to the MCMC's initial informal questionnaire commented that they face no impediments in acquiring access to this service on the terms set out in the MSA.

Discussion

- 24.3 Digi proposed that the MCMC include specific definitions for IP interconnection as most Access Providers are now progressing to IP interconnection. Similarly, TTdC submitted that the description for Interconnect Link Service should encompass IP interconnection, in addition to SS7 protocol, in line with the move from copper to fibre-based interconnection.
- 24.4 Given the nature of the IP network, Digi is of the view that the MCMC should analyse the applicability of principles and requirements based on geographical areas and distance. The transition to IP interconnection will likely be on a capacity-based arrangement.
- 24.5 Maxis requested that the MCMC provide some guidelines on IP interconnection for the industry to adapt as the industry moves from SS7 protocol to IP interconnection. TTdC also proposed the same, stating that the guideline should ensure all aspects of the service are covered, e.g., technology, security, standards, etc.
- 24.6 REDtone, TTdC and TM also commented that IP Interconnection be addressed in the MSA. In particular, TTdC recommended that full-scale IP-based interconnection and time-bound migration from copper-based to IP interconnection be reflected in subsection 6.3 of the MSA, and TM suggested service delivery timeframes under subsection 6.3.5 of the MSA may need to be updated to reflect IP interconnection. TTdC also suggested that, even though the MSA is technology neutral, subsection 6.3 of the MSA should explicitly be made applicable to IP interconnection.
- 24.7 TM also commented that billing cycles should be determined by the Access Provider and negotiated between the parties rather than prescribed under subsection 6.3.6 of the MSA.
- 24.8 U Mobile submitted that subsection 6.3 of the MSA should be removed since it was no longer applicable to an IP scenario and voice is not a significant contributor to bandwidth usage.
- 24.9 YTL submitted that in respect of the Interconnect Link Service, the following SLAs for should apply in light of the transition to IP interconnection:
- (a) lease bandwidth shall be dedicated (non-shared), transparent to user protocols, no VLAN encapsulation and modification to Access Seeker's Layer 2 frame and Layer 3 payload;
 - (b) support for Layer 2 minimum transmission unit (**MTU**) size of up to 9000 bytes;
 - (c) service availability: 99.9% monthly availability to be end-to-end;

- (d) packet loss: < 0.1%;
- (e) jitter: < 1 ms; and
- (f) one-way latency: < 10ms.

24.10 YTL submitted that the benefits of these requirements are as follows:

- (a) ensuring necessary network resources reserved prior to connecting the end-user, thereby assuring good voice quality;
- (b) avoiding User Experience issues, such as ghost ring, where users experience silent calls due to inadequate network resources; and
- (c) AMR-WB is the wide-band speech Codec described in GSMA IR.92 for VoLTE to improve end-user voice experience.

24.11 While several operators commented that IP-based interconnection be reflected in subsection 6.3 of the MSA, only one operator proposed specific amendments required in light of the transition to IP-based interconnection, noting that the amended handover principles for origination and termination services are addressed in paragraph 22.22 above. Taking into account also the MCMC's decision to include IP-based interconnection within the scope of the Interconnect Link Service in the Access List, the MCMC does not have enough information at this stage to determine what amendments are required to subsection 6.3 of the MSA on this issue.

24.12 However, the MCMC does not propose to consider any guidelines for IP-based interconnection within the scope of the current inquiry, which is concerned primarily with the Access List and the non-price terms and conditions for access to Services and Facilities listed therein.

24.13 In relation to the specific technical parameters proposed by YTL, the MCMC notes that the Service Specific Obligations for the Interconnect Link Service do not currently include any technical parameters. However, the MCMC is interested in hearing further views from operators on this matter.

24.14 Further, given the limited comments in respect of other provisions raised by TM, including service delivery timeframes and billing cycles, the MCMC proposes to leave those provisions unchanged. For similar reasons and noting the ongoing transition to IP-based interconnection, the MCMC is not inclined to remove subsection 6.3 of the MSA, as proposed by U Mobile.

MCMC preliminary view

24.15 The MCMC's preliminary view is that the terms of access to the Interconnect Link Service in subsection 6.3 of the current MSA should be retained with some amendment.

Questions

Question 26: Should any amendments be made to the Service Specific Obligations for Interconnect Link Service, including for IP-based interconnection?

Please detail any proposed addition, deletion or amendment to the terms currently set out in the MSA, including any particular technical parameters required in light of the transition to IP-based interconnection.

Question 27: Do you have any comments on the technical parameters proposed by YTL for the Interconnect Link Service, as set out in paragraph 24.9?

25 Access to Network Elements

Overview

- 25.1 Subsection 6.4 of the MSA currently sets out a series of Service Specific Obligations that apply for Access to Network Elements. The access services covered by these obligations include:
- (a) Full Access Service;
 - (b) Line Sharing Service;
 - (c) Bitstream with Network Service;
 - (d) Bitstream without Network Service; and
 - (e) Sub-Loop Service.¹⁰
- 25.2 In the 2016 MSA Review, the MCMC introduced a number of obligations, including on new time requirements for forecasts and timeframes, and further clarified that if an Access Provider rejected a request for Access to Network Elements on the basis that HSB Network Services are available as an alternative, the Access Provider must make evidence available to the Access Seeker.
- 25.3 However, in the Access List Review, the MCMC made the decision to remove from the Access List the copper-based access services listed above.

Discussion

- 25.4 Only two stakeholders commented on the Service Specific Obligations for Access to Network Elements.
- 25.5 Maxis commented that Access Providers must not require the Access Seeker to subscribe to any minimum purchase at any particular location and must allow the Access Seeker to subscribe on a per line or per port basis as required by the Access Seeker (rather than a ports per-card basis).
- 25.6 TM is an Access Provider for Access to Network Elements and foresees that there will be no further interest for Access Seekers to provide these services using the copper-based network, due to the huge capital expenditure (**CAPEX**) costs compared to the return on investment. In addition, the quality of copper deteriorates over time and will increase maintenance costs.

¹⁰ MSA, section 3 (Interpretation), definition of 'Access to Network Elements'.

Given the shift towards HSBB services, TM considers that the demand for copper-based services will likely remain limited.

- 25.7 The MCMC agrees that the copper-based local access services are subject to limited demand, and this demand is likely to decrease over time as operators continue to transition to fibre-based HSBB services. As copper-based local access services are not being acquired by any Access Seekers, the MCMC removed copper-based services from the Access List, being Wholesale Line Rental, Bitstream with Network Service, Bitstream without Network Service, Full Access Service, Line Sharing Service and Sub-loop Service.

MCMC preliminary views

- 25.8 The MCMC proposes to delete subsection 6.4 of the MSA with consequential amendments throughout the MSA to reflect the removal of services from the Access List to which the Access to Network Elements obligations previously applied.

Questions

Question 28: Do operators have any views on the MCMC's proposal to delete the Service Specific Obligations for Access to Network Elements in subsection 6.4 of the draft MSA, together with other consequential amendments throughout the draft MSA? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.

26 Digital Subscriber Line Resale Service

Overview

- 26.1 As part of the 2016 MSA Review, the MCMC included a new subsection 6.5 that set out the detailed terms that would apply specifically for access to the Digital Subscriber Line Resale Service, including a new ground for refusal permitting an Access Provider to refuse an access request for services and service-specific timeframes.
- 26.2 The MCMC removed the Digital Subscriber Line Resale Service from the Access List pursuant to the Access List Review.

Discussion

- 26.3 Similar to other copper-based services, there were limited submissions from operators on the Digital Subscriber Line Resale Service.
- 26.4 Maxis commented that it will upgrade its "negligible" copper network to fibre. However, it again noted that the minimum port per card requirement is an impediment to acquiring the Digital Subscriber Line Resale Service, and a requirement that adds substantial costs. Maxis requested that the Access Provider be prohibited from requiring the Access Seeker to subscribe to any minimum purchase of the service at any particular location, and that the Access Seeker should be allowed to acquire on a per line or per port basis at its discretion.

- 26.5 TM repeated its comments in respect of the other copper-based services, as set out in paragraph 25.6 above (and not repeated here).
- 26.6 Finally, YTL Communications submitted that there is a lack of ports and capacity available at certain areas and that all digital lines should be upgraded to fibre-based lines.
- 26.7 Given the MCMC has removed the Digital Subscriber Line Resale Service from the Access List, the MCMC considers that the Service Specific Obligations relating to this service should be removed from the MSA.
- 26.8 Regarding YTL's comments, the MCMC notes the National Fiberisation and Connectivity Plan (**NFCP**) already contemplates a target phasing out of the copper network by 2025.

MCMC preliminary views

- 26.9 The MCMC proposes to remove subsection 6.4 from the MSA, with consequential amendments throughout the MSA to reflect the removal of the Digital Subscriber Line Resale Service from the Access List.

27 HSBB Network Services

Overview

- 27.1 Subsection 6.6 of the MSA currently sets out a series of Service Specific Obligations that apply for the HSBB Network Services.
- 27.2 Following the 2016 MSA Review, the MCMC included additional obligations in this section including, among other things:
- (a) the common terms of access (e.g., EOI, Forecasts, indicative activation timeframes, etc.) for HSBB Network Services;
 - (b) requirement to make OSS interfaces available to Access Seekers;
 - (c) clarification around service activation timeframes, service assurance timelines and on-site support;
 - (d) requirements for an Access Provider to make certain information available on its publicly available website;
 - (e) clarification that any information provided to an Access Seeker under an Implementation and Migration Plan must allow the Access Seeker to carry out certain activities on the same basis as the Access Provider;
 - (f) express requirements for an Access Provider to make available certain information to an Access Seeker as soon as the Access Provider makes that information available to itself and rebates being payable for incorrect information being provided; and
 - (g) the inclusion of new reporting obligations that set out details such as location and product availability of HSBB Network Services, which an

Access Provider would be required to notify to the MCMC on a biannual-basis.

Discussion

- 27.3 The MCMC notes that it has received a high volume of operator comments in relation to the negotiation and supply of HSBB Network Services.
- 27.4 As noted in the MCMC's Access List Review, the MCMC is aware of a number of issues reported by Access Seekers in relation to accessing these services. The MCMC expects that several of these issues will be addressed through the amendments it has made to the Access List.
- 27.5 However, stakeholders also commented on several other issues that are relevant to the terms set out in the MSA. Generally, operators commented on:
- (a) Access Provider non-compliance with the MSQoS for Wired Broadband (, including interaction with JENDELA; and
 - (b) issues relating to the installation and activation process.

JENDELA and MSQoS

- 27.6 Several operators submitted that the current MSA terms and conditions are sufficient to support JENDELA. However, a number of operators made submissions regarding the interaction between the MSA, the MSQoS, and the JENDELA objectives more generally.
- 27.7 Astro commented that, in the absence of any service credits as compensation for a failure to meet the SLAs set out in subsection 6.6 of the MSA, there are no consequences for the Access Provider and accordingly the SLAs are not effective. Further, the Access Provider bears no losses of any kind even if Access Seekers suffer losses or interruptions, or delays to access, etc.
- 27.8 "Astro sought clarification with respect to discrepancies between the MSA and the MSAP FAQs regarding minimum service level availabilities. The MSA sets a minimum service availability of 95% in subsection 6.6.14 of the MSA, while the MSAP FAQs refers to 99.9%.
- 27.9 Astro also made submissions in respect of the interaction between the MSA and the Mandatory Standards for Quality of Service (Wireless Broadband Access Service), which can be summarised as follows:
- (a) the MSQoS is particularly important to Access Seekers, when Access Seekers are unable to meet the MSQoS due to faults/causes that do not originate from/are beyond the control of Access Seekers, resulting in warning letters/compounds, which affect the Access Seekers as licensees as well as their reputational loss or loss of confidence by the consumers. Astro proposed that Access Providers pay rebates to or reimburse Access Seekers for compounds imposed to the Access Seekers due to faults not attributable to the Access

Seekers. Additionally, impacted customers of the Access Seekers should also be reimbursed/provided with rebates by the Access Provider. This will motivate the Access Provider to perform well in terms of the MSQoS and provide the customers with the appropriate compensation for any loss of service.

- (b) to support JENDELA, ASTRO opined that it is important to require Access Providers to have a centralised and complete database of the household addresses and home pass in Malaysia; the data that is being keyed in for addresses should be consistent and accurate to avoid any mismatch or discrepancies. This will also help Access Seekers to integrate their database with the Access Providers' database and provide more accurate information for JENDELA. For areas that have a high demand for port availability, the timeframe for the port availability should be stipulated in the MSQoS and MSA to ensure that Access Providers comply with the guidelines and customers are able to enjoy the 'service at a shorter turnaround time.

27.10 Celcom commented that some terms in TM's RAO for the HSBB Network Services do not comply with the MSQoS or the MSA. Celcom's negotiations with TM have been ineffective, particularly as to operational scope, dampening Celcom's plans to accelerate customer subscriptions. Celcom highlighted the following terms in TM's RAO which it considers inconsistent with the MSQoS and the MSA principles:

- (a) 95% of reported faults to be restored in 7 days, compared with the MSQoS requirement for 95% of service restoration fulfilment in a reporting period to be fulfilled within 24 hours (and 100% within 48 hours);
- (b) commencement of post-order Service Qualifications within 15 Business Days, compared with subsection 6.6.5 of the MSA which specifies 5 Business Days;
- (c) requirement for a Proof of Concept prior to service deployment, compared with the MSA which does not require Proof of Concept or other application services tests;
- (d) the information provided by TM under its processes and the information required to be provided and updated under subsections 6.6.9, 6.6.10 and 6.6.13 of the MSA (including as to service availability). Specific issues highlighted by Celcom include:
 - (i) no regular updates from TM on locations of new homes passed, with all Access Seekers given new homes passed lists at the same time on the same day;
 - (ii) inconsistent information in different TM portals;
 - (iii) no visibility on the number of appointment windows in TM portal, leading to inconsistencies;

- (iv) Access Seekers are required to perform registrations in both the Access Seeker portal and the Access Provider portal, leading to a longer registration period for Access Seeker customers; and
- (v) late notification on cancellation of customer appointment, with notifications taking place one hour before the appointment instead of 24 hours; and
- (e) earliest installation appointment timeslots of 10 days from the date of the customer's request, even though installation timeframes for TM's own retail customers are typically 2 days from the date of request.

27.11 Digi submitted that, in meeting the MSQoS for Wired Broadband (particularly its obligations in respect to the customer service QoS requirements), Digi is dependent on the Access Provider's cooperation to fulfil its obligations. Digi submitted that the MCMC should give due consideration to address and adopt the following requirements in the MSA:

- (a) the integration of the Access Seeker's and Access Provider's OSS via a secure API;
- (b) the presence of the Access Seeker's and Access Provider's installers at the customer's premises to ensure the timely provision of the service or for the Access Provider to provide full installation services;
- (c) to compensate the Access Seeker who is being penalised for not meeting the MSQoS due to the Access Provider's negligence; and
- (d) to standardise and simplify a customer's transfer process when switching service providers.

27.12 Maxis proposed that the existing MSA QoS parameters ensure that the Access Seeker can deliver the Quality of Experience targets as set out in the JENDELA, i.e.:

Item	Existing MSA	Maxis Input
Latency	< 85ms, 95% of the time	< 50ms, 90% of the time. (exclude submarine cable)
Packet Loss	Not more than 1.0%	< 0.5%.

27.13 Maxis submitted that, in its experience, there are certain obligations under the MSQoS for Wired Broadband that cannot be fulfilled by the Access Provider. Maxis's submissions can be summarised as follows:

- (a) in respect of Network Performance QoS, Maxis submitted that the MSA should reflect the following existing provisions in the MSQoS for Wired Broadband:

Item	Existing MS QoS for Wired Broadband
Access Network Utilisation (uplink traffic utilisation)	Not more than 70% of the uplink bandwidth
Advance Notice of Scheduled Downtime	Not less than 24 hours
Service Disruption	Not more than 3 hours and not more than 500 customers affected

(b) in respect of Customer Service QoS, Maxis submitted that the requirements for Service Restoration Fulfilment should be expressly specified in the MSA as not less than 95% within 24 hours and 100% within 48 hours, to align with the MSQoS for Wired Broadband. Currently, the service restoration commitments provided by Access Providers are:

- (i) 50% of reported faults to be restored in 24 hours;
- (ii) 80% of reported faults to be restored in 48 hours;
- (iii) 95% of reported faults to be restored in 7 days; and
- (iv) 100% of reported faults to be restored in 14 days.

27.14 Another operator also commented that commitments on throughput are not clearly specified in its commercial agreement with its Access Provider. The operator proposed to include an obligation in the MSA for the Access Provider to provide a throughput of 90% of the subscribed level for 90% of the time

27.15 As an Access Seeker, MYTV and NET2ONE opined that the RAOs should be consistent with the MSQoS for Wired Broadband. Both stated that an Access Provider should not offer a service with a QoS level, which is much lower than what is mandated under the MSQoS.

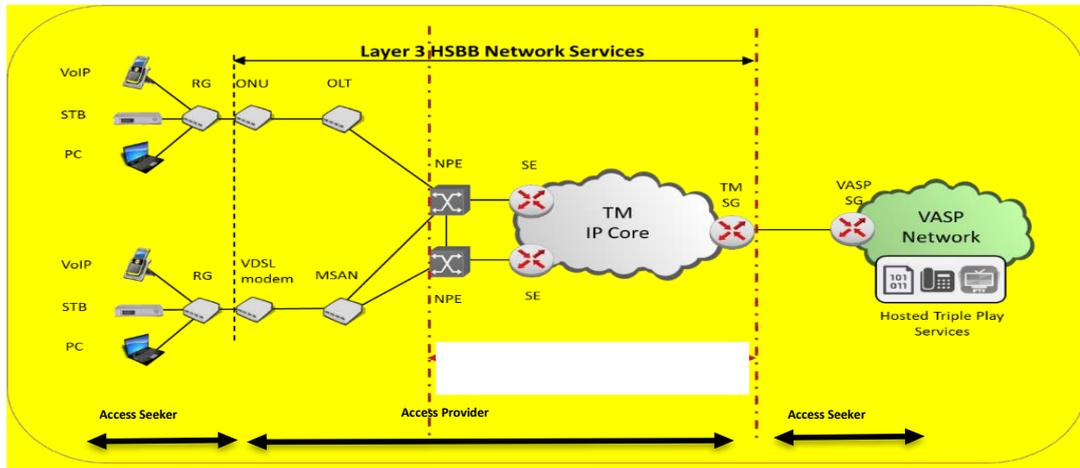
27.16 Net2One is of the view that the MSA should specify at least the minimum level of QoS or SLA that should be accorded to an Access Seeker. This is vital for an Access Seeker to safeguard its business against network congestion and downtime.

27.17 PPIT submitted that the JENDELA Report dated 3 September 2020 makes an interesting read and shows the applaudable government aspirations. However, whether steps should be taken to address such issues in the MSA is another matter as the MSA binds the licensees only, whilst the JENDELA initiative covers all stakeholders. PPIT also noted the lag of the internet speed during the MCO, when everyone was home and on the internet. Despite claims from telecommunications operators, the claimed speed was not attained. PPIT suggested that such issues can be addressed in the MSA.

- 27.18 REDtone submitted that it has identified some Access Providers' RAOs being inconsistent with MSQoS, particularly with respect to service activation and restoration.
- 27.19 TTdC submitted that the MSQoS will impact Access Providers' obligations to Access Seekers. However, TTdC submitted that amendments should be made to reflect new benchmarks for speed and coverage.
- 27.20 TTdC also submitted that one of its main concerns with regards to the compliance of MSQoS is the Service Restoration Fulfilment parameter. The restoration time was typically longer than the regulated parameters, as the process involves a number of third-party suppliers leading to a longer lead time.
- 27.21 TTdC commented that subsection 6.6.12 of the MSA, which requires RAOs to comply with applicable mandatory standards on QoS, should be read alongside paragraph 4 of the MSQoS and subsection 6.6.17 of the MSA - Equivalence of Inputs. In particular, in TTdC's view, the Access Seeker must provide clear evidence on its ability to fulfil the requirement of any MSQoS and related standards for services acquired from the Access Provider, failing which the Access Provider should be allowed to deny an access request.
- 27.22 TM proposed that the MSQoS obligations for the Access Provider should be limited to cover only that which is within the control of the Access Provider's network. It stated that MSQoS for retail broadband should not be included in the MSA as the Access Provider has no control over the retail products offered by the Access Seeker to its customers. TM accordingly submitted that the MCMC should remove the MSQoS standard in subsections 6.6.13 and 6.6.14 of the MSA. TM highlighted in particular the following elements which it considers are not within the Access Provider's control:
- (a) Service Gateway (**SG**) contention ratio is normally negotiated by the Access Seeker;
 - (b) the condition or placement regarding the speed test e.g., through WiFi or cable;
 - (c) the choice of CPE devices supplied to the end user by the Access Seeker will influence the throughput result; and
 - (d) contention ratio at the Access Seeker's network is not visible to the Access Provider, including internet connectivity.
- 27.23 TM reiterated that the provisioning of HSBB Network Service comprises the combination of the Access Provider's and the Access Seeker's network elements. For Layer 3 HSBB Network Service, TM's obligation is limited from the broadband termination unit (**BTU**) (optical network unit (**ONU**)/very high bit rate digital subscriber line (**VDSL**) modem) until the SG only. The Access Seeker's responsibility includes the residential gateway, customer authentication and link to the internet (as illustrated in the diagram below). TM, as an Access Provider, therefore, faces impediments in supplying services in accordance with the MSQoS as TM does not have a view of the

end-to-end network elements and has no control over the retail services offered by Access Seekers to its customers. For example, certain network design, which impacts internet service performance (throughput), such as contention ratio, is decided by the Access Seeker and not the Access Provider.

Figure 1: Illustration of Layer 3 HSBB Network Service



27.24 TM highlighted that the Access Seeker is also dependant on services supplied by multiple Access Providers and not necessarily services from only a single Access Provider. As such, this factor would also impact the Access Seeker's ability to ensure compliance with the MSQoS. Additionally, TM submitted that since there is no specific measurement in the MSA, operators are unable to map directly onto the MSQoS measurements. TM refers specifically to the following MSQoS parameters as stipulated under subsection 6.6.14 of the MSA:

No.	MSA obligation	Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service) Determination No.1 of 2016
1.	Mean time to restore for fault due to infrastructure from SG to BTU	Service restoration fulfilment
2.	A complete failure of network elements and causing all services to be totally disrupted	Network service availability
3.	Any fault relating to breakdown of passive fibre	Service restoration → fulfilment / Network service availability
4.	Throughput (based on service quality)	Throughput (Broadband speed)
5.	Packet Loss and jitter (based on service quality)	Packet loss

- 27.25 Finally, TM submitted that, as an Access Seeker, the MSQoS should consider necessary exclusions, including infrastructure from third parties (Access Provider) and/or stipulating a clear demarcation between the Access Seeker and Access Provider infrastructure.
- 27.26 In respect of the MSQoS for Wired Broadband, U Mobile submitted that it is imperative that the RAO reflect the description of the services, according to the Access List. The RAO should set the minimum standard and indicate where the service provided exceeds the requirements under the MSA. U Mobile has stated that the terms of the regulated services should not deviate from the MSA; some Access Providers have provided regulated services with slightly different SLAs and, thus, justified their departure from the MSA.
- 27.27 Webe submitted that the MSA should be consistent with the MSQoS for Wireless Broadband to ensure compliance by both Access Seekers and Access Providers.
- 27.28 YTL Communications submissions may be summarised as follows:
- (a) SLAs for fault restoration, service availability, etc. should be made specific under the MSA as per MSQoS standards;
 - (b) the SLAs in the MSA should be end-to-end, and, at a minimum, meet the MSQoS standards;
 - (c) data specifics should be included in subsection 5.12.12;
 - (d) access to Facilities and Services should be consistent with the MSQoS as an end-to-end service and not on an individual component level;
 - (e) in respect of JENDELA, a robust access framework is required to ensure efficient use of infrastructure and prevent duplications, especially in the underserved and rural areas, and the MCMC should ensure that all devices (user equipment) sold in Malaysia support all national frequency bands, radio access technologies and VoLTE; and
 - (f) the MSA should include SLA rebate provisions where an Access Provider fails to meet the minimum QoS.
- 27.29 YTL further submitted that where the RAO is prepared before the issuance of the MSQoS, it should be aligned to the MSQoS. Notwithstanding, the MSQoS takes precedence. Additionally, YTL proposed that operators typically failed to meet the following parameters in subsection 6.6.13 of the MSA of the MSA: BTU installation per month to be completed from the agreed installation time: 1. 50% \leq 4 hour, 2. 80% \leq 6 Hours, or 3. 100 \leq 8 hours. The equivalent provision in the MSQoS is, along the lines of, "Not less than 95.0% Fulfilled within 24 hours, from the agreed time and date. 100% Fulfilled within 72 hours, from the agreed time and date.
- 27.30 One operator submitted that based on its experience in recent negotiations with certain Access Providers, the conditions laid out by Access Providers in their RAOs for service assurance indicative timelines and obligations for the Layer 3 HSBB Network Service are not in accordance with the MSQoS as

determined by the MCMC. The conditions set by the said Access Provider are not consistent with the standards set by the Commission. However, the operator appreciated that this may not be within the Access Provider's control as per the explanation (extracted from the Access Provider's RAO under Service Assurance Timelines as per the Terms and Conditions for Regulated Facilities and/or Services (Part A – Section XIV)):

- (a) SG contention ratio applied for the service is normally negotiated by the Access Seeker;
- (b) the condition or placement of which the speed test is done, i.e., through WiFi or cable. Please note that WiFi signal strength decreases as the laptop moves further from the Access Seeker's modem/residential gateway;
- (c) the choice of CPE devices supplied to the end user by the Access Seeker will influence the throughput result; and
- (d) contention ratio at the Access Seeker's network is not visible to Access Provider including its Internet connectivity.

27.31 In response to these submissions, the MCMC reminds operators that the MSA requires Access Provider RAOs for HSBB Network Services to be consistent with MSQoS under subsection 6.6.12. The MCMC proposes to make this requirement broader and more prominent, by expanding this obligation to apply across all RAOs under subsections 5.3.3 and 5.3.4 of the MSA. Other than these changes, the MCMC does not consider that any further amendments to the MSA would be effective to address this issue. Rather, the MCMC encourages Access Seekers to raise the non-compliance in the RAO with the Access Provider in the first instance, failing which Access Seekers should submit a complaint to the MCMC pursuant to section 69 of the CMA.

27.32 The MCMC also reminds operators that subsection 105(3) of the CMA requires compliance with mandatory standards determined by the MCMC. Again, to the extent Access Seekers encounter any difficulties in Access Provider compliance with the MSQoS itself, the Access Seeker should first seek to resolve the issue with the Access Provider, failing which the Access Seeker should submit a complaint under section 69 of the CMA.

27.33 The MCMC otherwise does not consider it appropriate to use this inquiry as a means to address non-compliance with mandatory standards other than the MSA, or to amend the MSQoS itself.

27.34 The MCMC also does not consider that the obligations relating to MSQoS set out in the MSA should be removed or reduced in scope.

27.35 First, it would be inappropriate to make the requirement to maintain RAOs in accordance with the MSQoS conditional upon an Access Seeker being able to comply with the MSQoS. The MCMC considers that compliance with mandatory standards determined by the MCMC is a matter for each operator, and one operator's compliance (or otherwise) with a mandatory

standard should have no bearing on another operator's requirement to comply with the same.

- 27.36 Secondly, in response to TM's comments that certain MSQoS obligations set out in the MSA should be removed, the MCMC notes that compliance with MSQoS is already a key issue for Access Seekers, and the MCMC did not receive any submissions from other Access Providers regarding their inability to comply with the obligations in subsections 6.6.13 and 6.6.14, or otherwise as to the unsuitability of the obligations set out in those sections. The MCMC accordingly proposes to retain these obligations without amendment.
- 27.37 In relation to operator submissions on JENDELA generally, the MCMC anticipates that a number of changes it is proposing to the MSA will be useful to the industry in achieving JENDELA ambitions. It is not the MCMC's intention, however, to effectively encode JENDELA within the MSA, rather, the MCMC will consider each term of access on its merit having regard to a number of factors, including as to what will assist industry in achieving the JENDELA targets.
- 27.38 For clarity, although the MSAP is beyond the scope of this inquiry, the MCMC notes that the 99.9% availability figure in the MSAP FAQs to which Astro refers relates to the availability of Transmission Services, rather than HSBB Network Services. Transmission Services are subject to the Mandatory Standards for Quality of Service (Digital Leased Line Service), pursuant to which a service availability of 99.90% applies to those services.
- 27.39 In relation to the proposals by some operators that the MSA should set out SLA rebates and other commercial matters, the MCMC notes that these matters have been typically left to commercial negotiation between Access Providers and Access Seekers, noting that the requirements may vary extensively between specific Services and Facilities or particular projects. The MCMC is open to including these provisions in the MSA and considers there may be reasonable grounds for doing so, however notes that nearly all operators commented that they have been able to agree on these matters commercially (see section 40 below). The MCMC invites further submissions from operators on this point.
- 27.40 In relation to technical parameters generally, the MCMC notes the changes it has made to the Access List, to expand the scope of the HSBB Network services to cover any technical parameters used or supplied by the Access Provider to itself. The MCMC expects that this will open up access and clarify the available parameters with which these services can be accessed.

Installation and activation process

- 27.41 Celcom identified the following issues on TM's installation processes that it considers are not addressed in the MSA:
- (a) dual truck rolls due to challenges in coordinating information between the Access Seeker and Access Provider's teams or the Access Provider's installers arriving late or not at all;

- (b) unreasonable justifications for order cancellations, including due to port unavailability or out of specification requests;
- (c) delays in attending on-site troubleshooting due to shared slots between Access Seekers being fully booked;
- (d) unreasonable charges for appointment changes;
- (e) termination costs for failure to return Access Provider's CPE;
- (f) challenges in subscribing to the Access Seeker's service where a premises is already subscribed to the Access Provider's service; and
- (g) Access Provider POIs not actually being available at prescribed POI locations.

27.42 Digi commented that it faces challenges in provisioning services to end users using the Access Provider's portal, as this is not connected to Digi's own ordering system and creates challenges as it requires Digi to manage different portals. Digi requested that Access Providers be required to allow Access Seekers to integrate to their portal using APIs, to allow functions such as exporting serviceable addresses, port availability status, order management and scheduling, service assurance, customer port-out/in process management and network statistics/performance. Digi also commented that:

- (a) Access Providers who are also retail service providers must allow Access Seekers to offer the Access Provider's customer the option of activating a service with the Access Seeker without having to go through the Access Provider's transfer request process or being hindered from doing so; and
- (b) Access Providers must indemnify Access Seekers in the event the Access Seeker is penalised by MCMC for failure to meet the relevant Mandatory Standard for Quality of Service requirement where the root cause is the Access Provider's negligence.

27.43 Maxis commented on the following common reasons cited by Access Providers in the event of delays in ordering and provisioning of HSBB Network services:

- (a) fibre port/distribution point issues, e.g., it is full, not available, faulty, wrong tagging;
- (b) the portal information is not updated, e.g., VDSL to Fibre upgrade, address not serviceable, address not found; and
- (c) there are system issues, e.g., inventory mismatched, login error.

27.44 Maxis submitted that, in respect of subsection 6.6.13 of the MSA, the Access Provider should provide weekend (Saturday and Sunday) installation, if requested by the Access Seeker on an EOI basis. Maxis also submitted that the Access Provider should allow the Access Seeker to perform the BTU

installation (single installer by the Access Seeker) if requested by the Access Seeker, such process to be mutually agreed between the Access Provider and the Access Seeker.

27.45 TTdC and Maxis submitted that the indicative activation timeframe for HSBB Network Services in subsection 6.6.7 of the MSA need to be amended from 20 Business Days to 14 Business Days. TTdC submitted that this reflects the JENDELA's aspiration of 14 days service activation for ready for service (**RFS**) areas, which was also reflected in the recent MCMC letter on 24 December 2020.

27.46 One operator made several submissions on issues in acquiring HSBB Network Services:

- (a) on average, there are more than 1,500 "port full" issues per month in 2020 as compared to 1,000 port full issues per month in 2019 with regards to the Operator's wholesale agreement with the Access Provider. A port full situation occurs when a customer orders from the Operator and upon the Operator ordering in the Access Provider's wholesale portal, ports are unavailable, or address not found in the portal for the customer's premises. The operator must then submit a "demand list" to request for a network upgrade from the Access Provider.
- (b) sales "hijacking" through 'exceptional' network expansion once the customer walks into the Access Provider's retail outlet, with about 10% (approximately 150 case per month) of customer's demand list issued by the operator ending up being offered retail broadband services by the Access Provider while the operator awaits a demand list response from the Access Provider for "port full" situations.
- (c) unethical sales practices by the Access Provider's reseller, because the transfer process involves a step whereby the customer engages with the losing operator which provides the opportunity for counter offers.
- (d) 20% of customers not being able to walk-in to the Access Provider's outlet for Transfer Requests due to accessibility issues and operating hours. This frustrates churn and reduces the competitive threat to the market.
- (e) discrepancies of Port Information between Wholesale Portal for Access Seeker and Access Provider's Retail Portal - Address serviceable in Access Provider's reseller Portal but not serviceable in Access Provider's Wholesale Portal, such that the Access Seeker order is rejected but installed with Access Provider's retail broadband services.

27.47 The MCMC considers that some matters raised by Access Seekers are more appropriately dealt with commercially in an operations and maintenance manual made available by the Access Provider. While the MSA sets out certain non-price terms and conditions for access to services, the MCMC's

view remains that the MSA should set out only a robust framework for access to Facilities and Services, to be used as a basis for Access Agreements and RAOs. It is not intended to operate as a precedent Access Agreement.

27.48 However, the MCMC considers that some principles set out in the MSA apply generally to matters of the nature raised by Access Seekers, indicating that the existing obligations remain appropriate to address those issues. In particular:

- (a) to the extent information provided or made available by Access Providers pursuant to subsections 6.6.9 and 6.6.10 of the MSA (including as to POI availability) is incorrect, the Access Provider must provide a rebate of RM44.75 to the Access Seeker, or such other amount as agreed between the parties; and
- (b) subsection 5.7.17 of the MSA sets out exhaustive circumstances in which an Order can be rejected, and where insufficient capacity is cited, the application of the Capacity Allocation Policy in those circumstances.

27.49 The MCMC notes also that Order cancellation charges imposed upon Access Seekers are subject to some restraints under subsection 5.7.26 of the MSA. In light of other "penalty" type charges being imposed by Access Providers, the MCMC proposes to expand the scope of these restraints so that they also apply to penalties for other types of events, such as appointment changes and failure to return CPE.

27.50 Separately, other issues raised by Access Seekers regarding the installation and activation process could be addressed through the MCMC's proposal to require Access Providers to allow API integration with their OSS, as set out in paragraph 17.15 above. In particular, issues regarding transparency and inconsistency of information may be resolved through such API integration, which the MCMC considers should be made available by Access Providers.

27.51 The MCMC notes its intention to include new churn obligations applying specifically to HSBB Network services, as discussed in section 20 above. The MCMC anticipates that those amendments will address difficulties currently experienced by Access Seekers in churning end user customers from Access Provider's network to the Access Seeker's network.

27.52 Finally, the MCMC agrees with TTdC and Maxis's separate submissions that the indicative activation time of 20 Business Days for HSBB Network Services should be reduced to 14 Business Days to align with JENDELA aspirations and the MCMC proposes to amend paragraph 6.6.7(b) of the MSA accordingly.

Other issues

27.53 Celcom submitted that amendments to the MSA should take into account any revised description of the services, including technical aspects. In particular, HSBB Services acquired by an Access Seeker should enable the Access Seeker to provide services, being video streaming, webpage loading,

e-sports and IP voice and video calls (as stipulated in the National Digital Infrastructure Lab Report dated 3 September 2020), in accordance with the specified Quality of Experience under JENDELA.

27.54 Maxis considers that certain sections of the MSA require further improvement to ensure that Access Seekers can provide competitive and efficient high-speed broadband services to their customers. The key proposals by Maxis include:

- (a) the definition of "premises on a street that is connected to the HSBB Network" should be clarified in the context of paragraph 6.6.7(a) of the MSA, as certain Access Providers define this as their home pass, but other Access Providers define this as the premises that is already installed with a BTU;
- (b) a proposed new paragraph 6.6.7(c) requiring the Access Provider to take all necessary action to ensure that BTU stock is always available to meet certain specified indicative activation timelines, which should commence from the date of order submission;
- (c) the timeframe in subsection 6.6.7 of the MSA should commence from the date of the order submission by the Access Seeker in the portal;
- (d) a requirement that the total number of BTU ports (including available ports) should be provided up to the premises at the street level, in subsection 6.6.9 of the MSA;
- (e) that the implementation and migration plan information provided under subsection 6.6.10 of the MSA should be up to the premises on the street level (including the number of BTU ports available), and provided on a monthly basis;
- (f) a proposed new section that requires all customers to be migrated from copper to fibre, regardless of the speed that they are currently subscribed to, after the Access Provider has migrated to fibre;
- (g) a requirement that the Access Provider provide aggregation on points of interconnect, with a maximum of 2 POI per region for Layer-2 HSBB Network Services;
- (h) the Access Provider should provide its network utilisation and performance report under subsection 6.6.14 of the MSA on a monthly basis via the portal on an EOI basis;
- (i) the Access Provider should provide a quarterly report on the performance of services, including key operational metrics in respect of the services such as network utilisation, throughput, latency, packet loss, service fulfilment and service assurance;
- (j) an option for Access Seekers to request a single truck roll for service fulfilment and assurance, without limitation on the number of devices to be installed;

- (k) a proposed new subsection 6.6.20 setting out new terms and conditions applying to Customer's Demand List – Address Not Found issues as follows:
 - (i) the Access Provider shall allow the Access Seeker to submit their Customer Demand List via the portal;
 - (ii) the Access Provider shall acknowledge receipt of the Customer Demand List, submitted by the Access Seeker, within 1 Business Day;
 - (iii) the Access Provider shall take action to investigate and inform the Access Seeker on the status of the Customer Demand List submitted by the Access Seeker within 1 Business Day;
 - (iv) the Access Provider shall treat the Customer Demand List submitted by the Access Seeker as Confidential Information of the Access Seeker and shall not use it to contact customers or do any marketing activities with the intention to promote or to 'win back' the customers;
 - (v) the Access Provider shall resolve the Customer Demand List within 3 Business Days; and
 - (vi) the information updated by the Access Provider in the portal shall be accurate; and
- (l) a proposed new subsection 6.6.20 setting out new terms and conditions applying to Customer's Demand List - Port Full issues, similar to the proposals set out in paragraph 27.54(k).

27.55 Maxis also proposed a new subsection 6.6.19 specifically for the HSB Network services churn/transfer process to be included in the MSA that addresses Maxis' comments above:

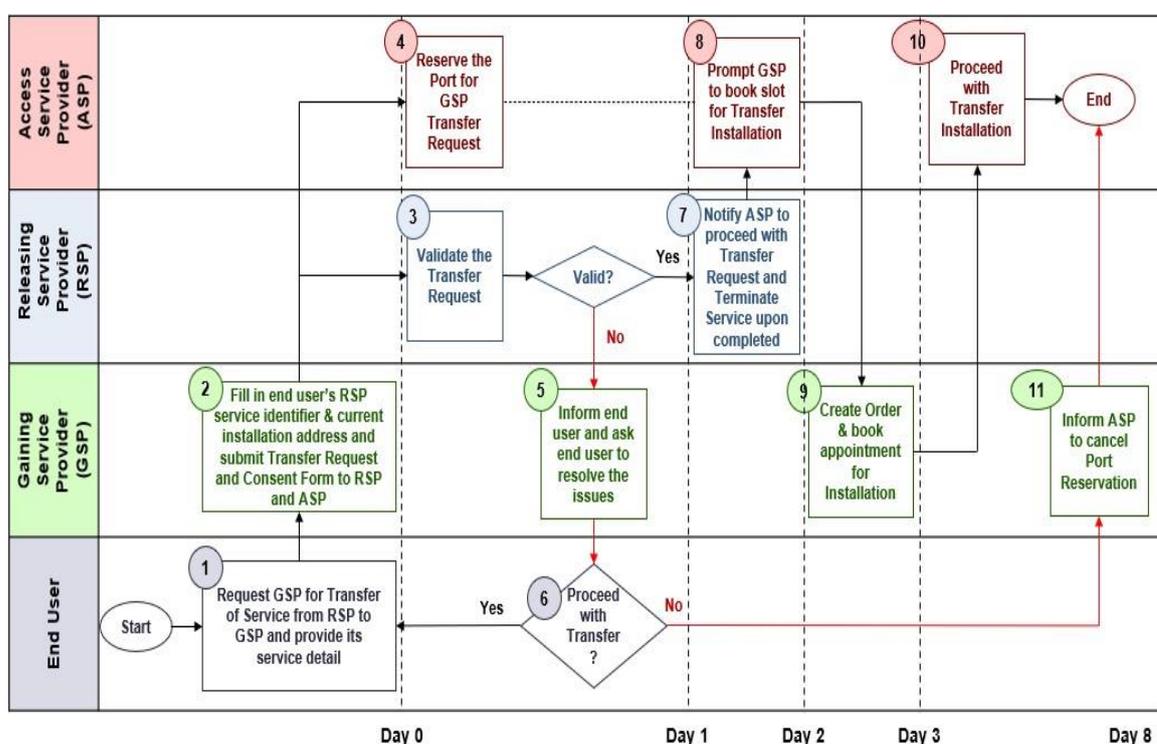
- (a) the RSP and Access Service Provider must not object to the Gaining Service Provider's churn/transfer request.
- (b) the RSP and Access Service Provider must allow the GSP to submit the churn/transfer request via portal. The portal shall have end to end automation from the Form submission to installation e.g., Submit → Approval → Release → Booking → Install → Disconnect. The Access Provider shall minimise the manual intervention in order to improve the SLAs for the churn/transfer process.
- (c) the Access Service Provider must reserve the BTU port for the GSP within one day from the date of receipt of the churn/transfer request submitted by the Gaining Service Provider.
- (d) the RSP must validate the churn/transfer request within one day from the date of receipt of the end user's churn/transfer request submitted by the Gaining Service Provider.

- (e) if the churn/transfer request is valid, the RSP must within one day from date of validation, notify the Access Service Provider to proceed with the churn/transfer process and the Access Service Provider must immediately notify the GSP to book the slot for service activation at the end user's premises.
- (f) the GSP must, within one day from the date of receipt of the notification from the Access Service Provider, create an order and book the appointment slot for service activation at end user's premises with the Access Service Provider.
- (g) the Access Service Provider and the GSP must complete the churn/transfer request and services activation at end user's premises within five days from the date of receipt of the order from the Gaining Service Provider.
- (h) if the churn/transfer request is invalid, the RSP must, within the same day of the validation date, notify the GSP that the churn/transfer request is invalid and provide the reason(s) to the Gaining Service Provider. The GSP will then liaise with the end user to resolve the invalid reason(s).
- (i) the RSP and the Access Service Provider must allow re-use of the existing BTU for the churn/transfer request and does not require the end user to return the BTU to the RSP and/or the Access Service Provider.
- (j) the RSP and the Access Service Provider must ensure seamless or no downtime for every churn/transfer request.
- (k) the RSP and the Access Service Provider must not impose any terms and conditions that restrict the churn/transfer request e.g. require the end user to walk-in to the RSP and/or Access Service Provider retail centre to terminate the service, pay the outstanding amount, return the device, wait for the final bill, etc. with the objective to delay, block or counter offer the end user from churn/transfer to the Gaining Service Provider.
- (l) the RSP and the Access Service Provider must ensure proper business ethics in customer's request for termination. This should be consistent throughout the customer's lifecycle journey with the RSP and/or Access Service Provider. As an example, if the end user can sign up via online, virtually, via call and documents can be provided digitally, the end user should likewise be allowed to terminate via the same procedure and not have to endure additional hassle as mentioned above.
- (m) the RSP and Access Service Provider shall not make any contact with the end user during the churn/transfer process and any communications to the end user shall only be through the Gaining Service Provider.

- (n) for the Transfer Request returned order due to Access Provider's reason code, which are related to systems issues e.g., activity not display, incompatible BTU, etc., the Access Service Provider shall proceed with order completion and trigger BTU upgrade as a second visit.
- (o) the Access Service Provider /RSP shall rectify the BTU inventory mismatched (e.g., due to the earlier BTU termination not being captured by the Access Service Provider /RSP or invalid subscribed service) prior to Transfer Request submission by the Gaining Service Provider, within 14 Business Days including complete installation above.

27.56 Maxis also submitted the following diagram setting out its proposed churn guidelines for HSBB Network Services:

Figure 2: Proposed Churn Process for HSBB Network Services



27.57 REDtone is in the process of converting its commercial agreements for HSBB services to access agreements and commented that it has difficulties in interpreting the definition of services where SLA is concerned. In particular, REDtone specified that for Transmission and HSBB services, Access Providers interpret the SLA in the Access List as basic, and not inclusive of the SLA required to allow REDtone to meet its customer requirements. REDtone suggested that these be clarified.

27.58 TM also requested that:

- (a) the words "publicly accessible website" be deleted from subsections 6.6.9 and 6.6.10 of the MSA, as in TM's view the listed information

should only be made available via the self-service portal or when requested directly by the Access Seeker to the Access Provider; and

- (b) the requirement to pay a rebate of RM44.75 for each item of unfurnished or inaccurate information under subsection 6.6.9 of the MSA be amended so that it applies only where TM fails to provide (or inaccurately provides) material information;
- (c) the MSA prescribe a process for Access Seeker's claiming the rebate of RM44.75 for inaccurate information; and
- (d) that the MCMC revisit the template provided by the MCMC to guide Access Provider in complying with their notification obligations, specifically in relation to information that the Access Provider is already submitting to the MCMC such as HSBB premises passed.

27.59 YTL commented on three issues that have resulted in its inability in using the HSBB Network Service:

- (a) certain Access Providers require HSBB Network Services to be bundled with other services, rather than sold as stand-alone data only services;
- (b) there is no transparency on where HSBB Network Services are available; and
- (c) HSBB as a whole has not met its rollout.

27.60 TTdC submitted that subsection 6.6.15 of the MSA should be amended given QinQ is not an industry norm. Further, TTdC commented that there are currently no standards for Equivalence of Input within operators.

27.61 In response to comments from Maxis, the MCMC notes that:

- (a) the reference to "premises on a street that is connected to the HSBB Network" in paragraph 6.6.7(a) of the MSA is not intended to limit the application of that provision to premises where BTUs are already installed. In particular, subsection 6.6.7 expressly contemplates that the indicative activation timeframe includes the date of the BTU installation appointment, reflecting that such premises may not yet have a BTU installed. The MCMC proposes to make minor amendments to paragraph 6.6.7(a) of the MSA to clarify this point;
- (b) the indicative delivery timeframes set out in subsection 6.6.7 of the MSA apply to the activation process generally, and an Access Provider would already, at least in practice, need to take into account its BTU stock alongside other factors, e.g., its field workforce capacity, in ensuring it achieves these timeframes. However, the MCMC proposes to include a specific obligation on the Access Provider to ensure BTU stock availability to meet these timeframes;

- (c) in response to requiring that the Access Provider provide a maximum of 2 POI per region, the MCMC notes that POIs are sufficiently dealt with under subsection 5.8.6 of the MSA;
- (d) as described below, the MCMC proposes to include new obligations relating to port availability and churn which it anticipates will address the "port full" issues raised by some Access Seekers as well as transfer request process issues;
- (e) the MCMC proposes to include an obligation relating to the provision of reports containing information on operational metrics such as network utilisation, throughput, latency, packet loss, service fulfilment and service assurance;
- (f) in response to the inclusion of single truck roll requests, the MCMC wishes to understand how this would be operationalised and seeks further details from the operators; and
- (g) the MCMC proposes to include an obligation in subsection 6.6.14 of the MSA requiring Access Providers to provide network utilisation and performance reports on a monthly basis, given Access Seekers would benefit from this increased transparency.

27.62 The MCMC considers that, given the complaints from Access Seekers regarding port unavailability or lack of information regarding port availability, the industry would benefit from greater transparency. Accordingly, the MCMC proposes to introduce new disclosure requirements requiring Access Providers to share information regarding port availability. The MCMC is also interested to understand from Access Providers the degree of burden required to provide this information on a premises-by-premises level.

27.63 For similar reasons, the MCMC also proposes to include the new provisions dealing with the processes by which Access Seekers can submit "Customer Demand Lists". Taken together with the additional disclosure requirements proposed in respect of port availability, as well as the proposed new HSBB Network specific churn obligations, the MCMC considers these amendments will likely address the issues raised by Maxis.

27.64 Regarding REDtone's comments on the SLAs included within the HSBB Network services, the MCMC refers to its amendments to the description of each of the HSBB Network services in the Access List, which it considers will address the issues highlighted by REDtone.

27.65 Regarding TTdC's submissions, in the absence of further comments from other operators, the MCMC does not intend to remove the QinQ requirements set out in subsection 6.6.15 of the MSA, which were introduced in the 2016 MSA Review with no objections raised by Access Providers. The

MCMC also notes that the IEEE 802.1ad. or QinQ standard has been adopted by Layer 2 wholesale operators in other jurisdictions.¹¹

- 27.66 In response to TM's comment, the MCMC proposes to remove the reference to "publicly accessible website" in subsections 6.6.9 and 6.6.10 of the MSA, given those sections already require the Access Provider to provide the required information through an interactive self-service portal, which the MCMC considers is sufficient for Access Seekers (provided that such information must be readily available to all Access Seekers, not just those with whom TM has an existing relationship).
- 27.67 In relation to TM's proposed amendment to the rebate for incorrect information, the MCMC notes that Access Seekers are reliant on information provided by Access Providers pursuant to subsections 6.6.9 and 6.6.10 of the MSA in not only ordering HSBB Network services, but also in performing other business functions such as marketing activities and devising retail-level service parameters. In any event, the MCMC does not expect that Access Providers would pay a RM44.75 rebate over a mere typographical error, unless that error results in the provision of inaccurate information to Access Seekers. In acknowledgement of the importance of this information to Access Seekers, the MCMC considers that removing or limiting the application of the RM44.75 rebate would not be appropriate. Instead, the MCMC has amended this provision to allow the parties to agree on another amount to apply as a rebate for provision of incorrect information.
- 27.68 In relation to YTL's comments, the MCMC refers to paragraph 6.6.9(a) of the MSA, which requires Access Providers to provide detailed information in respect of the availability of the HSBB Network at a premises-by-premises level. The MCMC invites YTL to provide details regarding any further information which it considers should be provided by Access Providers.
- 27.69 The MCMC reminds operators that the HSBB Network services must be supplied on the basis described in the Access List. To that end, the MCMC notes that the MSA prohibits Access Providers from making the supply of Facilities and Services in the Access List conditional on the acquisition of other Facilities and Services (whether or not listed on the Access List). Accordingly, the supply of HSBB Network services must not be made conditional on the acquisition of content or application services or other value-added services.
- 27.70 Finally, the MCMC refers again to its comments throughout this section 27 regarding the interaction between the MSA and aspirational JENDELA targets.

MCMC preliminary view

- 27.71 The MCMC notes that, as was the case in the course of the MCMC's last MSA review, many operators made substantial submissions on the MSA

¹¹ For example, the wholesale Layer 2 fibre network operator in Australia, NBN Co, provides VLAN tagging capabilities over 802.1ad. See NBN Co, Wholesale Broadband Agreement - nbn™ Ethernet Product Technical Specification, available at <https://www.nbnco.com.au/content/dam/nbnco2/2021-wba4/emod/sfaa-nbn-ethernet-product-technical-specification-20201129.pdf>.

obligations applicable to HSBB Network Services. This highlights the ongoing importance of these services and the terms governing their supply, as Malaysians continue to finalise transitioning away from copper-based services onto fibre-based networks.

27.72 The key changes to the MSA proposed by the MCMC in relation to the HSBB Network Services are as follows:

Reference	Summary of proposed change	MCMC rationale
6.6.3(a)	<p>The MCMC proposes to increase the maximum period of time that can be covered by Forecasts regarding HSBB Network Services from one year to three years, provided that any period of time greater than one year shall be non-binding.</p>	<p>As discussed in section 11, the MCMC understands that the forecasting information provided by Access Seekers is often not useful to Access Providers. The MCMC proposes to increase the usefulness of this information by expanding the time period of forecasts for HSBB Network Services, while balancing this with a mandatory non-binding period.</p>
6.6.7, 6.6.9 and 6.6.10	<p>The MCMC proposes to amend these sections to:</p> <ul style="list-style-type: none"> ▪ change the activation timeframe for HSBB Network Services from 20 Business Days to 14 Business Days for all premises other than premises on a street that is connected to the HSBB Network; ▪ remove the requirement to make the relevant information available on a public website; ▪ set out the process for when the Access Seeker makes a claim for a rebate for the provision of inaccurate information by the Access Provider; and ▪ require Access Providers to make available information regarding the availability of ports. 	<p>The MCMC consider it appropriate to shorten the timeframe from twenty Business Days to fourteen Business Days in response to submissions received from operators.</p> <p>The MCMC considers that it is sufficient for Access Providers to make information available through a portal that can be accessed by Access Seekers, rather than on a publicly available website.</p> <p>In response to TM's submission, the MCMC proposes to set out a process for the Access Seeker submitting a claim for a rebate for any inaccurate information provided by the Access Provider.</p> <p>Some Access Seekers have also reported difficulties in accessing HSBB Network services due to the Access Provider claiming that it does not have sufficient ports available to complete an order. The MCMC considers that Access Seekers would benefit greatly from increased transparency as to the availability of ports, to improve end user activation experience and promote competition.</p>
6.6.12	<p>The MCMC proposes to delete this subsection and introduce in subsections 5.3.3 and 5.3.4 broader obligations requiring all Access Provider RAOs to comply with any applicable mandatory standards on QoS.</p>	<p>Currently, the MSA requires HSBB Network Service RAOs to comply with applicable mandatory standards on QoS. In light of complaints from Access Seekers regarding RAO non-compliance with those mandatory standards, the MCMC proposes to expand this obligation to apply to all RAOs, and to more prominently state this as a General Obligation</p>

Reference	Summary of proposed change	MCMC rationale
		rather than a Service-Specific Obligation. See also section 6 of this PI Paper.
6.6.13	<p>The MCMC has proposed to amend the timeframe for completing SG configuration from 20 Business Days to 14 Business Days.</p> <p>The MCMC proposes to include a requirement for the Access Provider to inform the Access Seeker within 5 Business Days of an Access Seeker's request whether the premises or exchange service area is serviceable by the HSBB Network Service, and subsequently if the premises or exchange service area is not serviceable, the MCMC proposes to include a requirement for the Access Provider to provide a plan for servicing the premises.</p>	<p>The MCMC consider it appropriate to reduce the timeframe in response to submissions received by operators.</p> <p>The MCMC considers that the provision to include a requirement to inform the Access Seeker of non-serviceable areas would increase efficiencies for the Access Seeker.</p>
6.6.14	The MCMC proposes to include a new requirement for Access Providers to provide to Access Seekers monthly network utilisation and performance reports.	The MCMC considers that the provision of this information would benefit Access Seekers and ultimately be in the LTBE, as it would incentivise investment by Access Providers in their networks.
6.6.16	The MCMC proposes to include additional quarterly reporting obligations relating to the key operational metrics supplied by the Access Provider over the HSBB Network, including network utilisation, throughput, latency, packet loss, service fulfilment, and service assurance.	The MCMC considers such reporting obligations to be appropriate to allow Access Seekers to optimise network efficiency, especially for areas dependent on Access Providers, ultimately increasing the LTBE.
6.6.19 (new)	The MCMC proposes to include new churn obligations specifically applicable to HSBB Network Services.	Currently, the MCMC understands that churn requests for HSBB Network Services take several days to process, during which time RSPs may be able to propose a counter-offer or employ other strategies in order to retain the transferring customer. In any event, the MCMC considers that the existing obligations relating to churn requests are not being complied with, suggesting that they require updating.
6.6.20 (new)	This provision will impose a new process to be followed by Access Providers to resolve Customer	Some operators have raised concerns regarding the availability of ports in connection with HSBB Network services. As

Reference	Summary of proposed change	MCMC rationale
	Demand List issues such as missing addresses or "port full" issues.	part of broader changes aimed at addressing these concerns, the MCMC also proposes to include these processes which will, amongst other obligations, require Access Providers to rectify "port full" or missing address information issues within 3 Business Days of notification by an Access Seeker.

Questions

Question 29:	Do you have any comments on the MCMC's proposed amendments to the Service Specific Obligations for HSBB Network Services in subsection 6.6 of the draft MSA? Please provide details of any amendments with which you disagree, and any other amendments you propose to the MCMC's current draft.
Question 30:	Do you have any comments on the MCMC's amendments to the activation and service fulfilment timeframes? If not, please specify and substantiate and proposed changes or amendment.
Question 31:	Should the MCMC include an option for Access Seekers to request a single truck roll for service fulfilment and assurance single truck roll requests? If so, please provide details of how this would be operationalised.
Question 32:	Should the MSA set out any service level rebates or other commercial matters which have typically been left to commercial negotiation?
Question 33:	Having regard to JENDELA targets, are the indicative delivery timeframes in subsection 6.6.7 still appropriate or do they require amendment? Please provide details of any specific changes required.

28 Transmission Services

Overview

- 28.1 Subsection 6.7 of the MSA contains a series of Service Specific Obligations in respect that apply to Transmission Services, which was introduced by the MCMC in the course of the 2016 MSA Review.

Discussion

- 28.2 There were relatively limited comments from operators on the Service Specific Obligations for Transmission Services, indicating that the current MSA obligations for these services are generally accepted and operating as intended. Further, of the submissions received, the MCMC anticipates that any technical issues raised by operators will be resolved pursuant to the changes it has made to the family of Transmission Services in the Access List.

Billing cycles and delivery timeframes

- 28.3 Celcom Timur (Sabah) made the following comments in respect of the obligations in subsection 6.7 of the MSA:
- (a) Transmission Services should be billed yearly in advance; and
 - (b) the indicative delivery timeframe under paragraph 6.7.5(a) of the MSA should be amended from 20 Business Days to 30 Business Days and from 60 Business Days to 90 Business Days under paragraph 6.7.5(b) of the MSA, subject to flexibility around extension of time, especially for cases involving new infrastructure.
- 28.4 Fibrecomm commented that the commencement of construction of new civil infrastructure required for the delivery of the End-to-End Transmission Services is subject to the time taken to get Permit to Work (**PTW**) approval.
- 28.5 Maxis submitted that common reasons submitted by Access Providers for delays in ordering and provisioning of transmission services included:
- (a) infra/equipment is not available, e.g., the fibre port is full, it is an off-net area, there is an equipment delivery delay; and
 - (b) third party issues, e.g., work permit approval from Jabatan Kerja Raya (**JKR**)/Dewan Bandaraya Kuala Lumpur (**DBKL**), local authority/council approval, landowner.
- 28.6 Sacofa submitted that, for off net infrastructure, the timeframe is subjective and should be mutually agreed by the Access Provider and Access Seeker as there are factors to be considered, such as right-of-way and local authority approvals.
- 28.7 TM and Fiberail commented that billing cycles under subsection 6.7.6 of the MSA should be determined by the Access Provider and negotiated between operators rather than prescribed under the MSA. In response to these submissions the MCMC notes that mutual agreement of billing cycles other than the cycle prescribed under the MSA is already permitted under subsection 5.11.3 of the MSA. As such, the MCMC is of the view that no changes are necessary in relation to the billing cycles.
- 28.8 TM also submitted that the MSA should consider different delivery timeframes based on volumes per order. In addition, TM suggested amendments to the target timeframes to account for certain circumstances such as fibre cut due to a third party, force majeure or floods. TM have also proposed to enable the Access Provider acknowledge receipt of orders in batches.
- 28.9 The MCMC considers it appropriate to allow the Access Provider to acknowledge receipt of orders in batches and propose to cap the acknowledgement of receipt to 20 orders per batch. In relation to TM's submission about the target timeframes, the MCMC notes that the listed circumstances would constitute force majeure, and therefore it would not be

necessary to specifically carve-out these scenarios under the target timeframe provision in the MSA.

- 28.10 The MCMC considers that requiring Access Seekers to pay an entire year's charges upfront for Transmission Services would require significant capital expenditure and may deter new market entrants. Further, the MCMC has not received any actual justification for such an approach. Accordingly, given the limited number of submissions received, the MCMC does not intend to amend the billing cycles for Transmission Services.
- 28.11 Regarding indicative delivery timeframes set out in subsection 6.7.5 of the MSA, to the extent Access Providers are unable to comply with these timeframes due to the time taken to obtain authority/government approvals, subsection 5.7.33 of the MSA already carves out such delays from the late delivery rebate. That said, in response to TM's submission on establishing different timeframes, the MCMC agrees and proposes to amend subsection 6.7.5 of the MSA to allow parties to agree on a different delivery timeframe having regard to the volume of the relevant order. Further, the MCMC notes that there were limited industry submissions regarding the timeframes for Transmission Services, despite more extensive submissions regarding timeframes for other services such as the Infrastructure Sharing Service. On that basis, the MCMC considers that the existing timeframes remain appropriate, however the MCMC invites further submissions from operators regarding their views on the timeframes for delivery in subsection 6.7.5 of the MSA and whether operators are capable of complying with these timeframes in practice.

Reporting obligations

- 28.12 Fiberrail proposed reporting obligations to be provided as and when requested as it is taxing to the licensees.
- 28.13 Fibrecomm proposed removing the reporting obligations or a reduction in the frequency of submission from twice a year to once a year.
- 28.14 TM submitted that reporting under subsection 6.7.7 of the MSA should be provided only as and when it is requested as time and resources need to be allocated to provide the information.
- 28.15 In response, the MCMC notes that, as it observed in the 2016 MSA Review, the more detailed reporting obligations for Transmission Services are intended to improve transparency and to allow for greater monitoring by the MCMC in the context of challenges faced by Access Seekers in accessing these services. As the MCMC noted in its Access List Review, it still has several ongoing concerns regarding the supply of Transmission Services, and accordingly it does not propose to amend the reporting requirements.

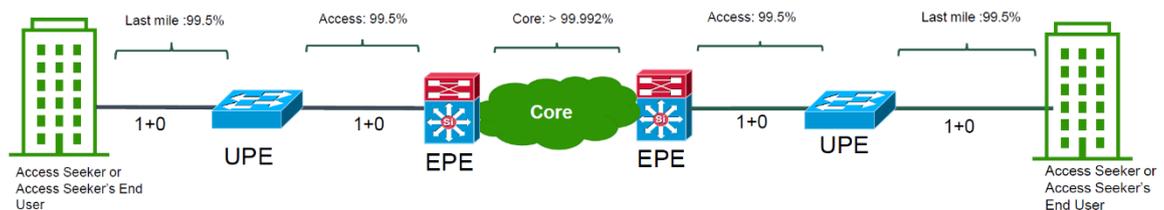
Technical matters

- 28.16 Maxis submitted that the MSA should include minimum technical specifications for Transmission Services to be provided by the Access Provider, including as to:

- (a) service level availability and the demarcation (i.e., from the network elements involved and which element is the responsibility of the Access Provider);
- (b) network configuration/redundancy including for core and access network e.g., 1+1, 1+0, dual homing, etc.;
- (c) Mean Time to Restore;
- (d) Class of Service (**COS**); and
- (e) Linked performance report/monitoring via Portal.

Maxis submitted the following diagram setting out the proposed SLA for different parts of Transmission Services:

Figure 3: Proposed SLA for Transmission Services



- 28.17 MYTV and NET2ONE suggested that redundancy requirements should be included in the provision of the service. Other components of the Transmission Service that should be considered are the minimum service level assurance and upholding the technology neutrality principle in the terms of provision of the service to ensure any-to-any connectivity.
- 28.18 REDtone submitted that it acquires Transmission Services on a commercial basis, as Access Providers consider that Transmission Services under the Access List do not include the SLAs required by REDtone. REDtone requested that the MSA should clearly define the Transmission Service to enable parties to have better clarity on the services.
- 28.19 Sacofa commented that it faces high prices from Access Providers, and difficulties in dimensioning the transmission network to cater to industry needs, due to the unavailability of forecast information.
- 28.20 U Mobile submitted that access to fiberised backhaul transmission is vital to meet JENDELA targets ahead of 5G implementation and that it is important that Access Providers provide clear and shorter timelines (maximum 15 days) on service availability and quotation to provide access. U Mobile provided an example of slow provision of fiberised backhaul in Langkawi, where a quotation was given by the Access Provider after a one-year delay.
- 28.21 YTL Communications faces impediments in gaining access to Transmission Services, as Access Providers push for commercial arrangements and don't open up the service in accordance with the MSAP. YTL also proposed the

inclusion of a transmission link service level guarantee with the application of a monthly service rebate for each link if the link service level availability falls below the SLA set out in Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, subject to the following exclusions:

- (a) any act or omission of Access Seeker not acting under the advice of Access Provider which directly causes the outage in the link;
- (b) Force Majeure event; or
- (c) scheduled maintenance outage time which is notified and agreed by the Access Seeker.

28.22 YTL also proposed a review of the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009 for improvement to include the technical QoS parameters for network quality control.

28.23 The MCMC considers that many of the above issues will be addressed through its amendments to the Transmission Services. In particular, the MCMC has opened up access to trunk and tail transmission on an unbundled basis, and clarified the scope of the End-to-End Transmission Service, including to broaden the Access List description to capture the provision of the service with any technical parameters which vary from the Access List.

28.24 The MCMC sees merit however in including a new rebate for service level availability for failures to comply with the QoS Determination No.3 of 2009. The MCMC considers that while this can already be agreed between Access Seekers and Access Providers on a commercial basis where desired, the MSA should set out a baseline for the provision of these rebates given the importance of compliance by Access Providers with the relevant QoS standards.

28.25 Finally, as operators are aware, pricing for Access List Facilities and Services is beyond the scope of this review, as are amendments to any mandatory standards determined by the MCMC other than the MSA itself.

MCMC preliminary view

28.26 The MCMC proposes to make the following amendments to the Service Specific Obligations for Transmission Services.

Reference	Summary of proposed change	MCMC rationale
6.7.9 (new)	The MCMC proposes to provide access to the Trunk Transmission Services in accordance with express quality of service parameters.	The MCMC notes that services other than the Trunk Transmission Services are described with certain parameters in the Access List. The MCMC has received submissions proposing technical parameters for Trunk Transmission Services and is giving consideration to include a provision which has been drafted in the table at subsection 6.7.9, but is subject to the responses to the MCMC's question below.
6.7.10 and 6.7.11 (new)	<p>The MCMC proposes to include a requirement for Access Providers to discuss and negotiate in good faith the provision of a rebate to Access Seekers where a Transmission Service fails to meet the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009.</p> <p>The amount of any rebate must at a minimum reflect the reduced costs that would have been incurred by the Access Seeker in acquiring a Transmission Service with the inferior service level availability actually provided by the Access Provider, and any other diminution in value of the Transmission Service to the Access Seeker resulting from the Access Provider's non-compliance.</p>	<p>Access Seekers are entirely reliant on Access Providers complying with relevant QoS Determinations. Where Access Providers fail to comply with the service level availability in the relevant Determination, the MCMC considers that Access Seekers should be compensated accordingly.</p> <p>As the service level availability requirements in Determination No. 3, 2009 are specified on annual basis, the MCMC has proposed a flexible regime under which the Access Provider must provide a rebate that generally reflects the reduced quality of the Transmission Service that it provides to the Access Seeker.</p>

Questions

Question 34:	Do operators agree with the service-specific timeframes that currently apply in respect of the Transmission Services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.
Question 35:	Do operators agree with the quality of service parameters in relation to Trunk Transmission Services set out in subsection 6.7.9? If not, please specify and substantiate and proposed changes or amendment.
Question 36:	Are there any other technical parameters that are not reflected in the Access List amendments that should be addressed under the MSA? Please provide details.
Question 37:	Do operators agree with the MCMC's proposal that Access Providers should provide Access Seekers with rebates where they fail to comply with the service level availability requirements set out in Commission

Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009? If so, what should be the appropriate amount of any such rebate?

29 Infrastructure Sharing

Overview

- 29.1 Subsection 6.8 of the MSA sets out Service Specific Obligations that apply in respect of the Infrastructure Sharing service.

Discussion

- 29.2 Operators commented on a number of challenges in acquiring and supplying the Infrastructure Sharing service. Generally, comments focused on:
- (a) challenges due to exclusivity arrangements enjoyed by certain operators, including SBCs;
 - (b) issues accessing in-building mobile antenna systems;
 - (c) indicative delivery timeframes; and
 - (d) other specific proposed changes to the MSA.
- 29.3 These matters are addressed in turn below.

SBC exclusivity

- 29.4 Celcom faces challenges in obtaining infrastructure services from SBCs and state-appointed OSA. OSAs were established to coordinate between service providers, SBCs and the local authorities. However, Celcom has experienced delays in processing applications. Additionally, Celcom finds that the Infrastructure Sharing service is successful among mobile operators where cost sharing units (**CSU**) are accumulated and swapped. Where there is no sufficient value of CSU to swap, operators may lease from the other operators.
- 29.5 Digi, edotco, Maxis and Webe faced challenges with respect to Infrastructure Sharing due to some service providers having exclusivity arrangements. Their submissions can be summarised as follows:
- (a) Digi faces challenges in gaining access to Infrastructure Sharing services in states/territories/buildings where some service providers have some exclusivity arrangements with the landlord/building management in that area/building. In some states, only appointed deployment partners are able to build and Digi needs to get access from these exclusive/appointed partners. Digi proposed that the parties should not have exclusivity arrangements or for the MCMC to facilitate access at areas with such exclusivity agreements;
 - (b) edotco submitted that SBC exclusivity impeded the provision of Infrastructure Sharing services and its ability to deliver the services

in accordance with subsection 6.8.1 of the MSA. As a company backed by the state, these establishments are monopolising the capability to build and own telecommunication infrastructure in Malaysia. edotco suggested that the MCMC consider raising the matter to the Cabinet to minimise exclusivity power granted by the states to these SBCs. General cases are as follows:

- (i) Items: Passive structure;
 - (ii) State: Sarawak; Sole Contractor: Sarawakian Company as per SMA regulation which states that only Sarawakian only can own, operate and manage towers in Sarawak;
 - (iii) State: Melaka; Sole Contractor: MICTH;
 - (iv) State: N. Sembilan; Sole Contractor: KJS and Teleflow;
 - (v) State: Perlis; Sole Contractor: Perliscomm;
 - (vi) State: Kelantan; Sole Contractor: Infraquest and Advanced Research Communications (**ARC**); and
 - (vii) State: Terengganu; Sole Contractor: Syakim Technologies, Significant Technologies and KUB Telekomunikasi.
- (c) additionally, edotco submitted that appointed OSAs, which have some vested interest with relevant SBCs, are imposing mandatory obligations on infrastructure providers to appoint them as a one stop agent for the purpose of the application of permits from the local authority. edotco submitted that the MCMC should consider raising the matter with the Cabinet and suggested that the Cabinet issue a gazette on the direction/instruction of which state should adhere to the Law/By Law issued by the Federal Government;
- (d) Maxis submitted that, with respect to Inbuilding Mobile Systems and impediments in gaining access to Infrastructure Sharing, it noted the Access Provider's exclusivity in certain areas; and
- (e) Webe submitted that since around 2016, all states except for Selangor, Kuala Lumpur and Penang have imposed exclusivity to build new infra structure to only their respective SBCs. This includes the building of new towers and roof tops. The prohibition for other service providers will deter effective competition as infrastructure is one of the key elements in building the telecommunication network.

29.6 As noted in the Access List Review, the MCMC reminds operators that, regardless of whether a Network Facilities Provider has entered into exclusive arrangements in respect of infrastructure within the scope of the Infrastructure Sharing service, the provider must still comply with its standard access obligations (**SAOs**) in respect of that infrastructure. In doing so, the provider must also comply with the MSA.

- 29.7 Further, as noted in the Access List Review, where SBCs are preventing other licensees from building network facilities in the states in which those SBCs operate, the MCMC is engaging in direct conversations with the respective Senior State Officials of such states to clarify the actual position/intent of the MCMC on this matter.
- 29.8 The MCMC accordingly repeats its view that the MSA is not the appropriate vehicle to address these issues.

Common Antenna Systems

- 29.9 Maxis submitted that the Access Provider's design and specification for in-building mobile systems do not meet the Access Seeker's KPI requirements. There are also potential interference issues between operators (Celcom, Digi, Maxis and U Mobile and Webe/YTL), because unlike passive tower sharing (multiple radios, many antennas), in-building coverage (**IBC**) uses a common antenna for all operators. The propagation of certain spectrum bands in combination (e.g., 2600MHz and 1800MHz) is proven to result in harmful interference. Maxis noted that the MCMC itself issued guidance not to use such spectrum in combination, however, the MSA needs to reflect this to make clear that denial in such circumstances is fair and reasonable. There needs to be reference to Standard Radio System Plan (**SRSP**) interference resolution process for such matters as well.
- 29.10 Webe is normally an Access Seeker for Infrastructure Sharing. It stated that the in-building mobile system provides indoor connectivity in buildings, such as halls, malls and office buildings. Webe submitted that it is always very challenging to request to join, especially because the equipment has limited Access Provider capacity, hence hindering Webe from providing its services in such buildings. Webe suggests that especially for new deployment, the equipment must cater for at least 7 or 8 providers to allow everyone to have access to the service to serve their customers.
- 29.11 YTL submitted that it faced challenges in accessing Infrastructure Sharing for IBC (including multiplexer and Common Antenna Systems). YTL submitted that where the Access Provider cited a lack of capacity as a ground for refusal, the parties must, in good faith, discuss and agree on a proposed technical solution to increase capacity. In many buildings, the existing incumbent service providers are refusing access to IBC systems (used by new service providers), hence the sharing of existing systems have become challenging. Existing IBC systems, where all the ports are full, can still be shared through the sharing of multiplexes, and distributed antenna systems. IBC is in MCMC Access List but not in Access Provider AA (except Maxis). YTL also requested that the MCMC make it mandatory for all service providers to include all services/facilities used and/or provided by them in their RAOs. YTL suggested that all new buildings should have comprehensive IBC systems, incorporating all the frequency bands and technologies approved by the MCMC.
- 29.12 The MCMC notes the challenges faced by operators in accessing Common Antenna Systems as part of the Infrastructure Sharing Service. To the

extent this infrastructure is provided by licensees, they are obliged under SAOs to provide access on equitable and non-discriminatory terms. If an Access Provider refuses an Access Request due to insufficient capacity, the parties are already required under paragraph 5.4.10(c)(ii) of the MSA to meet within 7 Business Days, where the Access Provider must, on request, identify when additional capacity or space is likely to be available.

- 29.13 Subsection 5.7.6 of the MSA also requires Access Providers to include in their Notice of Receipt details of any augmentation required to fulfil an Order submitted by the Access Seeker. The MCMC proposes to include an additional term in subsection 6.8 which expressly requires Access Providers to use all reasonable endeavours to augment the facilities comprising Common Antenna Systems in order to fulfil Orders that would otherwise be rejected. In adopting a "reasonable endeavours" standard, the MCMC acknowledges that Common Antenna Systems are subject to physical constraints and that it would be inappropriate for capacity augmentation to be imposed as an absolute obligation on Access Providers.
- 29.14 Regarding Maxis' comments on potential interference issues within Common Antenna Systems, the MCMC is interested to understand from operators the extent to which interference issues are prevalent in these systems today. The MCMC's view is that if interference events are relatively infrequent, then the existing obligations set out in subsections 5.13.4 - 5.13.5 of the MSA are sufficient to allow operators to address interference issues as and when they arise, rather than allowing Access Providers to reject orders preemptively. In taking this view, the MCMC is also mindful that Access Seekers continue to report difficulties in accessing this facility, with each operator of a Common Antenna System dominant in the individual market for access to common in-building systems in that building.
- 29.15 However, to the extent the MCMC is satisfied that these issues are frequent, the MCMC considers it may be in the LTBE for operators to be permitted to reject an Access Request that would clearly result in interference issues for Access Seekers and ultimately end users within the relevant building. The MCMC accordingly invites further submissions from operators on this matter.

Delivery timeframes

- 29.16 edotco proposed indicative delivery timeframes in subsection 6.8.5 of the MSA as follows:
- (a) 120 days for ground-based tower (3 or 4 legged) or monopole;
 - (b) 60 days for rooftop/minaret, billboard, water tank, pylon (non-standard structure); and
 - (c) 30 days for rapole or mast (temporary structure).
- 29.17 Maxis proposed the addition of an indicative delivery timeframe for fixed telecommunication poles to be 40 Business Days.

- 29.18 Maxis also submitted that common reasons provided by Access Providers in the event of delays to this service include:
- (a) structure issues/integrity (existing sites), e.g., loading capacity allowable, pricing (higher rates by NFP); and
 - (b) third party issues (new sites), e.g., site acquiring, work permit approval from JKR/DBKL, local authority/council approval, landowner.
- 29.19 Webe has experienced issues in delivery timeliness, impacting its fulfilment of commitment to regulator in network rollout commitment. In some instances, the delay has also resulted in interruption in service fulfilment to its subscribers. Webe submitted that while subsection 6.8.5 of the MSA specifies an indicative delivery timeframe for infrastructure sharing of 40 Business Days from notice of acceptance/confirmation of order, for the Access Provider, this timeframe is only applicable for sites which are ready. For new sites, the timeframe is 120 days.
- 29.20 The MCMC refers to the above submissions as well as further submissions from operators regarding the indicative delivery timeframes regime set out in the MSA more generally, as discussed in section 12 above. There appears to be general support amongst Access Providers for extending the timeframes for Infrastructure Sharing, and no Access Seekers commented that the timeframes were too long.
- 29.21 While only edotco proposed actual revisions to the timeframes set out in subsection 6.8.5 of the MSA, the MCMC notes that Webe also commented on a typical delivery timeframe of 120 days for new sites.
- 29.22 The MCMC also refers to its recent announcement of a new fast track process to resolve access issues in certain “high priority areas” where the MCMC is aware of issues experienced by Access Seekers (and ultimately end users) in accessing high-quality communications services in a timely manner.¹² The MCMC proposes to update the indicative delivery timeframes in the MSA to reflect this expedited process.
- 29.23 Given the above, the MCMC has amended subsection 6.8.5 of the MSA to specify that the indicative delivery timeframes for the Infrastructure Sharing service are:
- (a) 90 Business Days for ground-based towers and new sites;
 - (b) 10 Business Days for Common Antenna Systems in certain defined High Priority Areas;
 - (c) 10 Business Days for fixed telecommunications poles; and
 - (d) 40 Business Days for all other structures.

¹² MCMC, “Fast Track Process to Resolve Access Issues in High Priority Areas”, <https://www.skmm.gov.my/en/media/press-releases/fast-track-process-to-resolve-access-issues-in-hig>.

Other requested MSA changes

29.24 edotco proposed specific amendments to certain MSA sections. In particular:

- (a) for subsection 6.8.8 of the MSA, edotco proposes that safety and health requirements should be considered. Access Seekers should be equipped with protective gear and necessary certificates, according to Occupational Safety and Health Act (**OSHA**) and relevant Health and Safety regulations, when accessing high rise Facilities; and
- (b) for subsections 6.8.9 and 6.8.10 of the MSA (Escorts and Absence of Escorts), edotco proposes these provisions to be negotiated between the parties and not to be confined to the MSA. edotco has its own processes in place with regards to access to sites, which thus far have not been objected to by the Access Seekers.

29.25 Additionally, the fact that edotco is mostly dependent on landlords has created difficulty in implementing site access requirements, e.g., in ensuring 24/7 access to offices/buildings for the smooth operational and maintenance work, not only for Access Providers but also for Access Seekers. Power supply connectivity on site is also a challenge faced by edotco in dealing with situations of landlords not meeting Tenaga Nasional Berhad (**TNB**) requirements.

29.26 Maxis made the following submissions:

- (a) new subsections 6.8.13 and 6.8.14 should be included to cover the Malaysian Technical Standards Forum Berhad (**MTSFB**) technical specification for in-building mobile system (Radiocommunications Network Facilities – In-Building) and street furniture (Radiocommunications Network Facilities – Street Furniture) which Access Providers should be required to comply with; and
- (b) the MSA should be extended to regulate rooftop and street furniture facilities; and
- (c) the Access Provider shall ensure that its fixed telecommunication poles are in good condition.

29.27 PPIT submits that the terms and conditions for Infrastructure Sharing should be removed from the MSA and can be (and has been) commercially negotiated. PPIT has undertaken many negotiations with Access Seekers regarding Infrastructure Sharing services since 2003. In some instances, the terms of the MSA are varied mutually between PPIT and the Access Seekers and, despite that, no major issues have arisen from that. PPIT has also signed agreements for Infrastructure Sharing services on a long-term basis with Access Seekers. Commonly, these agreements are standard offers to the Access Seekers and, therefore, PPIT believes that this experience provides certainty in the industry. PPIT accordingly considers that there are no issues that warrant the continued regulation of Infrastructure Sharing services in the MSA. Additionally, PPIT submits that the service has matured and despite the impediment issues discussed below,

rollouts are still being performed. PPIT further submits that some of the impediments it faces are caused by parties who generally are not licensees under the MSA. Accordingly, PPIT queries whether the obligations in subsection 6.8 make a difference.

29.28 PPIT suggests that it faces some impediments in respect of Infrastructure Sharing as follows:

- (a) the term, 'share', in Infrastructure Sharing services denotes that the infrastructure is used by not one but more Access Seekers. In a situation where an Access Seeker is also a provider, it will build up the tower and use it for itself and subsequently share it with other Access Seekers. In PPIT's case, it built the towers only upon requests from Access Seekers and, upon entering of access agreements or commercial agreements, such tower will be licensed to the Access Seeker and eventually offered to be shared to others. The MSA does not seem to provide for instances of the first build, rather only for the sharing part (as seen from the indicative delivery timeframe in subsection 6.8.5 of the MSA). Also, as the costs of construction of towers varies because of their different heights, types, shapes and sizes, "one size fit all" terms do not necessarily work.
- (b) the relevant permits and licences required from local authorities before a tower can be operational takes a long time to obtain and, in some case, at very high monetary costs. The requirements imposed by the local authorities also sometimes vary between authorities in the same state or are too complicated as if we are developing a residential project, which caused unnecessary monetary implication on the Access Provider.
- (c) in some cases, for a site to be approved, various unrelated parties' approvals are required like next door neighbour, ADUN, Ahli Majlis, etc. over and above those that are necessary like Civil Aviation Authority of Malaysia (**CAAM**), Bomba, TNB/Sabah Electricity Sdn Bhd (**SESB**), the MCMC, etc.
- (d) despite the land being owned by the state government, under the Federal Lands Commissioner (**FLC**) or other Federal entities, certain approvals and permits can still take a considerable amount of time.
- (e) standard guidelines issued by local authorities in all states that include standard fees for permits or approvals etc. should be consistent.
- (f) rental costs can be high, which if not absorbed by the Access Seekers, will make the exercise not economically viable.
- (g) there are instances where certain Access Providers who are 'related' or 'connected' with certain individuals or parties have bulldozed and taken over other Access Providers' sites.

- (h) the current guidelines on permitted radius for constructing telecommunication structure need to be revised to suit the 5G requirement. The 20-meter guideline should be reviewed to allow structures to be constructed near buildings. The policy needs to treat telecommunications structures the same way as electricity poles or water pipes where the 20 meter buffer could be waived in some circumstances as the public needs telecommunications services as much as other utilities like electricity and water.

29.29 PPIT submits that further assistance from the MCMC in smoothing the impediments would help. Should the MCMC wish to continue to include Infrastructure Sharing services in the MSA, PPIT proposes the following changes in section 6.8 of the MSA:

- (a) in paragraph 6.8.2(a) of the MSA, the current maximum period of time for the Forecast regarding Infrastructure Sharing services is one year. As stated above, despite this, Access Seekers have not been providing such to PPIT nor has PPIT demanded same from them. This provision should be removed or Access Seekers can be made to be bound by it by expanding subsection 5.6.3 of the MSA;
- (b) subsection 6.8.5 of the MSA should be expanded to include new built site as explained in the reply for the Access List questionnaire;
- (c) subsection 6.8.6 of the MSA regarding Billing Cycle and subsection 6.8.9 of the MSA regarding Escorts should be negotiated by parties;
- (d) in respect of subsection 6.8.11 of the MSA, site registers should be made available at the respective Access Provider's site for the purposes of inspection by the Access Provider; and
- (e) some Content Obligations are not applicable to Infrastructure Sharing services like Forecasting Obligations (unless Access Seekers can be made to be bound by it by expanding subsection 5.6.3 of the MSA), POI Procedures, Network Change Obligations and Churn Obligations and recommends removing them from the MSA.

29.30 While REDtone has experienced no access issues, it states that the main issue is in respect of availability. It suggests that section 6.8 of the MSA should be amended to address transparency of availability of services and the relevant areas/location.

29.31 Sacofa is currently an Access Provider only. It submitted that the impediment it faced in providing access to Infrastructure Sharing is local authority approval.

29.32 TM's proposals in respect of Infrastructure Sharing can be summarised as follows:

- (a) for subsection 6.8.2 of the MSA, the forecast portion in the MSA should be removed as it is not standard practice in the industry to provide forecast for Infrastructure Sharing service;

- (b) for subsection 6.8.6 of the MSA, the billing cycle should be amended, since in practice, TM has been charging the Access Seeker either quarterly or monthly. Most Access Seekers do not agree with the advanced payment charging;
- (c) for paragraph 6.8.9 (c)(i) of the MSA, the timeline of 5 Business Days should be standardised and made applicable to both manned and unmanned sites as the approval process is standard across sites;
- (d) subsection 6.8.13 of the MSA should be removed as cost apportionment can be interpreted as operational expenditure (**OPEX**) sharing, whereas the cost for the utility and ancillary services is already established on commercial rates; and
- (e) TM highlighted that additional costs incurred during maintenance activity, for example tower strengthening activity where the Access Seeker will need to consequently relocate, is borne by the Access Seeker.

29.33 U Mobile is typically an Access Seeker, especially for infrastructure. It leases from NFPs and SBCs/TowerCos and does not deal directly with local authorities for approval. U Mobile submitted that Infrastructure Sharing services in the context of the Access List and MSA may also include specifically the mandate on access to facilities financed by the USP Fund (either through clawback or tender process) and is not limited to towers, but also fibre. The MSA should also provide a guide on the processes for sharing and negotiating such that Access Agreements are concluded within a reasonable timeframe. U Mobile's experience has been that access by U Mobile to USP Funded sites have been difficult due to prior 'commercial arrangements' made by the incumbent with other parties at specific sites (e.g., Celcom in Langkawi).

29.34 YTL Communications submitted that the Access List and the MSA should fully define and distinguish between full-span and in-span arrangements. It is not clear whether full span is mandated.

29.35 YTL submitted that, with respect to subsection 6.8.12 of the MSA, some Access Providers are trying to double charge on fees on "ROW" by focusing on the words that "it is not within the Access Provider's control". This is not reasonable to YTL as Access Seekers pay slightly less if they were to enter into an SBC agreement. The ROW should only be payable by the operator who laid the cable. Although the definition of associated services includes ROW, infrastructure owners insist on imposing additional charges. For example, an Access Seeker is required to pay ROW charges if it wants to pull fibre to the site. The same charges are still demanded by Access Providers, even if the Access Seeker wishes to access fibre that is already available at the site.

29.36 The MCMC notes the high degree of engagement on the MSA terms governing access to the Infrastructure Sharing service, reflecting the fact that this service is one of the most widely acquired service in the Access List.

29.37 In response to submissions from edotco, the MCMC notes that:

- (a) health and safety requirements are more appropriately set out in the operations and maintenance manuals made available by Access Providers as requirements may vary from site to site, and the MCMC does not propose to include such requirements in the MSA;
- (b) given escort arrangements may often be required by Access Providers at bottleneck facilities such as towers and submarine cable landing stations, it would undermine the objectives of the access regime if the MCMC were to remove the escort provisions from the MSA, given the potential for escort requirements to be used as a means (or with the effect) of blocking access to these Facilities and Services; and
- (c) the provision of utilities and ancillary services under subsection 6.8.12 of the MSA, including power, site maintenance and security, is a critical component of the Infrastructure Sharing service. Importantly, Access Seekers are wholly reliant on Access Providers in this regard, as Access Seekers typically have no relationship with the landlord and are not in a position to themselves arrange any such utilities. To the extent any Access Provider faces repeated difficulties in providing these utilities and services, the Access Provider should approach the MCMC so that the MCMC can consider any further measures that can be implemented.

29.38 In response to submissions by Maxis, the MCMC's view is that:

- (a) it would be inappropriate to mandate compliance with technical codes that are intended to be voluntary. The MCMC notes that voluntary codes are designed to balance effective compliance with minimal regulatory burden for providers;
- (b) it would be appropriate to include obligations on the Access Provider to ensure that the fixed telecommunication poles are in reasonable working condition; and
- (c) it has expanded the scope of the Infrastructure Sharing service to cover access to street furniture, such that the existing Service Specific Obligations for Infrastructure Sharing would apply automatically to such facilities.

29.39 The MCMC does not agree with PPIT's submission that the terms for Infrastructure Sharing can be removed from the MSA. The fact that PPIT has successfully commercially negotiated terms of access to the services it provides is not determinative of whether or not it is in the LTBE for terms of access to remain in the MSA. Rather, the MCMC is concerned to ensure that the terms of access in the MSA provide a baseline so that the terms of access imposed by Access Providers cannot be used to prevent or delay access to regulated Facilities and Services.

29.40 In response to PPIT's specific improvement proposals, the MCMC's comments are as follows:

- (a) to the extent that PPIT does not find the terms governing the provision of forecasting information useful, it is not obliged to request such information from Access Seekers, given subsection 5.6.6 of the MSA is drafted permissively rather than as an obligation. Accordingly, the MCMC does not understand the basis for removal of these terms;
- (b) the MCMC accepts that newly built sites may require differential delivery timeframes, as is the case with the Transmission Services under subsection 6.7.5 of the MSA. The MCMC accordingly proposes to introduce a new limb in subsection 6.8.5 of the MSA to cover scenarios where new infrastructure is required;
- (c) the MCMC is open to considering alternative billing cycles, based on the billing cycles being adopted by Access Providers in practice. However, for the reasons set out in paragraph 29.37(b), the MCMC does not propose to remove the escort provisions from subsection 6.8.9 of the MSA;
- (d) the MCMC does not consider there to be any benefit in requiring site registers to be made available at a particular location. The MCMC considers that the substantive obligation, being that the site registers must be made available on request, is sufficient to address Access Provider requirements; and
- (e) the MCMC is open to clarifying within the MSA which Content Obligations do not apply to certain Facilities and Services and invites further submissions from operators in this regard.

29.41 The MCMC agrees with REDtone that subsection 6.8 of the MSA should set out terms relating to transparency and availability of the Infrastructure Sharing service. The MCMC considers that this is especially important in the context of the proposed expansion of the Infrastructure Sharing service and the criticality of certain components of the proposed service description in enabling and accelerating 5G deployment and innovation. However, the MCMC acknowledges the need to ensure that any reporting obligations relating to this service are not unduly onerous on Access Providers. The MCMC accordingly proposes to adopt a "light touch" approach to this requirement which requires Access Providers to disclose to the MCMC the availability of street furniture, which will also enable the MCMC to further understand the scope, extent and nature of the street furniture that is available for supply in order to accelerate 5G deployment.

29.42 A number of the issues raised by TM are already addressed in the preceding paragraphs. In relation to the remaining issues, the MCMC's view is as follows:

- (a) the two Business Day timeframe for manned sites should remain, as the MCMC understands that most Access Providers are able to comply with this requirement;

- (b) to the extent costs for utility and ancillary services are already factored into an Access Provider's commercial rates, the MCMC expects that Access Providers will provide Access Seekers with enough information' to determine compliance with subsection 6.8.13 of the MSA, including as to the Access Provider's portion of the relevant costs; and
- (c) the MCMC does not consider that the MSA should specify that additional costs incurred during maintenance activities are to be borne by the Access Seeker, given this will depend on the circumstances in which such activities are performed. The MCMC reminds operators of the requirement in subsection 5.16.5 of the MSA for charges in an access agreement to be complete, other than work to be done on a time and materials basis which must be subject to a quotation.

29.43 Regarding U Mobile's submissions, the MCMC does not propose to expand the scope of the Infrastructure Sharing service to cover fibre infrastructure. Access to fibre infrastructure is already covered within the context of the Transmission Services and HSBB Network Services. Further, the MSA already sets out in subsection 5.4 relevant negotiation obligations, including timeframes, to ensure Access Agreements are concluded within reasonable timeframes. To the extent U Mobile is facing difficulties in accessing Infrastructure Sharing or concluding Access Agreements for this service in accordance with those timeframes, U Mobile should seek to resolve the dispute with the Access Provider, failing which it may initiate the Dispute Resolution Procedures under the MSA.

29.44 Finally, in response to YTL's submissions, the MCMC's views are:

- (a) the MCMC proposes to retain the existing reference to in-span interconnection only as full span interconnection is not specified in the Access List; and
- (b) charges for rights-of-way are outside the scope of this inquiry because they relate to pricing. However, as noted in the Access List Review:
 - (i) necessary right-of-way is included within the definition of "Associated Tower Sites" under the Access List, and to the extent that Access Seekers are being forced to pay separately for right-of-way, Access Seekers should submit a complaint to the MCMC under section 69 of the CMA; and
 - (ii) under section 228 of the CMA, a Network Facilities Provider or a public utility provider must provide another Network Facilities Provider with non-discriminatory access to any right-of-way owned by the first Network Facilities Provider (or public utility provider).

Out of scope issues

- 29.45 edotco and PPIT referred to public complaints as barriers. They stated that the public complaints hindered roll-outs. edotco states that the main concerns raised by the public in these complaints are electronic magnetic field (**EMF**) issues, however, edotco and PPIT identified some complaints as also being politically motivated and not necessarily genuine technical concerns. PPIT suggested that the MCMC should consider assisting tower owners to explain to the public about health issues for radio-cells, arising from concerns over exposure to radiation.
- 29.46 Digi also faces the following challenges in supplying Infrastructure Sharing:
- (a) insufficient space availability to accommodate sharing. Digi considers that all new building layouts or plans should incorporate dedicated space for telecommunications equipment. Digi also proposes that states/local councils allow their street furniture to be utilised;
 - (b) the infrastructure has reached its maximum tower loading capacity;
 - (c) frequency interference with the Access Seeker; and
 - (d) issues with passive intermodulation that limits the use of certain frequency for in-building system.
- 29.47 Digi also proposes that building infrastructure should accommodate Infrastructure Sharing, especially in dense areas (by allocating spaces and an approval process for access). This is because in dense areas Digi can only build light structures (on ground), which might not be able to accommodate additional sharing parties/additional equipment.
- 29.48 edotco experiences the following issues impeding the provision of Infrastructure Sharing services, and made a number of proposals to address such issues:
- (a) Each local authority requiring infrastructure providers to adhere to different guidelines and requirements. The MCMC should recommend minimum standard requirements and uniformity in the guidelines applicable for all states.
 - (b) Certain states creating managing entities, who not only manage the process but are interested in becoming telecommunication deployment partners. edotco considers that appointments are mainly made via direct award with no proper governance. States also have less oversight or prudential control on the power granted to these entities. In its opinion, new guidelines are also imposed by these entities, which are mainly created without consulting with the telecommunications industry prior to implementation. Important factors, i.e., technical and commercial aspects, fail to be taken into consideration during the crafting and issuing of these guidelines.
 - (c) Mobile broadband and future fixed wireless access (**FWA**) services are part of the main utility for the country and Government should

initiate the cabinet to consider gazetting a new Law/by Law for any housing/building/township projects to allocate plot of land/rooftop/in-building/riser space for infrastructure to be part of planning approval requirements.

29.49 MYTV submitted that, in accordance with the JENDELA policy support required to accelerate project delivery, the MCMC should look into the standardisation of electricity tariff for communications services. The electricity tariff should be regulated across all access instruments.

29.50 U Mobile reported, with respect to JENDELA, setbacks in rollout owing to delays by third parties from 3Q 2020. No significant progress was made despite notifying the MCMC on the issues. It is crucial that the approval process is shortened to ensure the timely rollout of coverage through the reduction of state government bureaucracy and the resolution of indiscriminate complaints by residents etc.

29.51 The MCMC thanks operators for their submissions on these issues. Many of these issues are not capable or otherwise appropriate to be addressed through the MSA. In particular, the MCMC notes that:

- (a) pricing matters (including as to electricity tariffs) are beyond the scope of this inquiry;
- (b) public complaints are more appropriately handled by the relevant local authorities, as the MCMC has no jurisdiction in respect of such matters; and
- (c) the MCMC does not have the jurisdiction to impose uniformity on differential local authority requirements, including approval timeframes.

29.52 However, the MCMC notes that it will engage in discussions with relevant stakeholders, including the Minister and Government generally, to ensure that where possible and in the LTBE, these industry concerns are addressed through the appropriate channels.

MCMC preliminary view

29.53 The MCMC proposes to retain the Service Specific Obligations for Infrastructure Sharing, subject to the following amendments:

Reference	Summary of proposed change	MCMC rationale
6.8.5	<p>The MCMC proposes to amend the indicative delivery timeframes as follows:</p> <ul style="list-style-type: none"> • 90 Business Days for ground-based towers and new sites; • 10 Business Days for Common Antenna Systems in defined high priority areas; and • 10 Business Days for fixed telecommunication poles; and • 40 Business Days, for all other structures. 	<p>Several operators commented that the existing delivery timeframes for the Infrastructure Sharing service are inadequate for certain infrastructure. Further, the MCMC agrees that the time required to provide access to this service will likely vary depending on the nature of the structure to which access is sought. The MCMC also wishes to enshrine in the MSA its recently announced requirement that access to Common Antenna Systems in certain defined high priority areas be fast-tracked.</p>
6.8.13	<p>The MCMC propose to clarify that the principles in this section in relation to utility costs should apply to utility costs in respect of network facilities provided by the Access Provider to the Access Seeker.</p>	<p>In response to TM’s submission, the MCMC considers that the utility cost allocation principle should only apply to network facilities provided by the Access Provider to the Access Seeker and not to costs incurred by the Access Seeker for network facilities acquired by it.</p>
6.8.14 (new)	<p>The MCMC proposes to introduce a new term which expressly requires Access providers to use all reasonable endeavours to augment the facilities comprising Common Antenna Systems.</p>	<p>The MCMC understands that some Access Seekers have faced difficulty in obtaining access to Common Antenna Systems due to Access Providers claiming that there is insufficient capacity or port availability to fulfil orders.</p>
6.8.15 (new)	<p>The MCMC proposes to introduce new reporting obligations requiring Access Providers to notify the MCMC in writing of the street furniture to which it offers access, pursuant to the proposed expanded service description for the Infrastructure Sharing Service.</p>	<p>The MCMC agrees with submissions from operators that the availability of the Infrastructure Sharing service will be critical in the context of 5G deployment, particularly street furniture, and considers that these reporting obligations balance the criticality of rapid 5G deployment alongside compliance burden for Access Providers.</p>
6.8.16 (new)	<p>The MCMC proposes to introduce maintenance and rectification obligations requiring the maintenance of all fixed telecommunication poles such that the fixed telecommunication poles remain in reasonable working condition.</p>	<p>The MCMC agrees with submissions from operators that maintenance of the fixed telecommunication is critical to ensure adequate provision of downstream services to customers.</p>

29.54 The MCMC welcomes operator feedback on its proposed timeframes in respect of Infrastructure Sharing.

Questions

Question 38: Do operators agree with the amendments to the Service Specific Obligations that the MCMC has proposed in respect of Infrastructure Sharing? Why or why not? If not, please specify and substantiate any proposed changes or amendments.

Question 39: Do operators experience any issues with interference within Common Antenna Systems? How are these issues typically resolved, and are any amendments required to the Service-Specific Obligations in subsection 6.8 of the MSA to address those issues, or are the existing provisions in subsections 5.13.4 – 5.13.5 sufficient? Please provide details, including any proposed changes or amendments.

30 Network Co-location

Overview

- 30.1 Following the 2016 MSA Review, the MCMC included a new subsection 6.9 setting out the detailed terms applying specifically to access to the Network Co-Location Service. In line with the broader proposal to apply the existing Content Obligations as Service Specific Obligations, the MCMC moved most of the then subsection 5.13 to this new subsection 6.9 and introduced service-specific timeframes for access to the Network Co-Location Service.
- 30.2 At the time, the MCMC also decided to amend the Service Specific Obligations on physical access. The MCMC amended the subsection to ensure that an Access Seeker's personnel are provided with equivalent access as an Access Provider provides to itself. The MCMC considered these changes were necessary to ensure an Access Provider does not use processes and procedures to unfairly or unreasonably deny access.
- 30.3 The MCMC also introduced a requirement that Access Providers publish the locations at which Network Co-Location Services are available.
- 30.4 In its informal questionnaire on the MSA for this review, the MCMC asked operators for feedback on their experiences with Network Co-Location Services, more specifically:
 - (a) if operators faced any impediments in gaining access to such services and if so, what those impediments were; and
 - (b) considering technical, functional and marketplace changes which are currently taking place or foreseeable in the future, what changes (if any) were recommended.
- 30.5 The MCMC received a number of responses on the section 6.9 of the MSA, which are discussed below along with the MCMC's preliminary views.

Discussion

- 30.6 Celcom submitted that it has not been able to acquire the Network Co-location Service at an Access Provider's submarine cable landing station, as

the Access Provider has claimed that it would compromise security. Celcom intends to acquire the service to co-locate Celcom's equipment at POIs for HSBB connectivity.

- 30.7 Maxis only acquires the Network Co-location Service on a "very limited" basis and cites "many functional limitations" of the service as currently listed. Generally, Maxis's experience is that Access Providers usually do not encourage Access Seekers to co-locate their equipment in their premises, citing security reasons and concerns regarding damage to Access Provider equipment co-located in the same location.
- 30.8 Maxis also proposed a new subsection 6.9.32 requiring the Access Provider to also provide the access route and ducts and manholes leading to the Access Provider's premises where the Network Co-location service is being supplied.
- 30.9 TM considers that all submarine cable landing stations must be treated as "Sasaran Penting Negara" requiring the highest level of security protocols, and that the government should allow only government-linked companies to build, operate and maintain these facilities. In TM's view, this is consistent with the practice of other countries in the region, such as Vietnam, Thailand, Indonesia and Cambodia. Similarly, TM also submitted that the publication of co-location locations is generally not published by operators due to security reasons.
- 30.10 TM also proposed several more targeted amendments to the Network Co-location obligations in subsection 6.9 of the MSA. In particular, TM proposed that:
- (a) billing cycles in subsection 6.9.6 of the MSA be determined by the Access Provider and negotiated between the parties, rather than prescribed under the MSA;
 - (b) the requirement under in paragraph 6.9.13(a) of the MSA to publish the list of co-location locations on a publicly accessible website be deleted;
 - (c) subsection 6.9.14 of the MSA (which deems an Access Seeker as the Access Provider in certain circumstances) be deleted, because TM does not see any applicability of the scenario in the context of the Network Co-Location Service. In particular, TM submitted that any requirement for interconnection which necessitates physical co-location should be with the original Access Provider (Principal Access Provider) in order for it to be technically feasible. TM commented that there is no situation where an existing Access Seeker can be a "Deemed Access Provider" because the virtual co-location or in-span co-location provided by the "Deemed Access Provider" can only be for itself and not directly with the "Principal Access Provider";
 - (d) the requirement for the Access Provider to maximise its utilisation of space including upgrading under subsection 6.9.15 of the MSA be

amended to allow for the Access Provider to transfer any resultant cost to the Access Seeker, with the amount to be mutually agreed;

- (e) paragraph 6.9.20(a) of the MSA, which requires the Access Provider to submit its space requirements over the three-year period from the date of notification to the MCMC, together with a reconciliation of its reservation over the previous twelve months with its actual space needs, be deleted. TM submitted that this requirement is highly tedious and that it does not see the need to submit such data unless there is refusal of access due to lack of space, which it considers is already covered under paragraph 6.9.20(b) of the MSA;
- (f) the requirement to publish a policy under subsection 6.9.21 of the MSA be removed and replaced with the provision of such information on request by an Access Seeker;
- (g) subsections 6.9.22 and 6.9.23 of the MSA, regarding preparatory work by the Access Provider and obligations in the event of delays, be deleted, as they are overly prescriptive and Access Seekers can perform site preparation on their own and find their most cost effective provider;
- (h) subsection 6.9.25 of the MSA regarding apportionment of costs for utilities and ancillary services be deleted. TM considers that the costs for utility and ancillary services is already established on commercial rates;
- (i) the words "including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 6.9.27" be deleted from subsection 6.9.27 of the MSA, as TM considers that equipment physically co-located at the Access Provider's premises is for the purpose of gaining access only to Facilities and/or Services provided by the Access Provider;
- (j) marking and labelling obligations in subsection 6.9.28 of the MSA should also apply to wiring, cabling or any other ancillary equipment such as batteries and power distribution board; and
- (k) there are inconsistencies in terms of the application of subsections 6.9.7, 6.9.13, 6.9.15 - 6.9.23 and 6.9.28 - 6.9.31 of the MSA between Network Co-location and the Infrastructure Sharing Service, even though both services deal with provision of space. TM recommends for these sections to be removed as they are not necessary under the Infrastructure Sharing Service and should not be required under Network Co-Location as well.

30.11 Regarding Celcom and Maxis' submissions that they face difficulties in acquiring this service due to security concerns highlighted by Access Providers the MCMC reminds operators that the MSA specifies that an Access Provider must not impose a security requirement which is designed to, or has the effect of, denying or delaying the Access Seeker's access to services. If, despite complying with these obligations, an Access Seeker is unable to

obtain access to this service from an Access Provider and the dispute is not resolved between the parties, the Access Seeker should submit a complaint to the MCMC in accordance with section 69 of the CMA.

30.12 In response to Maxis' proposal that Access Providers also be required to provide access to the access route and duct and manholes leading to the Access Provider's premises, the MCMC notes that the scope of the Duct and Manhole Access Service has been expanded to include all lead-in ducts, inter-exchange ducts, manholes and sub-ducts, including to the land upon which such facilities are located. Accordingly, the MCMC considers that no further amendments are required under the MSA to address Maxis's concerns.

30.13 In relation to TM's comments regarding the importance of security protocols at submarine cable landing stations, the MCMC reminds operators that Access Providers may only impose "reasonable security procedures and processes" in accordance with paragraph 6.9.31(b) of the MSA. Access Providers must not restrict or prevent access to network facilities or services for reasons concerning national or operational security, as set out in subsection 6.9.8 of the MSA, and protection of this infrastructure must not be used as a reason to hold back development of the industry. Further:

- (a) the MCMC does not have the jurisdiction to ask government to treat submarine cable landing stations as "Sasaran Penting Negara";
- (b) to the extent TM has specific security concerns arising from current MSA protections, the MCMC strongly recommends that TM raise these with the MCMC rather than denying access to these facilities; and
- (c) as submitted by Access Seekers in response to the informal questionnaire on the Access List, submarine cable stations are a critical access element for Access Seekers and in general, the MCMC's role is focused on ensuring open access to facilitate and foster competition and promote the LTBE, rather than limiting access to these key facilities.

30.14 The MCMC also reminds operators that they must publish on their publicly available website and keep updated a list of the general locations and technically feasible points at which physical co-location is available, pursuant to subsection 6.9.13 of the MSA. Again, if Access Providers have any particular concerns regarding publication of locations for genuine national or operational security reasons, they may decline to publish such information pursuant to subsection 6.9.31 of the MSA.

30.15 In response to TM's specific proposed improvements to the terms set out in subsection 6.9 of the MSA, the MCMC's response is as follows:

- (a) there is no compelling justification for the billing cycles set out in the MSA to be removed as the billing provision in subsection 6.9.6 already refers to the general billing obligations in subsection 5.11.3 which already allows parties to agree a different billing cycle than that which is prescribed under the service specific obligations. There

were no other submissions on this matter, suggesting that the current billing cycles are acceptable to the industry;

- (b) the Deemed Access Provider provisions set out in subsection 6.9.14 of the MSA have been in the MSA (at least in some form) since 2005, including in respect of co-location services. The MCMC is interested to understand further from industry whether they agree with TM's view that subsection 6.9.14 of the MSA is inapplicable to Network Co-Location Service;
- (c) the MCMC intends to make relevant amendments to the current reporting obligation template in order to ease the burden of reporting to MCMC. The MCMC will ensure that information provided by Access Providers for other purposes will be excluded from the reporting template;
- (d) the MCMC does not consider it appropriate for an Access Provider to be able to charge an Access Seeker for optimising its utilisation of physical space, given Access Providers should be optimising space in any event;
- (e) the MCMC does not agree to remove the reporting provisions in subsection 6.9.20 of the MSA. Given the difficulties reported by some Access Seekers in acquiring this service, particularly at submarine cable landing stations, it remains important for the MCMC to be informed of the Access Provider's space requirements, so that the MCMC can proactively manage any issues experienced by the industry;
- (f) the MCMC considers that the requirement in subsection 6.9.21 of the MSA for the Access Provider to make available a policy regarding contractors permitted to perform certain preparatory work remains important, by ensuring that Access Seekers are provided with an objective, non-discriminatory policy upon which they may commence preparatory works. If this requirement were to be removed, Access Providers could effectively delay access to the service. Similar principles apply in respect of subsections 6.9.22 and 6.9.23 of the MSA, in respect of which operators previously commented, in the course of the 2016 MSA Review, that these processes reflect industry practice;
- (g) the MCMC does not agree to remove subsection 6.9.25 of the MSA regarding apportionment of costs, given this provision appears throughout the MSA, and taking into account the reasons noted in paragraph 29.42 above; and
- (h) the purpose of subsection 6.9.27 of the MSA is to ensure that Access Providers do not refuse to provide access to certain Equipment merely because that Equipment is also used for other purposes. It is not intended to expand access obligations beyond Facilities and Services set out in the Access List and accordingly does not require removal;

- (i) the MCMC is interested to understand industry views regarding TM's proposal to require Operators to label wires, cables and other ancillary equipment under subsection 6.9.28 of the MSA. Although the MCMC is open to introducing such a requirement, the MCMC is concerned to ensure that this does not impose unduly onerous obligations on Access Seekers in particular, given the extensive volume of such ancillary equipment that may be situated at each site. Accordingly, the MCMC is primarily interested in understanding from operators whether expanded labelling obligations would reflect market practice, which would provide a stronger basis for such regulation; and
- (j) the provisions in subsection 6.9 of the MSA cited by TM as being inconsistent with the Infrastructure Sharing Service were introduced by the MCMC specifically for the Network Co-Location Service in response to feedback from the industry that these requirements were appropriate for this service, and in order to minimise the burden on Access Providers. The fact that some of these requirements are not imposed in respect of the Infrastructure Sharing Service does not mean that these requirements are not necessary for the Network Co-Location Service.

30.16 The MCMC also refers to its comments in paragraph 13.3 above and notes its intention to amend subsection 6.9.13 of the MSA to address the concerns raised by Celcom regarding the unavailability of in-span interconnection.

MCMC preliminary views

30.17 The MCMC has raised below a number of questions on the current operation and effectiveness of the Network Co-location provisions under subsection 6.9 of the MSA. Any operator responses to these questions will help inform any proposed changes to the substantive provisions in this section.

30.18 The MCMC proposes minor amendments to subsection 6.9 of the MSA to require in-span interconnection to be made available on request, and expanding the Access Seeker's obligation to mark or label its Equipment:

Reference	Summary of proposed change	MCMC rationale
6.9.13(c)	The MCMC propose to clarify that in-span interconnection must be provided on request by an Access Seeker, regardless of whether physical co-location is or is not available.	The MCMC considers that Access Seekers should be able to elect whether they require in-span interconnection, even where physical co-location is available.
6.9.28	The MCMC proposes to expand the obligation on Operators to mark or label their Equipment to also apply to wires, cables, batteries and distribution boards.	The MCMC is interested to understand whether expanding the labelling obligations would more closely reflect market practice. Although the MCMC appreciates that expanded labelling obligations would create operational efficiencies, it is also keen to ensure that such requirements do not impose undue operational burden on Operators, particularly Access Seekers.

Questions

Question 40:	Do you have any comments regarding the MCMC's proposal to require Operators to mark or label their wires, cables and other ancillary equipment? In particular, please comment on: <ul style="list-style-type: none"> (a) whether this reflects operational practice; (b) the operational burden this would create (as an Access Seeker) or the benefits this would provide (as an Access Provider); and (c) any specific equipment to which the expanded obligation should (or should not) apply.
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31 Domestic Connectivity to International Services

Overview

- 31.1 Subsection 6.10 of the MSA currently sets out a series of Service Specific Obligations that apply for Domestic Connectivity to International Services.

Discussion

- 31.2 There was only one operator submission regarding this section, reflecting that operators were generally satisfied with these terms.
- 31.3 Maxis submitted that it faced difficulty in acquiring such services as Access Providers typically do not allow Access Seekers to co-locate in the cable landing stations, instead offering to meet outside the Access Provider's compound of the cable landing stations via commercial point of access (**POA**) arrangement at exorbitant costs. Maxis accordingly recommended a clause be inserted to require the Access Provider to provide Network Co-Location service, access route (within the Access Provider's cable landing

stations compound) and ducts and manholes leading to the Access Provider's cable landing stations.

- 31.4 TM stated that there are no impediments in supplying Domestic Connectivity to International Services.
- 31.5 The MCMC refers to its comments in respect of the Network Co-Location Service in the Access List Review, including the amendments it has made to the Duct and Manhole Access service in the Access List, which the MCMC considers will assist Access Seekers in obtaining access to a wider range of ducts and manholes, including those required to facilitate access to the Domestic Connectivity to International Service.
- 31.6 The MCMC accordingly does not propose to make any changes to the Service Specific Obligations that apply for Domestic Connectivity to International Services.

Questions

Question 41: Do operators consider the current Service Specific Obligations for the Domestic Connectivity to International Service are sufficient? Please detail any proposed addition, deletion or amendment to the existing terms.

32 Duct and Manhole Access

Overview

- 32.1 Following the 2016 MSA Review, the MCMC included a new subsection 6.11 of the MSA setting out detailed terms that apply specifically to Duct and Manhole Access.
- 32.2 As part of that review, the MCMC introduced new reporting obligations, an additional ground of refusal where an Access Provider enters into an exclusive arrangement for communications infrastructure, service-specific timeframes and billing cycles for Duct and Manhole Access and an obligation to make operations manuals available to Access Seekers.

Discussion

- 32.3 The MCMC notes that the majority of issues raised by operators on the Duct and Manhole Access service have already been addressed through the expansion of the Duct and Manhole Access Service in the Access List as described in the Access List Review.

Transparency

- 32.4 edotco submitted that it faced challenges in gaining access to Duct and Manhole Access as there was a lack of key information on the service from the Access Provider. edotco proposed that improvements ought to be made to improve access, i.e., providing a standard database and/or a process for Access Seekers to utilise, which would incorporate high-level information, to assist the Access Seeker in deciding whether to acquire the service. edotco

also supported the standardisation of technical guidelines as well as standardisation of commercial costs of the Facilities.

- 32.5 The MCMC accepts edotco's submissions regarding transparency and proposes to include an EOI provision in the MSA specifically requiring each Access Provider to provide such information and priority to Access Seekers as it makes available to itself in the handling of orders for Duct and Manhole Access Services. The MCMC also notes that subsection 6.11.13 (Operational Manuals) of the MSA requires Access Providers to make operations and maintenance manuals available to Access Seekers, containing reasonable processes and procedures relating to Duct and Manhole Access.

Allocation of costs and risks

- 32.6 TM submitted that subsection 6.11 of the MSA does not sufficiently address the problem of the Access Provider not offering the Duct and Manhole Access under regulated terms. Considering the increasing demand for Duct and Manhole Access sharing and anticipating the potential risk, TM is of the opinion that standard industry processes and procedures need to be established.
- 32.7 TM additionally submitted that where Access Providers provide Duct and Manhole Access, either on regulated or commercial terms, on-site support activity needs to be provided to the Access Seeker. There are two types of Access Providers for Duct and Manhole Access: An Access Provider who has cables and equipment inside the ducting space (Type A) and an Access Provider who does not have any network infrastructure but supplies Duct and Manhole Access (Type B). Type B does not have significant interest to provide on-site support whenever the Access Seeker carries out work because there is no potential damage to the Access Provider's cable and equipment. However, Type A has an interest to provide on-site support to ensure that the Access Seeker does not damage the Access Provider's cables and equipment. As such, the Access Provider must be given the opportunity to transfer the cost of the risk management to the Access Seeker.
- 32.8 TM proposed that subsection 6.11.11 of the MSA be amended to include the required time for the Access Provider to obtain the required approval from the government/relevant authority to perform the activity needed prior to issuing the Notice of Acceptance, such as site survey and rodding, to ascertain that there is available space in the requested infrastructure.
- 32.9 TM also proposed to impose responsibility on the Access Provider to ensure availability of duct by performing the rodding and/or mandrel activity. The sharing of Duct and Manhole Access will create a lot of risk of potential damage to the existing cable, such as damage created from overstepping on the cable and fibre enclosure inside the manhole while doing installation, operations and maintenance. As such, to mitigate the risk of damage, TM would recommend including a provision where an Access Provider may request the Access Seeker to use the Access Provider's installation service or approved contractors. Where the Access Seeker chooses not to use the

Access Provider's installation service, the Access Seeker will be fully liable for any damage caused.

- 32.10 The MCMC understands that, under standard industry practice, Access Seekers would ordinarily be liable for their (and their subcontractors') acts and omissions in accessing the Duct and Manhole Access Service, performing installation works and (if any) damage caused to infrastructure in the process of accessing the service or performing works. It is not clear to the MCMC whether TM's proposal would involve the Access Provider accepting responsibility for the acts and omissions of its "approved" contractors. If not, it is not clear to the MCMC why the insertion of such a provision is required. The MCMC invites TM's and any other operators' feedback in this regard, but at this stage does not propose to change the cost or risk allocation principles set out in the MSA.
- 32.11 The MCMC requires further information to determine what on-site support is required in relation to Duct and Manhole Access, in order to determine whether such support is already covered under the MSA, or whether any amendments are required to facilitate such support.
- 32.12 In relation to subsection 6.11.11 of the MSA, the MCMC notes again that subsection 4.5.1 of the MSA already contemplates delays caused due to necessary third-party involvement. Any delays due to government or other authority approvals must be notified to the MCMC in accordance with that section, so that the MCMC may review the circumstances of such non-compliance.

Other comments

- 32.13 TTdC complained about exclusivity practice in specific locations by telecommunications/non-telecommunications providers, while U Mobile submitted that there were currently no providers providing this facility as a separate service. The MCMC has addressed these matters in the Access List Review.
- 32.14 Maxis proposed that the Access Provider ensures that the ducts and manholes are in good working condition. The MCMC agrees and considers it appropriate for the MSA to prescribe a standard for the condition of the infrastructure. The MCMC has therefore added subsection 6.11.16 requiring that the Access Provider ensure that it maintains in reasonable working condition.
- 32.15 TM has also made the following submissions with respect to specific obligations:
- (a) TM suggested that there be new grounds for the Access Provider refusing access to ducts and manholes in the following circumstances:
 - (i) where the infrastructure is used for critical services and therefore at risk of data tapping, sabotaging, malicious acts

that would threaten national security such as services provided to government agencies, the military or the police;

- (ii) for services which TM has commercial arrangement and liabilities due to data tapping, sabotaging, any malicious acts, such as with financial bodies;
 - (iii) where there is duplication of fibre infrastructure, for example where the Access Seeker requesting access to ducts and manholes to a premises where TM currently has presence of fibre infrastructure to the same premises and where TM is able to offer alternative services such as transmission services; and
 - (iv) where there is no space availability, or when TM is required to carry out a site survey to ensure space availability prior to granting access;
- (b) TM proposed that the MSA should specifically require the Access Provider include Occupational, Safety and Health obligations in its Operations Manual;
 - (c) TM proposed that the MSA include standard operating procedures in connection with ducts and manhole infrastructure services; and
 - (d) TM submitted that the Access Provider should not be held responsible for any incidents that may occur due to the Access Seekers having access to ducts and manholes, and therefore proposed that the Access Provider should be indemnified by other Access Seekers for any damage caused to the infrastructure, disruption of its services and loss of revenue.

32.16 In response to TM's submissions, the MCMC agrees with adding new grounds of refusal where the risk of data tapping, sabotaging and malicious acts is high due to the nature of services being provided to government agencies or bodies. However, the MCMC does not agree with the other proposed new grounds for refusal given the importance of access to Ducts and Manhole for the operation of other related services.

32.17 In relation to provisions relating to the Operations Manual, the MCMC notes that the MSA already requires safety, security and occupational health and safety to be addressed in the Operations Manual. The MCMC has also added that standard operating procedures, including quality control in connection with the performance of work be added to the list of procedures that may be set out in the Operations Manual.

32.18 With regards to the proposed indemnities, the MCMC has included an indemnity under subsection 6.11.17 of the MSA which borrows elements from the Facilities Access Code in Australia. The MCMC invites the operators to provide feedback on whether the MSA should provide a baseline of limitations or exclusions such as a cap on liability.

MCMC preliminary view

32.19 The MCMC proposes the following service-specific provision for Duct and Manhole Access:

Reference	Summary of proposed change	MCMC rationale
6.11.13	The MCMC proposes to clarify that the Access Seeker's compliance with the operations and maintenance manuals provided by the Access Provider is mandatory.	The MCMC considers that the Access Seeker's physical access should be subject to security measures to mitigate the security risk of the Access Provider.
6.11.14	The MCMC proposes to add a ground for refusing access based on safety and security.	The MCMC has received submissions from the operators about the risk to the network for certain critical services provided to government bodies and considers that a new ground for refusing access be included under the MSA.
6.11.15 (new)	The MCMC proposes to introduce a new subsection clarifying the application of the EOI principle to the provision of information relating to the Duct and Manhole Access service.	The MCMC has received submissions from operators that transparency and availability of the Duct and Manhole Access service is limited and considers that Access Providers should be required to ensure that they provide such information to Access Seekers regarding the availability of this service as they themselves hold.
6.11.16 (new)	The MCMC proposes to introduce maintenance and rectification obligations requiring the Access Provider to ensure that it maintains all ducts and manholes in reasonable working condition.	The MCMC has received submissions from operators suggesting that ducts and manholes be kept in good working condition. The MCMC agrees that a set standard with respect to the condition of the infrastructure be prescribed. The MCMC therefore suggests that Access Providers be required to maintain ducts and manholes to a "reasonable" working condition standard.
6.11.17 (new)	The MCMC proposes to introduce an indemnity for any damage to the ducts and manholes.	The MCMC considers that Access Seekers should indemnify the Access Provider for any damage it has caused to the relevant infrastructure, subject to certain limitations. This is consistent with requirements in other jurisdictions.

Questions

Question 42:	Do operators consider the Service Specific Obligations for Duct and Manhole Access are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.
Question 43:	Do you typically require any on-site support services in acquiring the Duct and Manhole Access service? If so, do you face any impediments in

acquiring those support services and would those impediments be resolved by requiring the services to be provided under the MSA?

33 Digital Terrestrial Broadcasting Multiplexing Service

Overview

- 33.1 Subsection 6.12 of the MSA currently sets out a series of Service Specific Obligations that apply for access to the Digital Terrestrial Broadcasting Multiplexing Service.

Discussion

- 33.2 Astro has not experienced any significant impediments in gaining access to the Digital Terrestrial Broadcasting Multiplexing Service from MYTV.
- 33.3 Awesome Broadcasting submitted that:
- (a) to ensure level playing field for free to air (**FTA**) television (**TV**), equal opportunity needs to be established for platform availability for FTA. Currently, not all FTA TV have access to Astro's platform;
 - (b) to ensure business viability of FTA TV where FTA TV do not have subscription revenue, Pay TV operators should be restrained from advertisement airing and heavy price discounts; and
 - (c) operators of FTA TV are exposed to the risk of MYTV not achieving the required transmission delivery such as "Transmitter down" that has already occurred a number of times since the start of digital terrestrial television (**DTT**). Therefore, there must be a clearly quantifiable and fair compensation from MYTV to FTA TV to reduce the burden of loss of income due to loss of viewership as a result of the system failure.
- 33.4 The MCMC understands that Awesome Broadcasting is now available on Astro's platform. However, the MCMC would like to reiterate that the SAOs apply to the provision of the Digital Terrestrial Broadcasting Multiplexing Service and, accordingly, Access Seekers should raise a complaint with the MCMC in accordance with section 69 of the CMA where they fail to access the service.
- 33.5 In respect of Awesome Broadcasting's submissions on advertising and pricing, the MCMC notes that matters on the Advertising Code of Practice and pricing are outside the scope of this inquiry.
- 33.6 Media Prima submitted that refusing the provision of Digital Terrestrial Broadcasting Multiplexing Services to a prospective subscriber on grounds that there are technical limitations of the Access Provider's systems is easily met. As such, Media Prima suggests that complete disclosure of technical configuration and hence limitations is necessary to ensure full transparency. Media Prima notes certain Access Providers are reluctant due to security and

privacy issues but suggests that this can be overcome by implementing proper disclosure agreements. Media Prima stated that Access Seekers may require additional information such as actual coverage measurements and various field test results in order to assess the viability of services offered measured against the costs which is applied to the services. For instance, broadcasters may need to conduct 'Cost Benefit Analysis' on the quotations received from Access Seekers based on actual coverage areas and actual number of viewers (active set top box users). According to Media Prima, this information should be made available and not be kept confidential. Media Prima also suggested that if needed, Access Providers should produce evidence of data and measurements where necessary.

- 33.7 Media Prima further submitted that due to developments in technology, there needs to be a distinction between the concept of 'channel' and 'bandwidth'. The amount of bandwidth for a channel need not be pegged against a fixed bandwidth. Bandwidth should be sold based on affordability and not based on channels anymore. This will make it more affordable and hence attract more subscribers. Once bandwidth is purchased, it would be the responsibility of the channel owner to utilise the bandwidth as efficiently as possible (within the boundaries of CMA). In the true spirit of 'net neutrality', data being carried over the bandwidth should not be charged separately, for instance, 'data carousel' information belongs strictly to the channel owner and should not be charged separately by multiplex owners.
- 33.8 The MCMC reiterates that matters relating to pricing and the basis for pricing of a particular service is beyond the scope of this inquiry. The MCMC acknowledges Media Prima's comments and encourages submissions on how bandwidth should be sold at a later stage when the MCMC reviews the MSAP.
- 33.9 Commercial Radio Malaysia (**CRM**) stated that Digital Terrestrial Broadcasting Multiplexing Service (**DTBMS**) currently relates to TV. It submitted that a clause should be inserted to specifically address radio (hardware or software) since the bandwidth consumed by radio is not as much as TV broadcast. CRM suggested that smaller radio stations can also be distinguished from larger radio stations.
- 33.10 CRM further submitted that the main obstacle is in terms of providing equipment/costs to be borne by the company and whether the government will provide or play a role in providing equipment or minimize the cost of equipment in the future. CRM stated that cost plays an important role in the success of digital radio Mondiale (**DRM**) because it is possible that large companies have no problem, while small companies will be burdened. CRM accordingly suggested that an Access Provider should be required to disclose the actual number of DTTV/MYTV active users to the Access Seeker. Additionally, CRM submitted that there should be a possibility to review licence fees. Further, CRM submitted that an Access Provider should be required to provide a suitable bit rate allocation with reasonable pricing for radio broadcasting services. Being a digital TV provider, an Access Provider should also be capable of providing interactive services functionality in its digital TV platform.

33.11 The MCMC has already amended the definition of “Transport Stream” to clarify that this service is capable of being supplied as an audio-visual or audio-only service. In response to the balance of CRM’s submissions:

- (a) the MCMC cannot comment in this inquiry on matters that are to be handled by Government;
- (b) it is unclear whether requiring Access Providers to disclose their End User subscription figures will address the issues raised by CRM. Further, such an obligation may result in the disclosure of the confidential information of other operators; and
- (c) the current inquiry does not cover matters relating to pricing, which will be dealt with at a later stage by the MCMC in a future review of the MSAP.

MCMC preliminary view

33.12 The MCMC has reviewed the existing Service Specific Obligations that apply for access to the Digital Terrestrial Broadcasting Multiplexing Service (e.g., bitrate allocation, encryption, etc.). The MCMC considers that the current provisions continue to operate effectively and the MCMC has not received any operator feedback to suggest otherwise. Therefore, the MCMC does not propose to change the existing obligations.

Questions

Question 44: Do operators consider the existing Service Specific Obligations for the Digital Terrestrial Broadcasting Multiplexing Service are sufficient? Please detail any proposed addition, deletion or amendment to the current terms.

34 MVNO Access

Overview

- 34.1 Mobile Virtual Network Operator (**MVNO**) Access was added to the Access List in 2015.
- 34.2 Under the MSA, Access Providers are required to provide MVNO Access on a modular and unbundled basis and provide support to Access Seekers so Access Seekers can comply with the Commission Determination on the Mandatory Standard for the Provision of Services through a Mobile Virtual Network, Determination No. 3 of 2015.
- 34.3 In its 2016 MSA Review, the MCMC took a relatively light-handed approach to the regulation of MVNO Access in the MSA, striking a balance between the need to regulate the key terms of access to help facilitate the entry of burgeoning “thick” MVNOs, while still providing flexibility for parties to commercially negotiate the substantive content of the Access Agreement.

Discussion

- 34.4 REDtone submitted that it had no issue in gaining access to MVNO Access.
- 34.5 TM submitted that it aimed to become a fair and transparent provider of MVNO services in the future.

Equivalence of Inputs

- 34.6 Cubic Telecom commented that regulators are now turning their minds to the question of 5G access for MVNOs and the potential for new business models to emerge, particularly in the B2B sector with a focus on IoT-specific MVNO. In the context of JENDELA, the MCMC should consider 5G access for MVNOs in the spirit of potentially fostering business models (including IoT-specific MVNO) to further the objectives of JENDELA.
- 34.7 Consideration should be given to a mandatory approach to wholesale access obligations that favour the development of new and innovative 5G applications, particularly in industry verticals that can be supported within network slicing capabilities of 5G, as well as the type of MVNO business models that can benefit from such mandatory access.
- 34.8 MY Evolution submitted that equal access to technology should be added as part of Access Providers' obligations with respect to MVNO.
- 34.9 NET2ONE submitted that the MSA should be further expanded to govern the standard operational processes, in order to preserve the equivalence of input principle in the provision of MVNO Access. In making this submission, NET2ONE made the following observations:
 - (a) since MVNO Access was included in the Access List, NET2ONE finds that it has ease in accessing the service;
 - (b) during the initial information session with the MCMC, it was communicated that it is not common for MVNO Access to be regulated. NET2ONE is of the view that this assumption does not apply to the current make-up of the market in Malaysia. In 2018, the MVNO market share was reported at 12% and Celcom's market share was reported to be at 20%. Based on the Axiata Group Berhad Governance and Audited Financial Statements 2019, Celcom holds 35% shares in Tune Talk Sdn. Bhd. and 20% in Merchantrade Asia Sdn. Bhd. Additionally, Celcom also has a digital arm, operating as Yodoo with a separate and distinct brand providing similar mobile services as an MVNO; and
 - (c) Celcom's shareholding in two MVNOs and its digital arm indirectly increases Celcom's dominance in the market and leads to preferential treatment being accorded to the MVNOs, which are under Celcom's ownership.
- 34.10 The MCMC agrees with operators that timely access to 5G networks will be critical in the context of maintaining and growing the MVNO market. The MCMC has underscored the inclusion of 5G technology where relevant

throughout the Access List and has included two new wholesale 5G access services on the Access List (as discussed further in section 35 below). Further, the MCMC proposes to introduce specific Equivalence of Input obligations in relation to MVNO Access, to ensure that Access Providers:

- (a) provide access to new mobile technologies, e.g., 5G, at the same time as they provide access to themselves; and
- (b) continue providing access to mobile technologies for the same duration as they provide access to themselves, noting the ongoing importance and use of some legacy technologies in certain industries, e.g., banking.

34.11 The MCMC also proposes to include an obligation on the Access Provider to ensure its wholesale business unit is exercising independent decision-making in relation to MVNO Access and is separate from its retail arm, and to implement appropriate measures to ensure such independence and separate decision-making in order to give effect to the preservation of the equivalence of input principle.

34.12 In relation to the second limb set out above, the MCMC intends to ensure that Access Providers cannot "sunset" mobile technologies such as IMT-2000 (3G) before they have stopped supplying such technologies to themselves.

34.13 The MCMC also notes that the access regime for 5G networks will be established separately to this inquiry. In particular, the MCMC refers operators to the recent launch of the MyDigital and Malaysia Digital Economy Blueprint, which set out the Government's plan for access to 5G services.

34.14 Separately, the MCMC notes that during the initial information sessions, some operators commented that, as a thin MVNO, the timeframes taken by MNOs to approve commercial initiatives, including marketing and pricing promotions and product launches, is too long, and hampers the ability of these MVNOs to compete effectively in the market for retail mobile services.

34.15 Although no operators made submissions regarding these matters in their responses to the MCMC's informal questionnaire, the MCMC is concerned to ensure that the MSA addresses these issues, especially as operators transition to 5G networks. The MCMC accordingly proposes to introduce new obligations which require an Access Provider for MVNO Access to respond to such commercial requests from Access Seekers within a reasonable timeframe and, in any event, within the amount of time that the Access Provider would ordinarily approve its own commercial promotions and launches. The MCMC also proposes to include a stand-alone requirement that the Access Provider's approval must not be unreasonably withheld or delayed.

Other comments

34.16 Digi submitted that the MVNO access obligation will need to be looked at from various aspects including in respect of customer data protection obligations. Digi stated that a clear and thorough customer data protection

policy statement should be considered that provides sufficient internal controls and measures and protects information gathered and processed on its customers. The statement should also clearly stipulate the levels of authority and accessibility to its customer information.

34.17 Digi also commented that MVNOs must be more transparent and forthcoming in providing sufficient information relating to:

- (a) annual credit evaluation by a relevant authority on the MVNO's overall credit position based on its financial reports/statements, financial borrowings and commitment as well as other financial criteria as deemed relevant;
- (b) shareholding structure of its top 3 largest shareholders, having 50% or more shareholding interest in the business. Digi also proposed that the MVNOs be obligated to provide timely updates when significant changes occur to their shareholding;
- (c) annual operating and financial plan summary stating its key business goals endorsed and signed by its board of directors for each upcoming financial year; and
- (d) its business code of conduct endorsed by its board of directors and published on the MVNO's home portal / website.

34.18 Webe submitted that no changes were required to section 6.13 of the MSA but stated that obligations that are too rigid may limit the supply of MVNO Access.

34.19 The MCMC does not propose to expand the MSA to include customer data protection obligations for the following reasons:

- (a) licensees are already required to comply with a comprehensive privacy and data protection regulatory framework in place in Malaysia, including the Personal Data Protection Act 2010 and the Personal Data Protection Code of Practice for licensees under the CMA;¹³ and
- (b) international practice leans towards regulatory forbearance in regulated access instruments in relation to these matters, which are typically left to commercial negotiation between the parties. For example, in Australia, while telecommunications operators and facility owners are subject to a privacy and data regulatory framework, there is no regulatory requirement to include such terms in the access agreements. The parties to such agreements typically determine and commercially negotiate how they wish to comply with

¹³ Available at: <https://www.pdp.gov.my/jpdpv2/assets/2019/09/Communications-Sector-PDPA-COP.pdf>.

and/or impose such privacy and data obligations.¹⁴ Similar principles apply in Singapore.¹⁵

- 34.20 While the MCMC does not consider it necessary to include the additional reporting obligations on MVNOs sought by Digi, the MCMC understands from the initial information sessions with operators that where MVNOs face solvency issues or otherwise default on their payment obligations to the MNO, this may impact that MVNO's end user customers, at no fault of the MNO. Some operators proposed that the MCMC advise on the settlement process in these circumstances.
- 34.21 In this regard, the MCMC considers that, instead of imposing the reporting obligations sought by Digi - which would be unduly onerous and require the disclosure by MVNOs of sensitive information that goes beyond an MNO's reasonable requirements - it would be more beneficial and in the LTBE to focus on how to minimise end user impact in circumstances of default.
- 34.22 For these reasons, the MCMC proposes to introduce a new provision for the MVNO Access service which requires an Access Seeker who experiences an insolvency event to provide all assistance reasonably required by the Access Provider to effect a transfer of the Access Seeker's end user customers to the Access Provider's network.
- 34.23 Maxis made the following submissions with respect to specific obligations in the MSA:
- (a) Reporting Obligations under paragraph 5.3.13(f) of the MSA should not apply to MVNO Access;
 - (b) Content Obligations should not be applied to MVNO Access in their entirety, because imposing strict conditions significantly reduces the ability of mobile operators to offer bespoke agreements to suit different types of access requests as "one size does not fit all";
 - (c) the time of acceptance or rejection as stipulated in the MSA under subsection 6.13.5 for MVNO access within 10 Business Days and subsection 6.13.6, indicative delivery timeframe being 40 Business Days, is not practical under the current environment. Maxis suggests evaluating each request on a case by case basis, but within a period of no longer than 60 to 90 Business Days. Maxis submitted that each submission or request may require complete technical assessment of the overall solution to support the MVNO's requirements across all network elements, to determine the impact (if any) and to ensure service and customer experience is not jeopardised. Technical assessments prior to implementation generally will require time and effort on the following:

¹⁴ See section 152BE of the Competition and Consumer Act 2010, which does not explicitly refer to terms relating to privacy and data.

¹⁵ See Code of Practice for Competition in the Provision of Telecommunication Services in the Republic of Singapore, s 6.

- (i) architecture, design and solution on network;
 - (ii) architecture, design and solution on business support system (**BSS**);
 - (iii) configuration and testing of the services;
 - (iv) User Acceptance Test to determine all requirements are satisfactorily met; and
 - (v) each request will have to be evaluated to determine the level of variation and level of customisation that may be needed in consultation with external technical experts as well as equipment vendors. The process has to be thorough to ensure there are no hiccups at the point of service provisioning; and
- (d) in relation to the service-specific timeframes proposed by MCMC in the MSA in subsection 6.13.6 of the MSA, Maxis submits that a longer duration should be allowed. While it may typically range between 3 to 6 months, a more complex requirement by the Access Seeker may require more time. The indicative timeframe will depend on the types of MVNO Access requested by the Access Seeker, which could vary between thick MVNO, thin MVNO, mobile virtual network enabler (**MVNE**) and reseller models. MVNO Access is, in many cases, customized to the business model and the service requirements stipulated by the Access Seeker. Depending on the type of MVNO Access, the technical preparatory works are expected to be extensive and may include, at the very least, the following activities which spans across various systems:
- (i) infrastructure systems configuration involving network elements (e.g., mobile switching centre (**MSC**), RAN, Home Location Register (**HLR**), MGW etc.);
 - (ii) system configuration involving IT elements (e.g., billing/charging, mediation, value-added services etc.);
 - (iii) API testing;
 - (iv) customer management systems if needed; and
 - (v) end to end user acceptance test for the above.

34.24 As described in the Access List Review, the MCMC is keen to ensure that the MVNO market continues to flourish, particularly given the lack of thick MVNOs in the market. In this regard, the MCMC recognises the importance of speed to market in allowing new market entrants and competition between MVNOs and existing MNOs. Accordingly, the MCMC's preliminary view is that these timeframes do not require amendment at this stage. The MCMC also notes that no other operators made any submissions in respect of the timeframes in subsection 6.13 of the MSA, suggesting that these timeframes are generally acceptable to the industry. However, the MCMC

invites further submissions from operators on these timeframes to assist the MCMC in confirming their ongoing suitability.

34.25 Finally, the MCMC does not agree with Celcom's and Maxis' submission that MVNO Access obligations should be removed from the MSA, for the same reasons it determined that MVNO Access should remain on the Access List.

MCMC preliminary view

34.26 The MCMC proposes the following amendments to the MVNO Access obligations in subsection 6.13 of the MSA:

Reference	Summary of proposed change	MCMC rationale
6.13.12 (<i>new</i>)	The MCMC proposes to introduce a new subsection clarifying the application of the EOI principle to the provision of MVNO Access, particularly given the imminent deployment of 5G mobile networks. In addition, the MCMC proposes to include an obligation for the Access Provider to ensure its wholesale business unit is exercising independent decision-making and is separate from its retail arm and implement appropriate measures to ensure such independent and separate decision-making.	Most recipients of this service commented on the criticality of timely access to 5G networks, as those networks are deployed across Malaysia. The MCMC is concerned to ensure that MNOs do not preference their own retail arms in the supply of such services, as this may place MVNOs at a significant competitive disadvantage.
6.13.13 (<i>new</i>)	<p>The MCMC proposes to introduce new provisions clarifying that, where an Access Seeker requests approval of marketing, pricing, product and other commercial initiatives, promotions or launches:</p> <ul style="list-style-type: none"> • such requests must be approved by the Access Provider within a reasonable timeframe, and in any event within the amount of time that the Access Provider would ordinarily take to approve its own commercial promotions and launches; and • the Access Provider’s approval must not be unreasonably withheld or delayed. 	During the initial information sessions, some operators complained that for “thin” MVNOs, approval of marketing, pricing and product campaigns by the MNO was unreasonably delayed. The MCMC is keen to avoid these issues arising in future, as such delays can inhibit the strength and emergence of competition in retail markets.
6.13.14 (<i>new</i>)	The MCMC proposes to include a new provision requiring Access Seekers who experience an insolvency event to provide all assistance reasonably required by the Access Provider to transition the Access Seeker’s end user customers so that they are the end user customers of the Access Provider.	Some Access Providers for this service commented during the initial information sessions that in the event of a default by an Access Seeker, there is limited recourse for Access Providers, given cancellation of the service results in poor end user experience. The MCMC is keen to ensure that end user interests are preserved in the event of an MVNO default, while balancing the disclosures required to be provided by MVNOs to MNOs.

34.27 The MCMC welcomes operator feedback on its proposed change in relation to MVNO Access.

Questions

- Question 45: Do operators agree with the proposed amendments to the Service Specific Obligations that apply to MVNO Access? Why or why not? If not, please specify and substantiate any proposed changes or amendments.
- Question 46: Should the MSA set out customer data protection obligations in relation to MVNO Access?

35 5G Services

Overview

- 35.1 The following 5G services were added to the Access List for the first time in 2021:
- (a) 5G Standalone Access; and
 - (b) 4G Evolved Packet Core ("EPC") with 5G Radio Access Network ("RAN").
- 35.2 As operators are aware, wholesale 5G services in Malaysia will be supplied solely by DNB.
- 35.3 The MCMC has introduced a series of Service Specific Obligations at subsection 6.15 of the MSA that apply to 5G Services.

Discussion

- 35.4 In response to an informal questionnaire on 5G services, operators made a relatively limited number of submissions in respect of the non-price terms and conditions that should apply to 5G services. The MCMC appreciates that this reflects the focus to date of industry on the Access List service description and the rollout model for 5G services in Malaysia, with the non-price terms and conditions always envisaged to follow in this subsequent inquiry.
- 35.5 Primarily, Access Seekers submitted that regulation should ensure that 5G services are supplied with appropriate service levels and QoS to permit the use of wholesale 5G services to be used as an input for retail 5G services.
- 35.6 Other submissions from operators are summarised below.
- 35.7 Altel submitted that non-price terms and conditions for 5G services should include the following:
- (a) MVNOs who obtain access to 5G services should not be prevented from revising the relevant package plan as this will take away the competitiveness and make it difficult for existing players to sustain their businesses;
 - (b) systems should allow for multiple billing cycles;

- (c) red tape on approval for any changes on configuration or new package plan should be improved, as speed of go-to-market is important;
 - (d) resolving service issues must be given higher priority and within agreed service level. Often, issues are not given priority by the host network providers (who owns the system);
 - (e) terms of payment must be clearly stated for Revenue Share arrangements; and
 - (f) systems must be able to provide accurate data, as this is impacting customer experience and reporting.
- 35.8 Celcom submitted that service levels should be imposed on DNB in order to support Access Seekers to comply with mandatory standards on QoS and SLAs. Celcom also suggested that there should be compensation recoverable from the Access Seeker if the QoS or SLA targets are not met, including delivery timeframes. In addition, Celcom views that coverage obligations and fulfilment should be included.
- 35.9 Celcom Timur (Sabah) proposed that anything that is not regulated should be subject to the freedom of commercial arrangements between Access Seekers and the Access Provider.
- 35.10 Digi submitted that in a competitive wholesale market, commercial and technical arrangements between the Access Provider and Access Seekers should as far as possible be left to commercial negotiations to allow for greater flexibility and agility to respond to different market conditions and demands over time. Digi further suggested that in the absence of competitive forces, there should also be a regulatory backstop for intervention should commercial negotiations fail to deliver an amicable solution.
- 35.11 As the Access Provider, DNB submitted that to safeguard the investments undertaken for the 5G network deployment in the country, certain minimum obligations should be imposed on the Access Seekers, including that:
- (a) Access Seekers shall have long-term upfront commitment for DNB's 5G network wholesale services to enable appropriate network planning for DNB's network. DNB notes that this is vital due to the CAPEX-intensive nature of deployment, especially in early years.
 - (b) Access Seekers shall collaborate with DNB to provide input on network planning and demand forecasting at a sufficient granularity (e.g., by geography, by usage pattern) to enable optimized cost, quality and demand.
- 35.12 DNB has published a RAO in which includes:
- (a) a requirement for operational procedures to be documented in an Operations Manual and made public on DNB's website;

- (b) a deployment schedule which requires DNB to set out a plan for the deployment of DNB's RAN;
- (c) a requirement for the Access Provider to implement continuous improvements in the provision of 5G Services; and
- (d) certain procedural obligations for introducing, changing and removing a 5G Service.

35.13 edotco proposed that the timeline to conclude access agreements with regards to the 5G services from DNB should be approximately 12 months. edotco also believes that the rest of the non-price terms and conditions should be maintained as it is.

35.14 Maxis proposed to add a new additional section on Service Specific Obligations for the 5G wholesale services to include the following scope and obligations:

- (a) application;
- (b) form of 5G RAN Sharing;
- (c) forecast obligations;
- (d) demand list;
- (e) service qualifications;
- (f) service activation/delivery timeline;
- (g) public information;
- (h) plan and implementation;
- (i) relevant MSQoS;
- (j) service ordering and fulfilment obligations and timeline;
- (k) service assurance obligations and timeline;
- (l) reporting obligation;
- (m) equivalence of input;
- (n) non-discriminatory and exclusivity;
- (o) modularity;
- (p) billing and payment;
- (q) minimum period;
- (r) privacy;
- (s) security;

- (t) customer service and assurance; and
- (u) others as required.

35.15 In addition to the above, Maxis asserted that the agreements between DNB and Access Seekers should also include a provision allowing termination for convenience by the MNOs only in the event of any relevant material regulatory changes. Maxis submitted that this should be defined in the MSA and RAO.

35.16 My Evolution submitted that improvements should be made to the “best efforts” standards Access Providers in Malaysia are currently providing under existing SLAs to Access Seekers. My Evolution highlighted that over the last couple of months, many Access Providers in Malaysia had major interruptions of services nationwide.

35.17 In addition, My Evolution do not foresee the ability to market IoT solutions for any of the 5G benefits based on real time connectivity for healthcare, or mission critical applications, if the QoS is not improved by Access Providers with guaranteed SLAs. Only non-critical applications will remain possible.

35.18 TM’s position on the non-price terms and conditions that should apply to access to 5G services is summarised as follows:

- (a) **Service fulfilment timeline:** The Access Provider shall comply to the service fulfilment timelines and obligations for the 5G Network Service especially for the 5G delivery of new industries vertical which is not part of the annual commercial rollout;
- (b) **Restriction of reselling:** The Access Seeker shall not have any restriction on reselling 5G services on any customer segment;
- (c) **Public Information:** The Access Provider must make available access to a mechanism which allows Access Seekers to select all existing and new 5G sharable sites location for multi-operator core network (**MOCN**) sharing consideration including spectrum layer etc.;
- (d) **Implementation and migration plan:** The Access Provider shall maintain and publish up-to-date implementation plan that provides its procedures and timing for the 5G sites and service offering;
- (e) **Service assurance timeline:** The Access Provider shall comply with the service assurance timeline and obligations for the 5G service reporting; and
- (f) **Network performance KPI:** The Access Provider shall comply to the service quality for the 5G Network Service in accordance with MSQoS.

35.19 U Mobile submitted that DNB should be mandated to:

- (a) provide Access Seekers “quality assurance” and SLAs that warrant high and consistent subscriber experience with peak rate of 1Gbps and average speed of well beyond 100Mbps (better customer experience compared to 4G);
- (b) provide seamless service continuity and mobility between 5G and 4G (Access Seeker’s 4G network), with 4G service priority to be provided by the Access Seeker’s 4G network;
- (c) leverage on existing infrastructure, for cost effectiveness;
- (d) provide coverage rollout based on mass consumer and enterprise bespoke requests;
- (e) provide for 5G resource sharing and addressing demands on “equal access”, i.e.:
 - (i) all Access Seekers to be supported by the same grade-of-service with same customer experience; and
 - (ii) all Access Seekers to have access to a clearly defined range of different services and qualities to meet requirements of users with higher service level demand;
- (f) ensure resiliency and robustness and addressing any single-point-of-failure covering potential risk e.g., cyber security;
- (g) provide plans and processes to address network and data information security and confidentiality; and
- (h) provide appropriate systems to enable efficient operations and monitoring, and to allow Access Seekers visibility on 5G network status via their respective Network Operation Centres (**NOC**) and/or Service Operation Centres (**SOC**).

35.20 U Mobile also submitted that certain onerous obligations on Access Seekers should be excluded such as high security sum requirements, resource charges and any other ancillary charges that could unnecessarily increase the cost of accessing 5G Services. U Mobile also suggested that flexibility should be afforded to Access Seekers to seek additional required capacity, to vary access request after the initial request has been committed and to incorporate a variable forecast requirement. In addition, U Mobile requested that the MCMC ensure that the access standards are explicitly documented and communicated with sufficient clarity and detail to avoid confusion or ambiguity, as well as ensuring accountability and good governance.

35.21 YTL requested that service specific obligations relating to POI, QoS and SLAs, coverage, change management to integrate existing network with DNB (performance management, fault management, security management) and compensation for non-compliance to QoS and SLAs should be imposed in respect of 5G services.

35.22 In response to submissions from Altel, Celcom, My Evolution, TM and U Mobile regarding service levels, detailed service levels for 5G services may be considered as part of a separate determination by the MCMC on the MSQoS (which must be reflected within each RAO in accordance with subsection 5.3.3 of the MSA). However, the MCMC repeats its comments in paragraph 27.39 that detailed SLAs (e.g. for fault rectification), have been typically left to commercial negotiation between Access Providers and Access Seekers and the MCMC's preliminary response is to give DNB and Access Seekers an opportunity to agree these matters commercially in the first instance.

35.23 In response to other submissions from Altel, the MCMC notes that:

- (a) given the nature of 5G wholesale services, the MCMC's preliminary view is to include in the MSA a monthly billing cycle to reflect that set out in respect of the MVNO Access Service, noting that operators are free to agree alternative billing cycles if desired;
- (b) it proposes to include Service Specific Obligations for 5G Services to require the Access Provider to approve commercial incentives / changes promptly, akin to those proposed in respect of the MVNO Access Service as discussed in paragraph 34.26 above;
- (c) subsection 5.3.3 of the MSA already requires RAOs to set out the full terms and conditions of supply. To the extent Access Seekers decide to enter into bespoke commercial Access Agreements containing revenue share or other payment arrangements differing from the Access Provider's RAO, it is the responsibility of the parties to ensure the access agreement contains all relevant information. Parties can approach the MCMC for resolution of any issues in negotiating Access Agreements; and
- (d) the MCMC invites Altel and other Access Seekers to provide specific details and examples regarding any difficulties experienced with the provision by Access Providers of inaccurate data in other contexts, so that the MCMC may consider any targeted MSA amendments required to strengthen Access Provider obligations.

35.24 Regarding Celcom's submissions that the MSA should include obligations as to 5G coverage obligations and fulfilment timeframes, the MCMC notes that DNB's licence application already sets out certain coverage commitments. The MCMC invites further submissions from operators regarding any specific fulfilment obligations desired by Access Seekers.

35.25 Furthermore, in response to Celcom's submission that there should be compensation recoverable from the Access Seeker if the QoS or SLA targets are not met, the MCMC has proposed to include a rebate for failure to meet the relevant service levels which will be those set out in the RAO until any applicable mandatory standard on QoS comes into effect.

35.26 The MCMC does not presently consider that Access Seekers should be required to commit to long-term arrangements upfront, as proposed by

DNB. DNB will be the sole provider of 5G wholesale services, which the MCMC considers provides sufficient certainty and investment incentives for DNB to roll out its 5G network. Further, the MCMC understands that DNB will adopt a phased approach to 5G network rollout, which will further mitigate the revenue sufficiency risk faced by DNB. The MCMC may reconsider this proposition once the roll out of the 5G RAN is complete.

35.27 As suggested by DNB, the MCMC proposes to include forecasting provisions in the MSA to assist DNB in network planning and demand forecasting. The MCMC proposes to adopt the same forecasting provisions set out in respect of the Service Specific Obligations for the MVNO Access service, to facilitate comment and consideration by operators. The MCMC has also proposed to include the abovementioned provisions listed in paragraph 35.12 in the MSA but invites operators to provide further submissions on such matters.

35.28 In response to edotco, the MCMC proposes extending to 5G Services the general obligation that Access Agreements should be concluded within 6 months rather than 12 months as proposed by edotco, which the MCMC considers could unnecessarily hamper negotiations in circumstances where timely 5G roll-out and take-up is critical for Malaysia's digital advancement.

35.29 In response to Maxis, the MCMC notes that the Operator Access Obligations outlined in section 5 of the MSA already applies to all network facilities providers and/or Services listed in the Access List Determination, including 5G services, and sufficiently addresses the list of obligations which Maxis has proposed should be included.

35.30 The MCMC does not agree to Maxis' submission proposing to allow termination for convenience by the MNO in the event of any relevant material regulatory changes to be defined in the MSA and RAO. The MCMC expects the parties to come to a negotiated agreement as to the impact of any regulatory changes as previously addressed in paragraph 19.29.

35.31 Regarding TM's submissions proposing that there be:

- (a) no restriction on the Access Seeker to resell 5G services on any customer segment; and
- (b) obligations on DNB to provide public information to allow Access Seekers to select all existing and new 5G sharable sites location for MOCN sharing consideration,

the MCMC notes that subsections 4.4.2 and 6.9.13 of the MSA already sufficiently address these proposals respectively.

35.32 The MCMC is open to considering TM's proposal that DNB should comply with service fulfilment timelines and service assurance timelines but has received limited submissions regarding whether and what timelines should apply. Given the nascency of 5G Services, the MCMC is conscious that imposing these timelines in the abstract may lead to increased cost burdens on DNB, who may be forced to pass these costs onto Access Seekers. Accordingly, while the MCMC's preliminary view is not to include these timelines, the

MCMC encourages operators to make further submissions regarding this issue.

- 35.33 Similarly, the MCMC has proposed to include an obligation on DNB to maintain an implementation and migration plan outlining procedures and timing for 5G sites and service offering proposed by TM. The MCMC has included a provision in the MSA which replicates the obligation in DNB's RAO to establish a deployment schedule which sets out an indicative plan for the various phases in the Access Provider's 5G RAN.
- 35.34 The MCMC notes that other submissions made by TM suggesting that there be no restrictions on reselling 5G Services, and that DNB make publicly available all existing and new 5G sharable sites location are sufficiently covered by subsection 4.4 and subsection 6.9.13 of the MSA respectively.
- 35.35 The MCMC also notes that DNB will be required to offer POI and co-location at each technically feasible point in accordance with paragraph 5.8.6(b) of the MSA.
- 35.36 In response to U Mobile's proposal to include obligations on DNB with respect to service continuity and mobility between 5G and 4G networks, the MCMC notes that it has received limited submissions on this matter and thus the MCMC's preliminary view is to not include such obligations.
- 35.37 Regarding U Mobile's submission proposing that DNB be mandated to leverage existing infrastructure and rollout the network based on mass consumer and enterprise bespoke requests, the MCMC notes that the terms of DNB's network facilities licence already require DNB to provide and comply with a detailed business plan to be approved by the MCMC. The detailed business plan will set out the implementation plan, service coverage and rollout timeline of 5G services.
- 35.38 In response to other submissions from U Mobile, the MCMC notes that:
- (a) subsection 6.15.17 of the MSA already requires DNB to provide 5G Services on an EOI basis to Access Seekers;
 - (b) subsection 5.3.9 of the MSA already prohibits DNB from imposing security requirements on the Access Seeker unless DNB determines that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk;
 - (c) resource charges may be necessary for DNB to sufficiently fulfil an Order submitted by an Access Seeker, and therefore the MCMC considers the provision allowing the Access Provider to charge certain resource fees be retained in the MSA;
 - (d) DNB may request the Access Seeker to enter into a standard confidentiality agreement covering data information security and confidentiality which according to subsection 5.3.8 of the MSA must be reciprocal between the parties; and

- (e) the proposal that DNB should be mandated to provide appropriate systems facilitating the Access Seeker’s visibility on 5G network status may be considered as part of a separate determination by the MCMC on the Mandatory Standard for QoS.

35.39 Finally, the MCMC agrees generally with the views of Celcom Timur (Sabah) and Digi that parties should be given freedom to enter into commercial negotiations with DNB to preserve flexibility and respond to market conditions. The MCMC notes that this has been the MCMC’s general preference when considering the inclusion of any service level or similar non-price terms in the MSA and it would be inappropriate for the MCMC to pre-emptively regulate these elements of 5G services without first giving operators the opportunity to agree these conditions commercially.

MCMC preliminary view

35.40 The MCMC proposes to introduce a new subsection 6.15 to the MSA setting out draft Service Specific Obligations in respect of the 5G services that are now listed on the Access List. In particular, the MCMC has mirrored the DNB RAO provisions relating to the deployment schedule, changes to the technical details of a service, introduction of a new service and removal of a service in the MSA.

35.41 The MCMC’s preliminary view is that these obligations should apply equally to both the 5G Standalone Access and 4G EPC with 5G Radio Access Network RAN services.

Questions

Question 47:	Do operators agree with the proposed Service Specific Obligations that apply to 5G services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.
Question 48:	Should any different Service Specific Obligations apply as between 5G Standalone Access and 4G EPC with 5G Radio Access Network RAN? If so, please specify and provide details.
Question 49:	Do you agree with the timeframes proposed by the MCMC in respect of the provision of 5G Services, including negotiation timeframes, the time for acceptance or rejection of orders, delivery timeframes and billing cycles?

36 IP Transit Service

36.1 The MCMC has determined to include IP Transit Service on the Access List under the Access List Review.

36.2 The MCMC has included Service Specific Obligations in the MSA in respect of IP Transit Services which broadly align with those currently applicable to Interconnect Link Services.

- 36.3 The MCMC notes that it did not ask any specific questions regarding the IP Transit Services in its informal questionnaire and appreciates that stakeholders have not yet had an opportunity to consider terms of supply for these services. The MCMC encourages feedback from operators on such terms of supply for IP Transit Services.

Questions

Question 50: Do you have any comments on the proposed Service Specific Obligations for IP Transit Services, as set out in subsection 6.16 of the draft MSA? Alternatively, do you consider that no Service Specific Obligations should apply to the supply of the proposed new IP Transit Services? Please provide details, including any additional Service Specific Obligations that you consider are required beyond those set out in subsection 6.16 of the draft MSA.

37 Domestic Inter-Operator Roaming Service

- 37.1 Pursuant to the Access List Review, the MCMC determined to include a Domestic Inter-Operator Roaming Service on the Access List.
- 37.2 The MCMC has included Service Specific Obligations in the MSA in respect of Domestic Inter-Operator Roaming Services which broadly align with those currently applicable to MVNO Access Services.
- 37.3 The MCMC notes that stakeholders have not yet been provided with an opportunity to consider any terms of supply for these services, as the MCMC did not ask any specific questions regarding this in its informal questionnaire. The MCMC encourages feedback from operators on the proposed Service Specific Obligations to be applied in relation to Domestic Inter-Operator Roaming Services.

Discussion

- 37.1 Maxis recommended that price be commercially negotiated for market efficiency. However, the MCMC notes that price-related matters are outside the scope of this inquiry and may be subject to a later MSAP inquiry.
- 37.2 In relation to the provisions relating to the technical details for access to the Domestic Inter-Operator Roaming Service, Maxis submitted that:
- (a) Access Providers require time to develop a product prior to offering it to Access Seeker;
 - (b) Access Seekers should have their own core network in Malaysia; and
 - (c) technical testing should be required to test new products, including that proof of concept and resource charges should apply.
- 37.3 TM made a number of submissions relating to Domestic Inter-Operator Roaming Services, including:

- (a) that the ordering procedure should be:
 - (i) the Access Provider acknowledge receipt of an order within 2 Business Days;
 - (ii) completion of post-Order Service Qualification within 5 Business Day; and
 - (iii) time for acceptance or rejection within 10 Business Days with grounds of refusal;
- (b) that the service fulfilment timeline should be:
 - (i) 4 months for new domestic roaming links with new infrastructure;
 - (ii) 2 months for new domestic roaming links with existing infrastructure;
 - (iii) 30 days for change of capacity to existing facilities and services;
 - (iv) 3 Business Days for activation and deactivation of up to 10 Tracking Area Codes; and
 - (v) 7 Business Days for activation and deactivation of more than 10 Tracking Area Codes.
- (c) a requirement that the Access Provider report to the Commission the locations at which:
 - (i) the Access Provider offers to supply any Domestic Inter-Operator Roaming Services including to its own end-user customers;
 - (ii) the Access Provider supplies Domestic Inter-Operator Roaming Services to Access Seekers; and
 - (iii) the Access Provider supplies alternative commercially negotiated services to another Operator using the Domestic Inter-Operator Roaming Service and any details of each such commercially negotiated service which may be requested by the Commission from time-to-time; and
 - (iv) each class of service or QoS Class;
- (d) the requirement to provide the Domestic Inter-Operator Roaming Service in accordance with proposed parameters in relation to availability, accessibility, retainability, integrity, bit error rate and latency; and
- (e) to prohibit the Access Provider from using any of the Access Seeker's customer information to market or offer to supply its goods or services.

- 37.4 The MCMC agrees with Maxis' view that there should be a prescribed timeframe for developing a product prior to offering it to the Access Seeker. The MCMC has proposed 6 months as the timeframe within which a service is to be offered on a trial basis following the commencement of the Commission Determination on the MSA, however invites further submission from operators on this point.
- 37.5 The MCMC however, disagrees with Maxis' proposition that Access Seekers should have their own core network. The MCMC considers that such an obligation would inhibit many operators from access to the roaming service and is of the view that all operators should have access to Domestic Inter-Operator Roaming Services, regardless of whether they own a core network. This would ensure robust competition in downstream markets and therefore ultimately increase the LTBE.
- 37.6 In relation to the technical testing and resource charges proposed by Maxis, the MCMC notes that resource charges are already covered under subsection 5.7.28 of the MSA.
- 37.7 In response to TM's submissions, the MCMC notes:
- (a) the MCMC has provisionally drafted a process for ordering the Domestic Inter-Operator Roaming Service in subsections 6.14.5 and 6.14.6 of the MSA, and invites further submissions from operators on their views;
 - (b) the MCMC agrees with the service fulfilment timeline proposed by TM however invites feedback from operators on the proposed timeline;
 - (c) in response to the request to report on the locations where the Access Provider supplies roaming services to the Commission, the MCMC proposes to include a general obligation on the Access Provider to report any information and details relating to the Domestic Inter-Operator Roaming Service which may be requested by the Commission.

MCMC preliminary view

- 37.8 The MCMC has proposed a new subsection 6.14 to the MSA setting out draft Service Specific Obligations in respect of the Domestic Inter-Operator Roaming Service that are now listed on the Access List.

Questions

Question 51: Do you have any comments on the proposed Service Specific Obligations for Domestic Inter-Operator Roaming Service, as set out in subsection 6.14 of the draft MSA? Alternatively, do you consider that no Service Specific Obligations should apply to the supply of the proposed new Domestic Inter-Operator Roaming Service? Please provide details, including any additional Service Specific Obligations that you consider are required beyond those set out in subsection 6.14 of the draft MSA.

38 Standard Administration and Compliance

Overview

- 38.1 The Standard Compliance and Administration provisions are currently set out under section 7 of the MSA.
- 38.2 It predominantly covers the following:
- (a) compliance with the MSA is mandatory. This subsection sets out the penalties for non-compliance and how compliance can be a defence against any action (subsection 7.1);
 - (b) how the MSA may be implemented, for example, in respect of existing access agreements and RAOs (subsection 7.2);
 - (c) the MCMC may request a review of a person's compliance with the MSA at any time (subsection 7.3);
 - (d) the notice procedures in place where the MCMC removes, varies or replaces Facilities / Services in the access list (subsection 7.4); and
 - (e) the circumstances under which the MSA may be reviewed by the MCMC and details around the review process (subsection 7.5).

Discussion

- 38.3 The MCMC notes that no comments were received from operators in relation to the Standard Administration and Compliance provisions. Presumably, this means that these provisions are acceptable to operators.

MCMC preliminary view

- 38.4 The MCMC proposes to retain the existing Standard Administration and Compliance provisions set out in section 7 of the MSA without amendment.

Questions

Question 52: Do operators have any feedback on the current Standard Administration and Compliance provisions?

39 Dispute Resolution

Overview

- 39.1 The Dispute Resolution Procedures are set out in Annexure A of the MSA.
- 39.2 In the 2016 MSA Review, there was overwhelming support from operators that no substantive change to the Dispute Resolution Procedures were required. The MCMC also considered the lack of use of the Dispute Resolution Procedures as an indication of the industry not having much issue in resolving disputes.

- 39.3 In its informal questionnaire on the MSA for this review, the MCMC sought operator feedback on the Dispute Resolution Procedures. In particular, the MCMC asked operators if they had used the Dispute Resolution provisions and whether they had any suggestions on procedures that should be reviewed.

Discussion

- 39.4 The MCMC notes that most operators that responded to the MCMC's informal questionnaire had not used the Dispute Resolution Procedures to date. Further, most of the respondents were broadly happy with the current Dispute Resolution Procedures in the MSA and did not have any suggested improvements.
- 39.5 For example, TM submitted that generally, commercial negotiations occur between the operators based on mutual agreement and this has been effective up until now. In cases where there is disagreement, operators will refer to the Dispute Resolution mechanism under the Master Service Agreement to settle the matter. TM is of the view that the Dispute Resolution Procedures is adequate.
- 39.6 TTdC submitted that most of the disputes are in relation to pricing which it has managed to resolve upon involvement of both parties' management teams.

Requested removal of Dispute Resolution Procedures

- 39.7 Celcom Timur (Sabah) submitted that the parties should be given the freedom to agree on the dispute resolution platform to be used in the event of a dispute, and that the Dispute Resolution Procedure can be removed from the MSA or otherwise that subsection 2.1 of Annexure A should be amended so that compliance with the Dispute Resolution Procedures is voluntary rather than mandatory.
- 39.8 PPIT similarly submitted that it wished to dispense with certain procedures in its dealings, although it had not used the Dispute Resolution Procedures to date. As the supply of towers is a somewhat straightforward transaction and disputes (if any) relate to pricing, certain levels of the Dispute Resolution Process may be irrelevant.
- 39.9 U Mobile suggested change to the Dispute Resolution Procedure to remove the Interconnect Steering Group provisions, as operators are already expected to resolve the dispute between themselves at the inter-party working group stage.
- 39.10 The MCMC does not propose to remove the Dispute Resolution Procedures in Annexure A or remove the Interconnect Steering Group provisions as most other operators submitted that the existing dispute processes are still appropriate. In any event, parties already have the opportunity for parties to resolve the matter amongst themselves without the MCMC's intervention, as well as the opportunity to escalate a dispute to an Interconnect Steering

Group if necessary. The MCMC accordingly considers that the existing approach strikes the right balance.

MCMC's intervention and adjustment to provisions

39.11 Maxis submitted that the Dispute Resolution Procedures should be tightened up by the MCMC. In particular:

- (a) Maxis is of the view that Dispute Resolution Procedures in the MSA should not insist upon a particular format, e.g., the Inter-party Working Group and/or Interconnect Steering Group. It should suffice for parties in substance to have attempted to resolve the dispute amongst themselves. Maxis notes that equivalent access Dispute Resolution Procedures issued by other regulators, such as Office of Communications of UK and the Australian Competition and Consumer Commission, do not specify the format of dispute resolution between the parties before the parties can submit their dispute to the regulator for resolution. Maxis thinks the following clauses in Annexure A should be amended:
 - (i) subsection 2.3 should provide some guideline on the criteria that will be used by the MCMC to determine whether the conditions in paragraphs 2.3 (a), (b) and (c) have been satisfied;
 - (ii) to include a new subsection 3.9 that requires the Parties to a Dispute to strictly comply with the timeline stated in this Annexure A throughout the Dispute Resolution Procedures and shall not delay the process, failing which, a Party has the right to directly file a Dispute Resolution to the MCMC;
 - (iii) to include new subsection 3.10 to mirror CMA subsection 86(2)(a) that where an agreement is not or will not be reached within a reasonable timeline, then the Parties can directly file a dispute resolution with the MCMC. The MSA must align with CMA on Dispute Resolution in its entirety;
 - (iv) subsection 5.1 should clarify whether the 10 Business Days' Notice to the other party stating its intention to escalate the issue and the notification where a party wishes to refer the issues to ISG are the same notice or two separate notices;
 - (v) subsection 5.3 should clarify the date/notice that the requirement for ISG to meet within 10 Business Days accrues from;
 - (vi) paragraphs 7.3(a) to (d) currently sets out the circumstances only applicable for voice and messaging interconnect traffic. This paragraph should be expanded to include other circumstances/facilities/services where disputes may arise e.g., error in invoice, disagreement on the rates, etc.; and

- (vii) subsection 7.11 should clarify what the Billing Dispute Escalation Procedure mentioned in this subsection is - should it follow the IWG → ISG → MCMC escalation process?
 - (b) Maxis submitted that, for access to facilities that are not on the Access List, there is little recourse to the regulator to resolve issues.
 - (c) Maxis further submitted, in terms of the dispute process, from Maxis' experience, disputes between Access Seekers and Access Providers under commercial agreements are usually not addressed effectively where the dispute concerns costs/prices, billing or payment. As an example, Maxis experienced this in the process of migrating its commercial agreements for transmission services from various Access Providers (e.g., TM, Celcom Timur (Sabah), Fibrecomm).
- 39.12 An operator submitted that in circumstances where there is clear evidence of an Access Provider not complying with the regulated terms and conditions in the Access List, MSA and MSAP, the MCMC should be able to immediately intervene the negotiation and/or dispute resolution process and direct the Access Provider to comply with the respective terms and conditions. The operator submitted that the MCMC should not insist that the Access Seeker and the Access Provider go through or complete the entire process of the dispute, e.g., Inter-party Working Group, Interconnect Steering Group, etc. as the process may be further manipulated by the Access Providers by intentionally delaying the negotiation and/or the dispute resolution process.
- 39.13 Furthermore, the operator stated that it has been in a long drawn-out dispute over MSA terms with an Access Provider. That operator has previously written to the MCMC to express its concerns that the Access Provider had been behaving in bad faith to delay resolution of disputes through tactics, such as refusing to provide information requested, refusing to comply with the terms and conditions in the Access List, MSA and MSAP, and including unreasonable terms and conditions in the Access Agreement. The operator felt these actions deterred a meaningful progression of access agreement negotiations.
- 39.14 Another Access Seeker commented on difficulties in negotiating and agreeing rates for access to poles from an Access Provider. The Access Seeker commented that it was involved in a dispute over the implementation of the MSAP rates which took around 2 years to resolve. The Access Seeker submitted that the resolution of those disputes was prolonged due to a lack of clear process for dispute resolution and commented that the Access Provider always takes longer to reply to the issues raised by the Access Seeker. The Access Seeker also stated that there were also cases where the Access Provider took drastic steps to downgrade the capacity of the transmission link subscribed by the Access Seeker, which caused congestion in the Access Seeker's network and resulted in service disruption to end users.
- 39.15 The MCMC notes any substantive questions relating to access pricing is beyond the scope of this inquiry, but the MCMC encourages operators to

provide details to the MCMC of any disputes or difficulties which they are unable to resolve between themselves. The MCMC can review such disputes as part of the MCMC's usual monitoring and enforcement functions.

- 39.16 TTdC suggested that the MCMC should refrain from being involved in any ongoing disputes and should only play a part in the dispute as per the current process, i.e., post ISG.
- 39.17 The MCMC notes that only one operator raised the need for more proactive intervention by the MCMC in the Dispute Resolution Procedure, while one operator considers the existing level of intervention appropriate. More generally, the industry's lack of use of the Dispute Resolution Procedure indicates that the industry is not experiencing issues in resolving disputes. Accordingly, the MCMC does not propose to substantially amend Annexure A to increase or reduce the MCMC's role in the Dispute Resolution Procedure.
- 39.18 Nonetheless, in response to the proposition to remove the step requiring parties to refer the dispute to the Interconnection Steering Group and allow parties to refer disputes directly to the MCMC. The MCMC proposes to retain the step and give each party the option to refer the issue to either a Technical Expert or the Commission for final arbitration.
- 39.19 If operators do face barriers in accessing listed Facilities and Services at any stage during negotiations or during the Dispute Resolution Procedure, operators can also submit a complaint to the MCMC in accordance with section 69 of the CMA.

Independent panel

- 39.20 YTL Communications suggested that the MCMC set up an independent panel with the relevant expertise to hear access disputes, with a requirement for transparency such that members of the panel should be made known, and the decision reached (which will also be deemed a decision of the MCMC) should be clear and supported by facts.
- 39.21 The MCMC notes that a similar process already exists under Annexure A whereby an independent "Technical Expert" can be appointed to arbitrate the dispute. Under the existing Dispute Resolution Procedure, the "Technical Expert" must hold the appropriate qualifications and experience to arbitrate the dispute and deliver his or her award after a fair hearing (either orally or in paper). The MCMC accordingly disagrees that an independent panel should additionally be set up. However, the MCMC welcomes further feedback on how the "Technical Expert" process can further be improved.

Billing Disputes

- 39.22 In relation to subsection 7.6 in the Dispute Resolution Procedures set out in Annexure A of the MSA, Webe commented that, in practice, it takes a different approach such that it first makes payment then commences the billing dispute procedure. Once a billing dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, the parties agree on a timeframe for issuance of a credit note without interest. Webe

accordingly stated that the MCMC should consider a simplified mechanism of interest-charging for operational efficiency.

39.23 For greater efficiency purposes, Astro recommended that the MCMC revise respective sections of the MSA to be in line with the current industry’s practice (i.e., the right to withhold invoice amount).

39.24 The MCMC considers the current mechanism for Billing Dispute resolution, including the requirement of paying interest in subsection 5.11.15 in the MSA, is reasonable and a well-recognised process in the industry for resolving billing disputes. It strikes an appropriate balance between the differing interests of the parties, where one party is permitted to withhold money (sometimes, for a long period of time or for an amount that is significant to the other party) subject to notice and good faith requirements to the benefit of the other party. Considering that no other operators raised similar concerns, the MCMC does not propose to amend this section of the MSA.

MCMC preliminary view

39.25 The MCMC proposes the following amendments to the Dispute Resolution Procedures:

Reference	Summary of proposed change	MCMC rationale
4.5 and 5.1 of Annexure A (<i>new</i>)	The MCMC proposes to introduce a new subsection which give parties the option of either referring the issue to the Interconnect Steering Group, or referring the issue to a Technical Expert (if the issue in dispute is technical in nature) or directly to the Commission for final arbitration, with consequential amendments in subsection 5.1 of Annexure A to reflect the introduction of subsection 4.5.	In response to an operator’s submission relating to the requirement to step through all procedures in order to refer a dispute to the Commission, the MCMC considers it appropriate for parties to elect to refer a dispute to the Commission.

Questions

Question 53: Do you agree that the current Dispute Resolution Procedures set out under Annexure A of the MSA can be retained without amendment, or do you have any suggested improvements to these provisions?

40 Other Submissions

Overview

40.1 Operators also made several other submissions relating to the MSA more generally. Those submissions, and the MCMC’s views, are set out below.

Discussion

Commercial negotiation for terms not set out in the MSA

- 40.2 Allo submitted that the commercial effective date of Access Agreements may be addressed in a side letter to the Access Agreement.
- 40.3 Another operator also considers that commercial negotiation of access agreement terms that are not provided in the MSA is not as effective for small Access Seekers. Although the operator is yet to have any dispute on any terms with the respective Access Providers, it has a few terms that could potentially develop into disputes during the course of negotiations. The operator also foresees potential dispute even with the terms provided in the MSA, for example the monthly recurring charges of the Layer 3 HSBB Service Gateway of an Access Provider is being priced at a price higher compared to the MSAP based on the justification that the Access Provider provide higher service availability which is not necessary for the Access Seeker. However, what has been outlined by the Access List Determination and MSA, is already sufficient for the Access Seekers. There should be options offered to the Access Seekers as per the MSA rather than only offering higher service availability with extra charges.
- 40.4 Celcom submitted that disputes with the incumbent operator on bottleneck facilities have not been addressed effectively and take a long time to resolve, and that Celcom faces challenges on operational matters relating the HSBB Network Service, as set out in paragraph 27.41 above.
- 40.5 In relation to access terms not set out in the MSA, edotco generally takes an approach where it explains the basic commercial principles relevant to the issue. For example, the minimum term for edotco's Infrastructure Sharing is generally 10 years on a site by site basis, which is longer than the minimum prescribed time of 3 years. When edotco negotiates the minimum term, it explains in a holistic manner the rationale for the longer term and how it works to the Access Seeker's benefit. This has been proven to work over the past few years. In the event of disputes on certain terms in the MSA, parties will directly seek for guidance from MCMC for clarification before an agreement on the terms is reached.
- 40.6 Fibrecomm submitted that in its experience, commercial negotiation is more effective and disputes can be resolved when both parties negotiate in good faith.
- 40.7 Maxis commented that where access agreement terms are not set out in the MSA, the parties will try to use the most related terms and conditions from the Access List, MSA or MSAP, failing which they will benchmark existing industry best practice. Challenges remain where one party is vexatious and does not negotiate in good faith, in which case deadlocks may occur which are not resolved until the Access Seeker accepts poor terms until the next Access List or MSA Review. Maxis proposed that more regular inquiries should be held as a remedy where there is sufficient public interest in a matter.

- 40.8 MyKRIS mainly acquires the End-to-End Transmission Service and a small volume of Infrastructure Sharing. MyKRIS submitted that it has experienced no issues in dealing with the Access Provider, with no major disputes and a smooth experience.
- 40.9 PPIT submitted that commercial negotiation is based on understanding and co-operation between the parties involved, and on mutual respect, particularly as tower construction involves extensive capital, so the relationship naturally has to be long term in order for the undertaking to be financially viable. PPIT has undertaken extensive negotiations with many Access Seekers and managed to resolve issues effectively over the years.
- 40.10 REDtone considers that effective commercial negotiation is very dependent on the competition conditions, such that if there is competition, negotiation with Access Providers is effective and fair. In REDtone's commercial agreements, the dispute clauses are not as extensive as those in the MSA. Further, negotiation with Access Providers takes time particularly for terms that are not consistent with MSA, which requires further discussion, negotiation, internal processes, internal approvals, all of which impacts implementation of effective price.
- 40.11 Sacofa submitted that parties will typically negotiate terms of access that are not in the MSA until they are able to reach a consensus on the terms. Typical issues include pricing, SLA, delivery dates and liquidated damages.
- 40.12 TTdC submitted that it makes available on its website a template with standard terms and conditions for its commercial services. The template is flexible and can be changed based on pricing upon negotiation, subject to the Access Seeker's requirement and approval by TTdC's management. The most disputed terms for negotiation are in relation to pricing, which TTdC typically resolves upon involvement of both parties' management teams.
- 40.13 TM commented that most issues can be resolved through commercial negotiation, with most negotiation, especially with larger operators, focusing on the terms and conditions and pricing for Facilities and Services. TM has only had to resolve a dispute through the MSA on one occasion, which was decided by the MCMC.
- 40.14 As an Access Provider, TM finds newly regulated services to be a challenge during negotiation, as the way TM productises the services may not necessarily be consistent with the regulated terms in the MSA. As such, TM typically explains to the Access Seeker the reason why TM has amended the terms of the MSA, and the parties would then reach a middle ground to finalise the terms.
- 40.15 U Mobile submitted that it is common practice in the industry to procure Access List services such as Transmission Services and Infrastructure Sharing under commercial agreements. Notwithstanding, it is still useful to include all Access List services in the MSA to provide the necessary guidance on the reasonableness of the terms relating to the services.

- 40.16 Webe commented that the principle of commercial agreements should adapt those of the MSA, which protects both Access Seekers and Access Providers when it comes to issues like disputes and its ultimate resolution.
- 40.17 The MCMC notes that the majority of operators appear to have been able to resolve disputes during negotiation relating to terms and conditions not set out in the MSA, suggesting that commercial negotiation is working effectively in this context. As the MCMC has noted in the past and earlier in this PI Paper, it does not consider it appropriate for the MSA to operate as an exhaustive set of terms and conditions which must be factored into Access Provider RAOs and Access Agreements.
- 40.18 In this respect, many of the matters noted by operators as typically attracting the majority of negotiation effort are more appropriately negotiated on a commercial basis between operators, subject to the MSAP (for price terms) and MSA (for non-price terms) where relevant. The MCMC considers it would be overly prescriptive and inflexible for the access regime to set out terms relating to operational matters such as rebates for service level agreements and liquidated damages where the industry reports that commercial negotiation for these matters is working effectively. Further, pricing matters are beyond the scope of this inquiry.

Form and complexity of the MSA

- 40.19 edotco commented that in overall terms the MSA, at 165 pages, is one of the longest telecommunications access regulatory document globally. edotco submitted that the MSA should be simplified and focused on the key aspects rather than trying to completely cover each and every issue.
- 40.20 TTdC submitted that the MSA does not limit any opportunity to negotiate on a commercial basis similar items which are governed under the MSA. Operators may accordingly opt to follow either the MSA or the commercial route in arriving at an access agreement based on their own justifications. Whilst operators may be drawn by the MSA in view of the seemingly lower access rates, operators are also cognisant of the fact that those rates reflect limitations in the scope of the services to be accessed. TTdC considers that the rates mandated by MCMC through the MSAP are based upon TM's network costs which is fair if the incumbent is the only operator mandated by the MSAP prices. In jurisdictions such as the UK and Singapore, access prices are set based upon each operator's network and applicable only to that particular operator. Applying MSAP prices across all operators has the implication of operators not investing because there is no incentive for investment if the wholesale prices that these alternate operators have to offer does not encourage reinvestment or attractive returns.
- 40.21 TM submitted that generally, the MSA is currently very prescriptive. As the MSA has been in operation for many years and the terms and conditions of Access Agreements are currently well established, TM suggested that the MSA move towards setting out key requirements / principles only (e.g., key timelines, reasons for refusal, non-discriminatory principles etc.) rather than prescribing the detailed processes/procedures, which can be restrictive. This

would allow operators some flexibility to agree on certain processes and procedures which are better suited to their current operations. Some of the current prescribed procedures may not be optimal for operators and even though operators agree to alternative processes, it may be a hindrance to registration due to deviation from the detailed MSA terms and conditions.

40.22 YTL submitted that Access Agreements and commercial agreements should be kept separate. In YTL's view:

- (a) Access Agreements should deal with Access List Facilities and Services and force Access Providers to open up their facilities on a non-discriminatory basis according to the terms of the Access Agreement, with the MSAP providing the ceiling price only; and
- (b) commercial agreements can cover areas where bespoke or customised services are involved or where the terms are better than the MSA. Commercial agreements are private and confidential and should result in lower cost / better pricing than MSAP rates.

40.23 In response to these submissions, the MCMC notes that the MSA already seeks to strike a balance between setting out the key non-price terms of access to Facilities and Services listed on the Access List while ensuring that operators have the flexibility to agree certain matters on a commercial basis, such as service level credits, liquidated damages for delay, and more detailed operational and maintenance-related matters. Further, in the 2016 MSA Review, the MCMC intentionally steered away from a "Precedent Access Agreement" approach in favour of the current RAO model. The MCMC considers that this demonstrates the MCMC's commitment to balancing the needs of Access Seekers with the regulatory compliance burden borne by Access Providers.

40.24 While the MCMC has regard to international best practice where relevant, the MCMC does not consider it relevant to compare the length of the MSA with international benchmarks. Rather, the MCMC focuses on what terms of access are required in Malaysia to ensure that Facilities and Services listed on the Access List are supplied by Access Providers in accordance with their SAOs and to limit scope for anti-competitive conduct, ultimately in furtherance of the national policy objectives.

40.25 The vast majority of operators who responded to the MCMC's informal questionnaire consider that the MSA is a useful basis for preparing and negotiating RAOs and Access Agreements. Further, even where parties enter into commercial arrangements, the MCMC notes that many parties rely on the MSA as a useful set of guiding terms. On that basis, the MCMC does not propose to amend the scope or approach currently adopted in the MSA.

40.26 Finally, the MCMC notes again that pricing matters are beyond the scope of this inquiry. The MCMC will consult with operators on the MSAP at a later stage and will encourage submissions on pricing at the appropriate time.

Registration of access agreements

- 40.27 NET2ONE highlighted that the requirement to register an access agreement for it to be enforceable as stipulated in section 150 of the CMA is being used as a ground to delay a service. Most Access Providers are not willing to start services until the access agreement is registered by the MCMC. NET2ONE suggested that pending registration of the access agreement, the MSA should stipulate a condition for the operators to operationalise the terms of the access agreement once it has been signed and stamped.
- 40.28 TTdC commented that currently there is no specific registration process for access agreements and as such, operators are left to anticipate when their submitted agreements would be enforceable under the law as the registration process and timeline are not specified.
- 40.29 TM commented that, based on its experience in negotiating with operators, the main issue has always been the effective date of the Access Agreement. Most operators have requested the access agreement to take effect on the date of the agreement and not the registration date. However, pursuant to section 150 of the CMA, registration of Access Agreements with the MCMC is required for the provision of listed network facilities or network services and no access agreement shall be enforceable unless it has been registered with the MCMC. Therefore, it is crucial for the access agreement to only take effect on registration so that it is enforceable. While operators note the requirement to register the relevant portions of the facilities and/or services in the Access Agreement, the current duration taken to register the access agreement puts operators in limbo in terms of operationalising the new access agreement which incorporates the revised MSA and Access List.
- 40.30 U Mobile commented that upon submission of access agreements for registration with the MCMC, sometimes the points highlighted by the MCMC regarding compliance with the MSA are minor or editorial in nature and which may not even affect the substance of the provisions. U Mobile proposed that the long process of access agreement registration should be shortened (including access agreements with SBCs).
- 40.31 Similarly, Webe commented that for some services such as Infrastructure Sharing, operators requested for the access agreement to take effect on the specified date or the date of agreement instead of the registration date due to the following reasons:
- (a) the duration taken to register Access Agreements; and
 - (b) business requirement to commence the services.
- 40.32 Webe proposed for section 150 of the CMA to be revised to allow the agreement to take effect on the date agreed by both parties and not the date the access agreement is registered. This is especially so for the existing services that are currently being provided and the revision of access agreement is to reflect the new revision of Access List, MSA and MSAP. It is understandable that the effective date for new services should be effective

only after the date of registration as the terms and conditions for them are new and needed review and clearance from the MCMC.

Question 54: In response to these submissions, and as discussed in the Access List Review, the MCMC notes that it is consulting separately on the requirement for access agreements to be registered, in an effort to simplify and streamline the process and minimise the time required to enter into an access agreement. In so doing, the MCMC intends to limit the difficulties and delays reported by some operators in this respect.

Annexure 1 Indicative Timeframe for this Public Inquiry

Tasks	Timeline
Public Inquiry Paper published	13 June 2022
Public Inquiry Period	13 June 2022 – 8 August 2022
Public Inquiry Report	7 September 2022
Determination on Mandatory Standard on Access	22 September 2022

Annexure 2 Consolidated List of Questions

Question 1	Do you agree with the MCMC's proposal to strengthen the EOI obligations in the current MSA by focusing on the application of the EOI principle under the Service Specific Obligations, rather than amending the General Principles? Why or why not?
Question 2	Do you, or would you, notify the MCMC of third-party delays under subsection 4.5 of the MSA? If not, should subsection 4.5 of the MSA be removed?
Question 3	Should the prohibition on the restriction of re-supply continue to apply to resale to both end users and downstream service providers, or should it apply only to end users?
Question 4	Do you consider any change not discussed above is required to the General Principles in section 4 of the MSA? If so, please specify what change you consider is required and explain why.
Question 5	Should Access Providers be required to submit their RAOs to the MCMC before publication, to ensure compliance with the MSA?
Question 6	Do you have any comments on the proposed amendments to the reporting and information disclosure obligations in subsection 5.3 of the draft MSA?
Question 7	Do you consider that any changes are required to the security, insurance and creditworthiness provisions of the current MSA? Why or why not? If so, please specify what change you consider is required and explain why.
Question 8	Do you agree with the MCMC's proposed changes to the Negotiation Obligations set out at subsection 5.4 of the draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.
Question 9	What changes (if any) could be made to subsection 5.6 of the MSA in order to make the provision of forecasting information simpler (for Access Seekers) or more useful (for Access Providers)?
Question 10	Have Access Seekers experienced any issues with an Access Provider rejecting an Order on the grounds that the Access Seeker had not obtained the necessary related agreements from the Access Provider (under paragraph 5.7.17(e) of the MSA)? Should this rejection right be removed from the MSA?
Question 11	Do Access Providers typically implement a POC or do Access Seekers face difficulty in obtaining this from Access Providers where required? Would any impediments be addressed by including a new requirement that the Access Provider must provide a POC on request?

Question 12	Do Access Providers typically pay late delivery rebates pursuant to subsection 5.7.33 of the MSA or are the consequences of any delays negotiated through commercial channels?
Question 13	Do you agree with the MCMC's proposed changes to the ordering and provisioning obligations set out at subsection 5.7 of the draft MSA? Why or why not? If not, please specify what change you consider is required and explain why.
Question 14	Have Access Seekers experienced any difficulties in obtaining POI access at the prescribed locations published by Access Providers? In addition, do Access Providers typically publish POI locations that are in compliance with subsection 5.8.6 of the MSA? Please comment on whether you would report such non-compliance to the MSA (as an Access Seeker) or the reason you may not offer POIs at the prescribed locations (as an Access Provider).
Question 15	Do you agree with the MCMC's preliminary view that the current decommissioning obligations in the MSA continue to operate well and do not require any substantive changes or updates? If not, please specify what change you consider is required and explain why.
Question 16	Do you have any comments on the MCMC's proposed amendments to subsection 5.10 of the draft MSA?
Question 17	Do you agree with the MCMC's proposed changes to the billing and settlement obligations set out at subsection 5.11 of the MSA? Why or why not? If not, please specify what change you consider is required and explain why.
Question 18	Are billing cycles typically commercially negotiated, or do you follow the billing cycles set out in the MSA? Please provide details, including the particular Services and Facilities for which the MSA billing cycles are not used.
Question 19	Should Access Providers be required to allow integration with their OSS where requested by an Access Seeker? As an Access Seeker, please comment on whether this would be beneficial to you. As an Access Provider, please describe any impacts of such a requirement.
Question 20	Do you agree with the MCMC's proposal to retain the technical obligations in subsection 5.13 of the MSA without any amendments? If not, please provide details of any required changes.
Question 21	Do you agree with the MCMC's proposed changes to the term, suspension and termination obligations set out at subsection 5.14 of the draft MSA to allow partial termination or suspension of

	Access Agreements? Why or why not? If not, please specify what change you consider is required and explain why.
Question 22	Do you agree that the churn obligations under subsection 5.15 are still appropriate for non-HSBB services? Please comment on any proposed changes.
Question 23	Do operators have any comments on the MCMC's proposed changes to the legal boilerplate obligations in subsection 5.16 of the draft MSA? Please provide details of any suggested amendments.
Question 24	Do you have any comments on the MCMC's proposed removal of subsection 6.1.14 regarding handover principles in light of the transition to IP-based interconnection?
Question 25	Do you agree that subsection 6.1.12 (Inter-Closed Number Area service) and the reference to "transit Networks" in subsection 6.1.16 be removed from the MSA? If not, please comment on why these provisions are required.
Question 26	Should any amendments be made to the Service Specific Obligations for Interconnect Link Service, including for IP-based interconnection? Please detail any proposed addition, deletion or amendment to the terms currently set out in the MSA, including any particular technical parameters required in light of the transition to IP-based interconnection.
Question 27	Do you have any comments on the technical parameters proposed by YTL for the Interconnect Link Service, as set out in paragraph 24.9?
Question 28	Do operators have any views on the MCMC's proposal to delete the Service Specific Obligations for Access to Network Elements in subsection 6.4 of the draft MSA, together with other consequential amendments throughout the draft MSA? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.
Question 29	Do you have any comments on the MCMC's proposed amendments to the Service Specific Obligations for HSBB Network Services in subsection 6.6 of the draft MSA? Please provide details of any amendments with which you disagree, and any other amendments you propose to the MCMC's current draft.
Question 30	Do you have any comments on the MCMC's amendments to the activation and service fulfilment timeframes? If not, please specify and substantiate any proposed changes or amendment.

Question 31	Should the MCMC include an option for Access Seekers to request a single truck roll for service fulfilment and assurance single truck roll requests? If so, please provide details of how this would be operationalised.
Question 32	Should the MSA set out any service level rebates or other commercial matters which have typically been left to commercial negotiation?
Question 33	Having regard to JENDELA targets, are the indicative delivery timeframes in subsection 6.6.7 of the MSA still appropriate or do they require amendment? Please provide details of any specific changes required.
Question 34	Do operators agree with the service-specific timeframes that currently apply in respect of the Transmission Services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.
Question 35	Do operators agree with the quality of service parameters in relation to Trunk Transmission Services set out in subsection 6.7.9 of the MSA? If not, please specify and substantiate and proposed changes or amendment.
Question 36	Are there any other technical parameters that are not reflected in the Access List amendments that should be addressed under the MSA? Please provide details.
Question 37	Do operators agree with the MCMC's proposal that Access Providers should provide Access Seekers with rebates where they fail to comply with the service level availability requirements set out in Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009? If so, what should be the appropriate amount of any such rebate?
Question 38	Do operators agree with the amendments to the Service Specific Obligations that the MCMC has proposed in respect of Infrastructure Sharing? Why or why not? If not, please specify and substantiate any proposed changes or amendments.
Question 39	Do operators experience any issues with interference within Common Antenna Systems? How are these issues typically resolved, and are any amendments required to the Service-Specific Obligations in subsection 6.8 of the MSA to address those issues, or are the existing provisions in subsections 5.13.4 – 5.13.5 sufficient? Please provide details, including any proposed changes or amendments.

Question 40	<p>Do you have any comments regarding the MCMC's proposal to require Operators to mark or label their wires, cables and other ancillary equipment? In particular, please comment on:</p> <p>(a) whether this reflects operational practice;</p> <p>(b) the operational burden this would create (as an Access Seeker) or the benefits this would provide (as an Access Provider); and</p> <p>(c) any specific equipment to which the expanded obligation should (or should not) apply.</p>
Question 41	<p>Do operators consider the current Service Specific Obligations for the Domestic Connectivity to International Service are sufficient? Please detail any proposed addition, deletion or amendment to the existing terms.</p>
Question 42	<p>Do operators consider the Service Specific Obligations for Duct and Manhole Access are sufficient? Please detail any proposed addition, deletion or amendment to the terms currently proposed by the MCMC.</p>
Question 43	<p>Do you typically require any on-site support services in acquiring the Duct and Manhole Access service? If so, do you face any impediments in acquiring those support services and would those impediments be resolved by requiring the services to be provided under the MSA?</p>
Question 44	<p>Do operators consider the existing Service Specific Obligations for the Digital Terrestrial Broadcasting Multiplexing Service are sufficient? Please detail any proposed addition, deletion or amendment to the current terms.</p>
Question 45	<p>Do operators agree with the proposed amendments to the Service Specific Obligations that apply to MVNO Access? Why or why not? If not, please specify and substantiate any proposed changes or amendments.</p>
Question 46	<p>Should the MSA set out customer data protection obligations in relation to MVNO Access?</p>
Question 47	<p>Do operators agree with the proposed Service Specific Obligations that apply to 5G services? Why or why not? If not, please specify and substantiate any proposed changes or amendments.</p>
Question 48	<p>Should any different Service Specific Obligations apply as between 5G Standalone Access and 4G EPC with 5G RAN? If so, please specify and provide details.</p>
Question 49	<p>Do you agree with the timeframes proposed by the MCMC in respect of the provision of 5G Services, including negotiation</p>

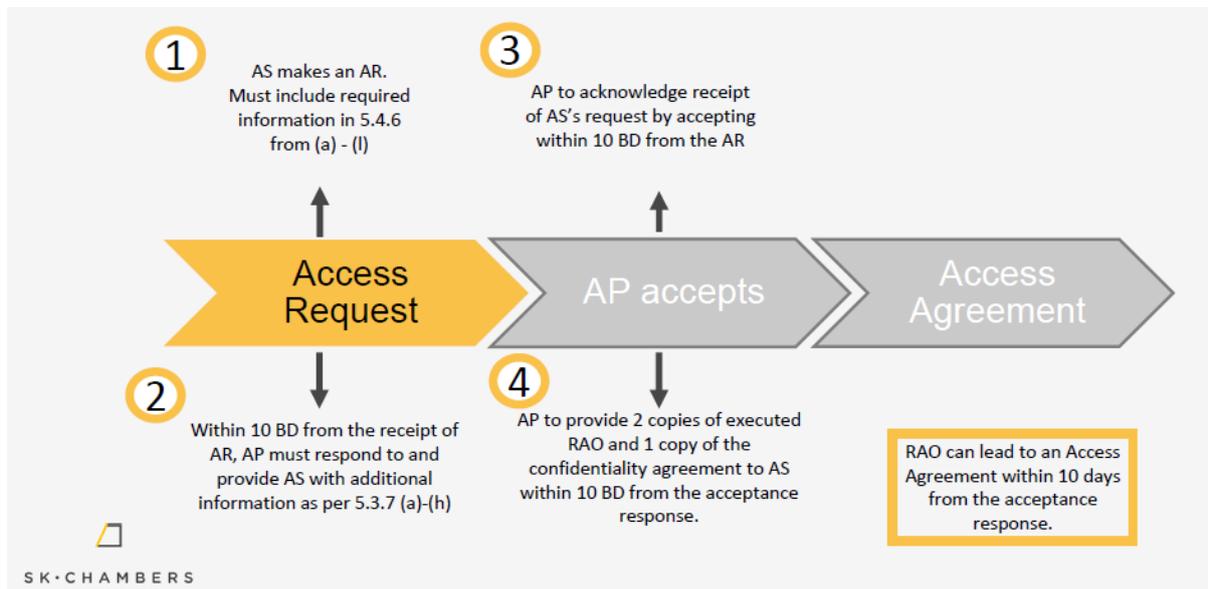
	timeframes, the time for acceptance or rejection of orders, delivery timeframes and billing cycles?
Question 50	Do you have any comments on the proposed Service Specific Obligations for IP Transit Services, as set out in subsection 6.16 of the draft MSA? Alternatively, do you consider that no Service Specific Obligations should apply to the supply of the proposed new IP Transit Services? Please provide details, including any additional Service Specific Obligations that you consider are required beyond those set out in subsection 6.16 of the draft MSA.
Question 51	Do you have any comments on the proposed Service Specific Obligations for Domestic Inter-Operator Roaming Services, as set out in subsection 6.14 of the draft MSA? Alternatively, do you consider that no Service Specific Obligations should apply to the supply of the proposed new Domestic Inter-Operator Roaming Service? Please provide details, including any additional Service Specific Obligations that you consider are required beyond those set out in subsection 6.14 of the draft MSA.
Question 52	Do operators have any feedback on the current Standard Administration and Compliance provisions?
Question 53	Do you agree that the current Dispute Resolution Procedures set out under Annexure A of the MSA can be retained without amendment, or do you have any suggested improvements to these provisions?
Question 54	In response to these submissions, and as discussed in the Access List Review, the MCMC notes that it is consulting separately on the requirement for access agreements to be registered, in an effort to simplify and streamline the process and minimise the time required to enter into an access agreement. In so doing, the MCMC intends to limit the difficulties and delays reported by some operators in this respect.

Annexure 3 Draft MSA

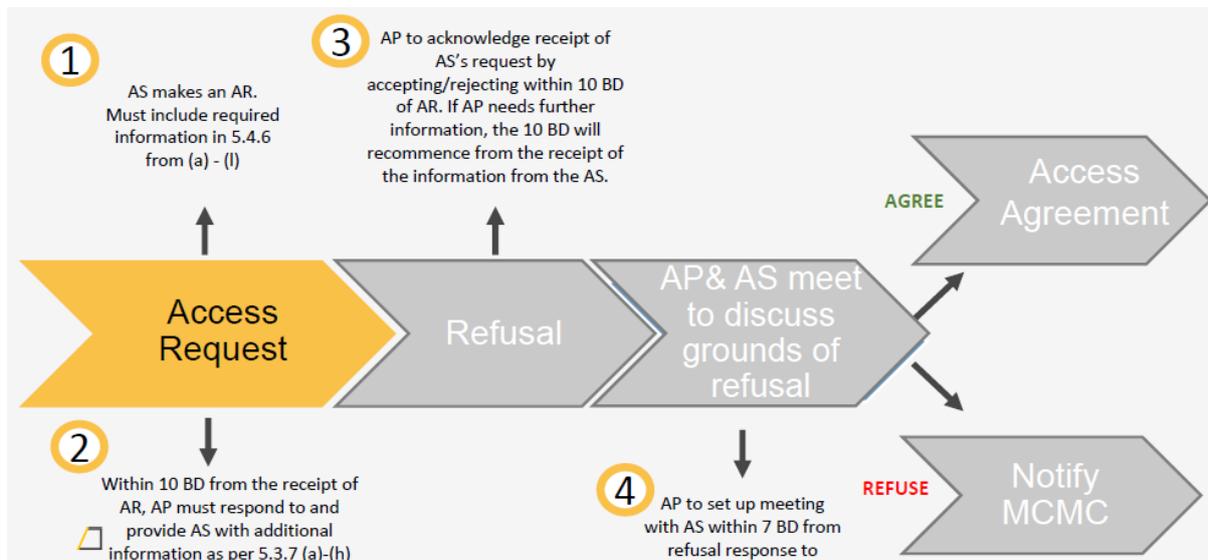
The draft MSA is attached as Annexure 3 to this PI Paper.

Annexure 4 Negotiation Process Proposed by Astro

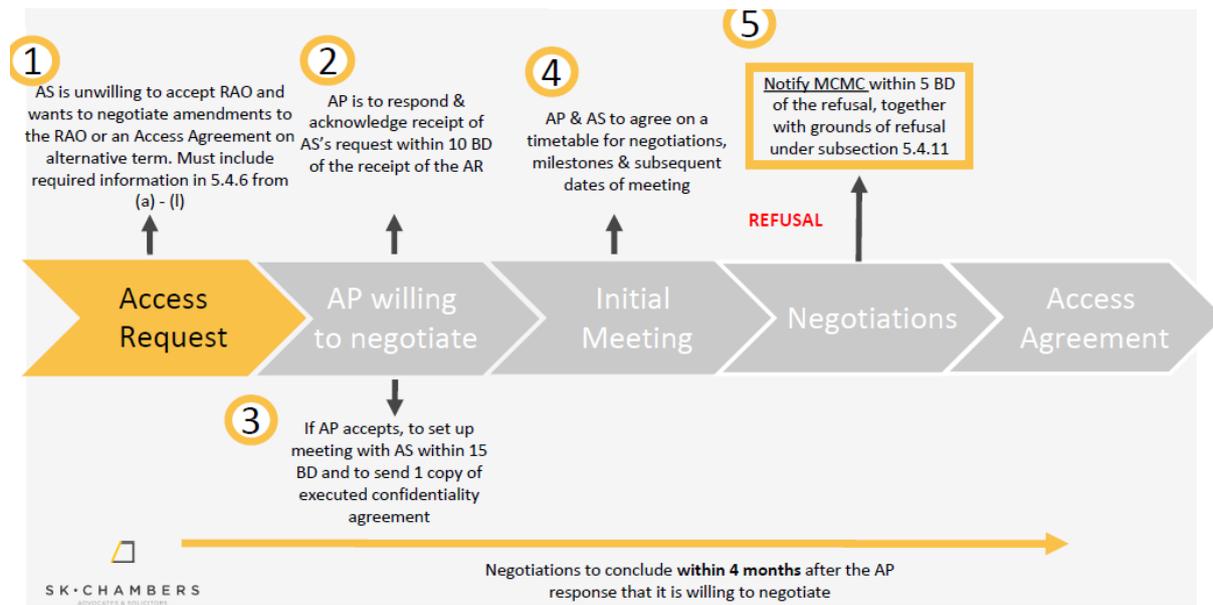
Access request accepted (with RAO)



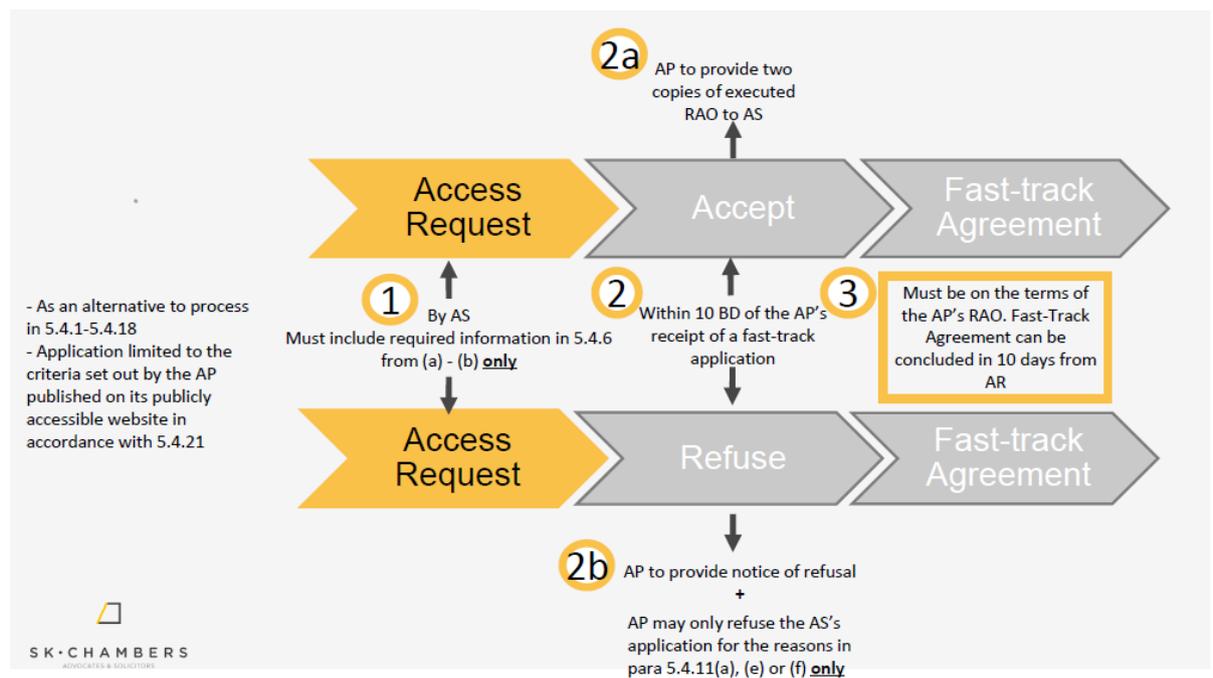
Access request rejected (with RAO)



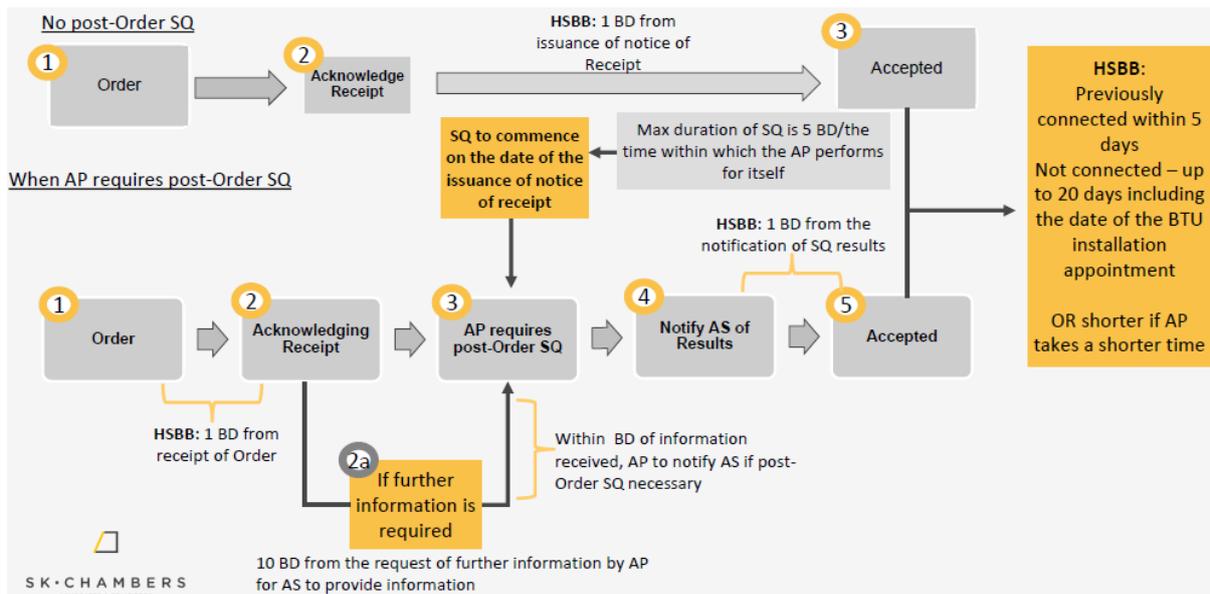
Access Seeker requests to negotiate terms



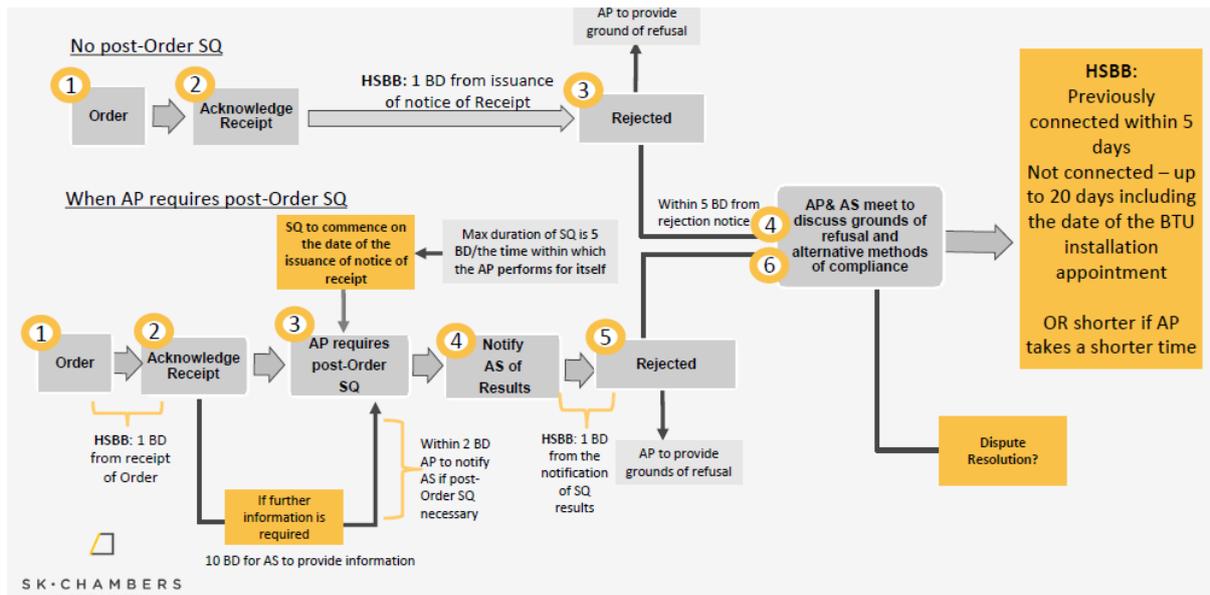
Fast track application



Access Provider accepts order



Access Provider rejects order





Suruhanjaya Komunikasi dan Multimedia Malaysia

Malaysian Communications and Multimedia Commission

COMMUNICATIONS AND MULTIMEDIA ACT 1998

COMMISSION DETERMINATION ON THE MANDATORY STANDARD ON ACCESS

DETERMINATION NO. ~~3[XX]~~ OF ~~2016~~2022

Pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104(2) and 106 of the Communications and Multimedia Act 1998 [*Act 588*] (“Act”), the Commission hereby determines as follows:

Citation and commencement

1. This Determination may be cited as the **Commission Determination on the Mandatory Standard on Access, Determination No. ~~3[xx]~~ of ~~2016~~2022**.
2. This Determination shall come into force on ~~1 January 2017~~.~~[xx]~~.

Definitions and Interpretation

3. For the purposes of this Determination, unless the context otherwise requires:

4G Evolved Packet Core (“EPC”) with 5G Radio Access Network (“RAN”) has the meaning as described in paragraph 5(19) of the Access List Determination;

“5G Services” means each of 5G Standalone Access and 4G Evolved Packet Core (“EPC”) with 5G Radio Access Network (“RAN”);

“5G Standalone Access” has the meaning as described in paragraph 5(18) of the Access List Determination;

“Access Agreement” means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement;

“Access List Determination” means the Commission Determination on Access List, Determination No. 6 of 2021 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act;

“Access Provider” means:

- (a) network facilities provider who owns or provides Facilities listed in the Access List Determination; or
- (b) network service provider who provides Services listed in the Access List Determination; and
- (c) who is a licensee as defined in the Act;

“Access Request” means a request for access made by an Access Seeker under subsection 5.4.5 of this Standard and containing the information contained in subsection 5.4.6 of this Standard;

“Access Seeker” means a network facilities provider, a network service provider, an applications service provider or a content applications service provider who is a licensee as defined in the Act and who makes a written request for access to Facilities and/or Services;

“Access Service Provider” means the Operator to whose Network, a line is directly connected and over which Services are supplied, and may also be a Gaining Service Provider or a Releasing Service Provider;

~~“Access to Network Elements” or “ANE” means Full Access Service, Line Sharing Service, Bitstream with Network Service, Bitstream without Network Service and Sub-loop Service;~~

“API” means an application programming interface-;

“Billing Period” means the period over which the supply of access to Facilities and/or Services is measured for the purposes of billing as contemplated in subsection 5.11.1 of this Standard, which shall be no more than one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

“Billing Cycle” means the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period, as specified in subsection 5.11.3 of this Standard;

“Billing Dispute” has the meaning given to it in subsection 1.1 of the Dispute Resolution Procedures in Annexure A of this Standard;

~~“Bitstream with Network Service” has the meaning as described in paragraph 4(12) of the Access List Determination;~~

~~“Bitstream without Network Service” has the meaning as described in paragraph 4(13) of the Access List Determination;~~

“Broadband Termination Unit” or “BTU” means an access device that is capable of supporting multiple terminating equipment with multiple types of interfaces including but not limited to FE (RJ45), RJ11 and wireless via a single last mile connectivity;

“Business Day” means a day other than the followings days:

- (a) a Saturday and Sunday;
- (b) in states where Friday is observed as the weekly holiday, a Thursday and Friday; or
- (c) a day which is lawfully observed as a national public holiday throughout Malaysia;

“B2B” means Business to Business;

“Calling Line Identification” or “CLI” means the information generated from the Network which identifies and forwards through the Network the calling number;

“Capacity Allocation Policy” has the meaning given to it in subsection 5.7.32 of this Standard;

“Change Notice” has the meaning given to it in subsection 5.10.3 of this Standard;

“Churn” means the processes which are required to be carried out by Operators in relation to the provision of Services and transfers of Customers, whenever a Customer requests for a transfer from the Operator who has been providing the said Customer with one or more Services (Releasing Service Provider) to another Operator (Gaining Service Provider);

“Churn Service” means the Service which the Customer requests a Gaining Service Provider to provide;

“Closed Number Area” means a set of digit(s) beginning with the trunk prefix “0” which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer’s fixed number is located, provided always that “09” in the states of Pahang, Terengganu and Kelantan will be treated as one Closed Number Area, “082” to “086” in the state of Sarawak will be treated as one Closed Number Area and “087” to “089” in the state of Sabah will be treated as one Closed Number Area;

“Confidential Information” means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the Disclosing Party but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement);
- (b) information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party;
- (c) information which has been independently developed by the Receiving Party;
or
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
 - (i) the Receiving Party, gives twenty-four (24) hours’ notice to the Disclosing Party of the particulars of the required disclosure; and

- (ii) the Receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing Party's cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

"Content Obligations" means those obligations set out in subsections 5.5 to 5.16 (inclusive) of this Standard;

"Customer" means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of communications by means of that Operator's Facilities and/or Services;

~~"Digital Subscriber Line Resale Service" has the meaning as described in paragraph 4(15) of the Access List Determination;~~

~~"Customer Demand List" means any list submitted by the Access Seeker from time to time requiring certain actions to be taken by the Access Provider to facilitate the placement of an Order by the Access Seeker, in accordance with subsection 6.6.20 of this Standard;~~

"Digital Terrestrial Broadcasting Multiplexing Services" has the meaning as described in paragraph [5\(10\)](#) of the Access List Determination;

"Disclosure Obligations" means those obligations set out in subsection 5.3 of this Standard;

"Disclosing Party" means the party disclosing the Confidential Information;

"Dispute Resolution Procedures" means the procedures outlined in Annexure A of this Standard;

~~"DSL" means Digital Subscriber Line;~~

"Domestic Connectivity to International Services" has the meaning as described in paragraph [5\(8\)](#) of the Access List Determination;

~~"Domestic Inter-Operator Roaming Service" has the meaning as described in paragraph 5(17) of the Access List Determination;~~

“Effective Date” means the date on which this Standard comes into effect as specified in paragraph 2 of this Determination;

“End-to-End Transmission Service” has the meaning as described in paragraph [5\(15\)](#) of the Access List Determination;

“Equipment” means any equipment (whether hardware or software), or device which is part of or within a Network;

“Equivalence of Inputs” is a concept that describes an Access Provider providing to itself and to all Access Seekers the same Facilities and Services on the same terms and conditions including at the same prices and service levels, using the same systems and processes and to the same timescales. For clarification, references in this Standard to “itself” includes its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest;

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

“Facility and/or Service Change” has the meaning given to it in paragraph 5.10.2(b) of this Standard;

~~“Far End Handover” means:~~

~~(a) — in relation to calls terminating on a Fixed Network, the delivery of calls to a POI within the same Closed Number Area where the call is to be terminated; and~~

~~(b) — in relation to calls terminating on a Mobile Network, the delivery of calls to a POI nearest to the location of the called number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;~~

“Fixed Network” means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy;

“Fixed Network Origination Service” has the meaning as described in paragraph [5\(1\)](#) of the Access List Determination;

“Fixed Network Termination Service” has the meaning as described in paragraph 5(2) of the Access List Determination;

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under this Standard or under an Access Agreement;

“Forecast” means a forecast made by the Access Seeker referred to in subsection 5.6 of this Standard;

“Forecast Information” has the meaning given to it in subsection 5.6.6 of this Standard;

“Forecast Request” means a request by the Access Provider for Forecast Information from the Access Seeker, as described in subsection 5.6.6 of this Standard;

~~“Full Access Service” has the meaning as described in paragraph 4(10) of the Access List Determination;~~

“Functionality Change” has the meaning given to it in paragraph 5.10.2(e) of this Standard;

“Gaining Service Provider” means an Operator to whom another Operator’s Customer requests for a transfer to be made to;

“HDF” means Handover Distribution Frame;

“High Priority Area” means each of the following locations, facilities or areas:

(a) Federal and State Government administration centres;

(b) transportation hubs, including MRT stations, airports, train stations;

(c) transportation lines or routes, including railways and highways;

(d) high economic impact areas, including industrial parks and economic corridors;

(e) identified Government projects under RMK-12;

(f) Jalanan Digital Negara (JENDELA) projects;

(g) areas identified by the MCMC or Government as “high priority” for 5G deployment; and

(h) any other location, facility or area where an Access Provider has been granted the exclusive right to install, supply access to, or maintain, any Facilities or Services.

“HSBB Network” has the meaning given to it in paragraph 3 of the Access List Determination;

“HSBB Network Service” means each of the Layer 2 HSBB Network Service with QoS and the Layer 3 HSBB Network Service;

“Infrastructure Sharing” has the meaning as described in paragraph [5\(7\)](#) of the Access List Determination;

“Interconnect Link Service” has the meaning as described in paragraph [5\(5\)](#) of the Access List Determination;

“Intellectual Property” means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them;

“Interface Change” has the meaning given to it in paragraph 5.10.2(a) of this Standard;

“Internet Protocols” has the meaning given to it in paragraph 3 of the Access List Determination;

“Invoice” means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period as contemplated in subsection 5.11.1 and 5.11.3 of this Standard;

“Layer 2 HSBB Network Service with QoS” has the meaning as described in paragraph [5\(11\)](#) of the Access List Determination;

“Layer 3 HSBB Network Service” has the meaning as described in paragraph [5\(14\)](#) of the Access List Determination;

~~“Line Sharing Service” has the meaning as described in paragraph [4\(11\)](#) of the Access List Determination;~~

“MCMCA” means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];

“MDF” means Main Distribution Frame;

“Mobile Network” means network facilities and/or network services comprising the public cellular mobile network and/or the public mobile radio network, for the provision of communications;

“Mobile Network Origination Service” has the meaning as described in paragraph 5(3) of the Access List Determination;

“Mobile Network Termination Service” has the meaning as described in paragraph 5(4) of the Access List Determination;

“Mobile Virtual Network Operator” or “MVNO” has the meaning given to it in paragraph 3 of the Access List Determination;

~~“MNVO-MVNO Access”~~ has the meaning as described in paragraph 5(16) of the Access List Determination;

~~“Near End Handover” means:~~

~~(a) — in relation to calls terminating on a Fixed Network, the delivery of calls to a POI within the same Closed Number Area where the calling number is registered; and~~

~~(b) — in relation to calls terminating on a Mobile Network, the delivery of calls to a POI nearest to the location of the calling number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;~~

“Negotiation Obligations” means those obligations set out in subsection 5.4 of this Standard;

“Network” means network facilities and/or network services comprising a system, or series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both, and in relation to an Operator, means so much of the network as is owned or operated by the Operator;

“Network Co-Location Service” has the meaning as described in paragraph 5(9) of the Access List Determination;

“Network Conditioning” means the conditioning, equipping and installation of Equipment in the Access Provider’s Network to enable the provision of O&T Services;

“network facilities” has the meaning given to that term as defined in the Act;

“Non-Binding Forecast Period” means, for the purposes of section 5.6.16 of this Standard, any period of time specified as a “Non-Binding Forecast Period” in the Service Specific Obligations;

“Notice of Acceptance” means the Access Provider’s notice of acceptance of an Order provided to the Access Seeker pursuant to subsections 5.7.12 and 5.7.13 of this Standard;

“Notice of Receipt” means the acknowledgment of receipt of the Order from an Access Seeker, as described in subsections 5.7.5 and 5.7.6 of this Standard;

“O&T Service” means an originating or terminating service in the Access List Determination, which on the Effective Date includes:

- (a) Fixed Network Origination Service;
- (b) Fixed Network Termination Service;
- (c) Mobile Network Origination Service; and
- (d) Mobile Network Termination Service;

“Operational Support System” or “OSS” means the interactive operational support system provided, or to be provided, by the Access Provider to the Access Seeker to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfilment and service assurances operational support systems;

“Operator” has the meaning given to it in paragraph 3 of the Access List Determination;

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to Facilities and/or Services, as described in subsection 5.7.2 of this Standard;

“OSS Change” has the meaning given to it in paragraph 5.10.2(d) of this Standard;

“Other Network Change” has the meaning given to it in paragraph 5.10.2(c) of this Standard;

“Point of Interconnection” or “POI” has the meaning given to it in paragraph 3 of the Access List Determination;

“Point of Interface” means a point at or between network facilities which demarcates the Network of an Access Provider and the Network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI and POP;

“Point of Presence” or “POP” has the meaning given to it in paragraph 3 of the Access List Determination;

“Polygon” a sub-area based on the administrative division (daerah or districts) in Malaysia, made up of Site(s) where the Access Provider’s 5G RAN is or will be made available as defined by the Access Provider and amended from time to time.

“Provisional Invoice” means an Invoice issued under subsection 5.11.17 of this Standard;

“QoS” means Quality of Service;

“Receiving Party” means the party receiving the Confidential Information;

“Reference Access Offer” or “RAO” has the meaning given to that term in subsection 5.3.3 of this Standard;

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 5.6.13 of this Standard;

“Releasing Service Provider” means an Operator from whom its Customer requests a transfer;

“Relevant Change” has the meaning given to it in subsection 5.10.2 of this Standard, and includes any Interface Change, Service Change, Network Change, OSS Change and Functionality Change;

“Service Qualifications” means:

- (a) in relation to O&T Services, Network Co-Location Service, Infrastructure Sharing, Duct and Manhole Access, Interconnect Link Service, Transmission Service, Domestic Connectivity to International Services ~~or~~ MVNO Access, or Domestic Inter-Operator Roaming Service, a desk and/or field study that may be conducted under subsections 5.4 and 5.7 of this Standard, and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order; and
- (b) in relation to all other Facilities and Services, includes the interrogation of an Access Provider’s OSS to confirm availability of network facilities to fulfil an Order or proposed Order;

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

“Service Specific Obligations” means the obligations which relate to specific types of Facilities and/or Services set out in section 6 of this Standard and which add to or vary the Content Obligations in respect of those Facilities and/or Services;

“Site” the network site that makes up the Access Provider’s 5G RAN required to receive and transmit radio signals for cellular voice and data transmission, comprising transmitters, receivers, power amplifiers, a digital signal processor, a power supply and network interface modules.

“Standard” means the Mandatory Standard on Access as determined by the Commission in this Determination;

“Standard Access Obligations” or “SAO” means the obligations which relate to access as referred to in section 149 of the Act;

~~“Sub-loop Service” has the meaning as described in paragraph 4(14) of the Access List of Determination;~~

“Transfer Form” means a form which is executed by a Customer for the purpose of authorising a Churn;

“Transfer Request” means a request from a Gaining Service Provider to an Access Service Provider to implement a Churn, including a Transfer Form;

“Transmission Services” means each of the Trunk Transmission Service, the Wholesale Local Leased Circuit Service and the End-to-End Transmission Service;

“Trunk Transmission Service” has the meaning as described in paragraph [5\(12\)](#) of the Access List Determination;

“Validity Period” has the meaning given to the term in paragraph 5.7.13(e) of this Standard;

“VLAN” means Virtual Local Area Network;

~~“Wholesale Line Rental Service” has the meaning as described in paragraph 4(17) of the Access List Determination; and~~

“Wholesale Local Leased Circuit Service” has the meaning as described in paragraph [5\(6\)](#) of the Access List Determination.

4. In this Determination, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) a reference to, this Determination or other forms of legal instruments issued under the Act or the Access Agreement, includes any variation or replacement of any of them;
 - (c) a reference to an annexure or schedule is a reference to an annexure or schedule to this Standard and a reference to this Standard includes an annexure or schedule;
 - (d) a reference to a section is a reference to a section of this Standard and a reference to a paragraph is a reference to a paragraph of this Standard;
 - (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under them and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) the word “person” includes a firm, body corporate, unincorporated association or an authority;

- (g) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
- (h) all monetary amounts are expressed in Ringgit Malaysia;
- (i) if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day;
- (j) a reference to a third person or a third party is a reference to a person who is not the Access Provider or the Access Seeker; and
- (k) a term or expression starting with a capital letter:
 - (i) which is defined in paragraph 3 of this Determination, has the meaning given to it in paragraph 3;
 - (ii) which is defined in the body of this Standard, has the meaning given to it in the body of this Standard unless the context indicates otherwise; and
 - (iii) which is defined in the Act, the relevant subsidiary legislations made under it or the Access List Determination, but is not expressly defined in paragraph 3 of this Determination, has the same meaning as in the Act, the relevant subsidiary legislations made under it or the Access List Determination, as the case may be.

5. A definition provided in the Act shall prevail over a definition provided in this Determination to the extent of any inconsistency.

Mandatory Standard on Access

6. The Mandatory Standard on Access determined under this Determination is as follows:

SECTION 1: PRELIMINARY

1.1 STRUCTURE

This Standard is divided into:

- (a) major sections of this Standard, described as sections (e.g. section 1: Preliminary);
- (b) subsections within each section, described as subsections (e.g. subsection 1.2 and subsection 1.2.1); and
- (c) paragraphs within subsections, described as paragraphs [i.e. paragraph 1.1(a) and paragraph 1.2.5(a)].

1.2 OUTLINE OF CONTENTS OF THIS STANDARD

The sections of this Standard deal with the following issues:

- 1.2.1 Section 1 titled **Preliminary** sets out the structure and outline of this Standard.
- 1.2.2 Section 2 titled **Background** provides an introduction and background to this Standard.
- 1.2.3 Section 3 titled **Scope** sets out the scope of this Standard in terms of the Facilities and/or Services to be covered and the persons who are subject to this Standard.
- 1.2.4 Section 4 titled **General Principles** sets out the general principles applicable to access regulation in Malaysia, including principles to implement the SAO contained in section 149 of the Act.
- 1.2.5 Section 5 titled **Operator Access Obligations** sets out the general obligations that apply to all Operators concerning access to Facilities and/or Services under this Standard, which build upon the basic obligations or SAO set out in the Act. These obligations include:

- (a) Disclosure Obligations;
- (b) Negotiation Obligations; and
- (c) Content Obligations.

1.2.6 Section 6 titled **Service Specific Obligations** sets out the obligations that apply to all Operators concerning various access issues in connection with specific Facilities and/or Services included in the Access List Determination. These obligations build upon the Operator Access Obligations in section 5 either by providing additional detail or introducing specific concepts relevant to a subset of the Facilities and/or Services in the Access List Determination, including:

(a) O&T Services;

~~(b)~~ Wholesale Line Rental Service;

~~(c)~~(b) Interconnect Link Service;

~~(d)~~ ANE;

~~(e)~~ Digital Subscriber Line Resale Services;

~~(f)~~(c) HSBB Network Services;

~~(g)~~(d) Transmission Services;

~~(h)~~(e) Infrastructure Sharing;

~~(i)~~(f) Network Co-Location Service;

~~(j)~~(g) Domestic Connectivity to International Services;

~~(k)~~(h) Duct and Manhole Access;

~~(l)~~(i) Digital Terrestrial Broadcasting Multiplexing Services;

(j) MVNO Access;

(k) Domestic Inter-Operator Roaming Services;

(l) 5G Services; and

(m) IP Transit Service.

1.2.7 Section 7 titled **Standard Administration and Compliance** sets out the administrative and compliance matters that are applicable to this Standard, including:

(a) enforcement of this Standard;

(b) implementation of this Standard;

(c) compliance review;

(d) transitional measures; and

(e) review of this Standard.

SECTION 2: BACKGROUND

2.1 LEGISLATIVE BASIS FOR THIS STANDARD

- 2.1.1 This Standard is determined by the Malaysian Communications and Multimedia Commission, established under the MCMCA pursuant to subsection 106(2) of the Act and the Ministerial Direction to Determine a Mandatory Standard on Access, No. 2 of 2003 (“Direction”).
- 2.1.2 Subsection 55(6) of the Act provides that any determination by the Commission shall be consistent with the objects of, and any requirements provided in the Act which are relevant to the particular matter or activity.
- 2.1.3 The Commission take cognizance of the objects of the Act as provided in subsection 3(1) of the Act in determining this Standard including without limitation:
- (a) promotion of the national policy objectives for the communications and multimedia industry;
 - (b) establishment of a licensing and regulatory framework in support of national policy objectives for the communications and multimedia industry; and
 - (c) establishment of the powers and procedures for the administration of the Act.
- 2.1.4 The Commission also take cognizance of the national policy objectives for the communications and multimedia industry as provided under subsection 3(2) of the Act, including without limitation:
- (a) to regulate for the long-term benefit of the end user;
 - (b) to ensure an equitable provision of affordable services over ubiquitous national infrastructure; and
 - (c) to facilitate the efficient allocation of resources.
- 2.1.5 In accordance with the Direction, the Commission followed the public inquiry procedures prescribed in Chapter 3, Part V of the Act in the course of developing this Standard.

2.2 OVERVIEW

- 2.2.1 This Standard sets out general principles as well as mandatory regulated terms on key rights and obligations concerning interconnection and access.
- 2.2.2 Under this Standard, Access Providers are required to make their terms and conditions of access publicly available in the form of Reference Access Offers which must comply with this Standard. The RAOs of Access Providers must be capable of being signed as an Access Agreement or further negotiated by the Access Provider and Access Seeker.
- 2.2.3 The Commission considers the ~~implementation of the~~ RAO model ~~will help~~ balancebalances the need to ensure expeditious and efficient access on transparent terms whilst providing flexibility to accommodate operator-specific matters and the interests of end users which may change over time.

SECTION 3: SCOPE

3.1 TYPES OF FACILITIES AND SERVICES COVERED BY THIS STANDARD

3.1.1 This Standard deals with access to Facilities and/or Services included in the Access List Determination. This Standard aims to be sufficiently flexible to deal with change as it occurs, and includes review provisions and transitional provisions (see subsection 7.4 and subsection 7.5 of this Standard).

3.2 APPLICATION OF THIS STANDARD

3.2.1 Any person who is a licensee as defined in the Act and who acts in one or more of the following capacities is subject to this Standard, and in accordance with subsection 7.1.3 of this Standard, may be directed to comply with subsection 105(3) of the Act by the Commission:

- (a) network facilities providers, in their capacity as Access Providers or Access Seekers;
- (b) network service providers, in their capacity as Access Providers or Access Seekers;
- (c) applications service providers, in their capacity as Access Seekers; and
- (d) content applications service providers, in their capacity as Access Seekers.

3.2.2 Consistent with the approach of the access regime established by the Act, this Standard confers the same rights and applies the same obligations on persons listed in subsection 3.2.1 of this Standard and as between a particular class of person (e.g. network facilities providers), making no distinction between large or small providers nor does it distinguish between established or new providers.

3.2.3 This Standard shall only apply in respect of the wholesale relationship between Operators in relation to access to Facilities and/or Services included in the Access List Determination. The Commission encourages all Operators to treat the provisions of this Standard, where relevant, as a guideline for any other wholesale access arrangements that may be entered into in respect of facilities and services which are not included in the Access List Determination.

SECTION 4: GENERAL PRINCIPLES

4.1 PRINCIPLES OF ACCESS TO FACILITIES AND SERVICES IN THE ACCESS LIST DETERMINATION

4.1.1 **SAO:** In accordance with the Act and subject to exemptions determined by the Minister, all network facilities providers and network services providers shall provide access on reasonable terms and conditions to the Facilities and/or Services listed in the Access List Determination to any other:

- (a) network facilities provider;
- (b) network services provider;
- (c) applications services provider; or
- (d) content applications services provider,

who makes a written request to the relevant Access Provider for access.

4.1.2 **Reasonableness:** An Access Provider may refuse a request if:

- (a) supply of the relevant listed Facilities and/or Services would not be reasonable (see subsection 4.1.3 of this Standard); or
- (b) supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 4.1.4 of this Standard).

4.1.3 **Unreasonable request:** Although not prescribed by the Act, a request for access to a listed Facilities and/or Services may not be reasonable if one or more of the criteria in subsection 5.4.11 of this Standard are satisfied. For clarification, this Standard does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act.

4.1.4 **Unreasonable terms:** The Act provides for several mechanisms to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

4.1.5 **Non-discrimination:** As required by subsection 149(2) of the Act, an Access Provider must provide access to those Facilities and/or Services specified in the Access List Determination, and such access must be:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services; and
- (b) provided on an equitable and a non-discriminatory basis.

4.1.6 **Meaning of non-discriminatory:** For the purposes of this Standard, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis and require a comparison of:

- (a) the basis on which a Facility and/or a Service is provided by the Access Provider to an Access Seeker; with
- (b) the basis on which that Facility and/or Service is provided by the Access Provider to itself and to other Access Seekers.

4.2 APPLICATION OF NON-DISCRIMINATION PRINCIPLE

4.2.1 **Examples:** The non-discrimination principle contained in subsection 149(2) of the Act applies to, amongst others the following:

- (a) processing of applications for access;
- (b) acceptance or refusal of Access Requests;
- (c) provision of information required to provide Forecasts or place Orders;
- (d) provisioning and Churn of Facilities and/or Services;
- (e) allocation of constrained capacity;
- (f) fault reporting and fault rectification;
- (g) Network Conditioning;
- (h) allocation of space at exchanges;

(i) the purpose or use for which access is provided; ~~and~~

(j) the technical parameters with which Facilities and Services are supplied; and

(j)(k) access to Operational Support Systems in respect of service fulfilment and service assurance.

4.2.2 **Non-Standard performance:** Nothing in this Standard limits an Access Seeker's ability to request access to Facilities and/or Services that is either superior or inferior (e.g. as to technical standard and quality) to that which an Access Provider provides to itself.

4.3 CUSTOMER PRINCIPLES

4.3.1 **Recognition of principle:** All Operators must recognise and act consistently with the Customer relationship principles referred to in subsection 4.3.2 of this Standard.

4.3.2 **Customer relationship principles:**

(a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities and/or Services provided to that Customer by the Operator.

(b) The same person may be a Customer of more than one Operator:

(i) in respect of the same or different Facilities provided by different Operators;

(ii) in respect of the same or different Services provided by different Operators; or

(iii) in respect of Facilities provided by one Operator and Services provided by another Operator.

(c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.

- (d) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may include, without limitation:
 - (i) the Access Provider billing on behalf of the Access Seeker; or
 - (ii) the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.

4.4 NO EXCLUSIVITY AND NO RESTRICTION ON RESALE

4.4.1 An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.

4.4.2 An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility and/or Service to any person.

4.5 NECESSARY THIRD PARTY INVOLVEMENT CAUSING OR CONTRIBUTING TO NON-COMPLIANCE IN TIMEFRAME:

4.5.1 If:

- (a) an Access Provider fails to comply with a timeframe under this Standard; and
- (b) the Access Provider considers that such failure was caused or contributed to by necessary third party involvement or other matters reasonably outside the Access Provider's control (for example, where approval from local or other authority is required),

the Access Provider must notify the Commission of such non-compliance and such third party involvement, and provide the contact details of such third party, to permit the Commission to investigate the non-compliance.

SECTION 5: OPERATOR ACCESS OBLIGATIONS

5.1 SCOPE

5.1.1 This section 5 imposes obligations on all network facilities providers and/or network service providers who are required to provide Facilities and/or Services listed in the Access List Determination under section 149 of the Act.

5.2 APPLICABLE OBLIGATIONS

5.2.1 All persons described in subsection 5.1.1 of this Standard must comply with each relevant subsection of this Standard, which address the following:

- (a) Disclosure Obligations;
- (b) Negotiation Obligations;
- (c) Content Obligations; and
- (d) Service Specific Obligations.

5.3 DISCLOSURE OBLIGATIONS

5.3.1 **General duty:** All Operators shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 5.3.8 of this Standard, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard and in the Act. No Operator may enter into any agreement which would prevent it from making information available to other Operators unless:

- (a) the Operator notifies the Commission of its entry into the agreement; and
- (b) the said agreement permits the Operator to only make the information available if directed by the Commission.

5.3.2 **Freedom to negotiate:** Without limiting its obligations under the Act, an Access Provider shall not:

- (a) refuse to negotiate an Access Agreement with an Access Seeker, whether the access sought is based on a RAO or otherwise; or
- (b) refuse to provide information required under subsection 5.3 of this Standard on the basis that the Access Seeker wishes to negotiate an Access Agreement, whether the access sought is based on a RAO or otherwise.

5.3.3 **Reference Access Offer:** Each Access Provider shall prepare and maintain a RAO for each Facility and/or Service listed in the Access List Determination which such Access Provider provides to itself or third parties. The RAO shall:

- (a) set out the full terms and conditions on which the Access Provider is prepared to supply Facilities and/or Services to any other Operator, including the rates, charges, charging principles and methodologies to be applied for Facilities and/or Services and any applicable fees or rebates (such as those referred to in subsection 5.7.28 and 5.7.33 of this Standard);
- (b) incorporate the details of all available POIs offered by the Access Provider, as specified on its publicly accessible website from time to time under paragraph 5.8.2(a) of this Standard;
- (c) contain a copy of the application forms required to be completed by the Access Seeker to apply for access to Facilities and/or Services, including a copy of the fast-track application form required for use under subsection 5.4.20 of this Standard;
- (d) contain a copy of the Access Provider's standard confidentiality agreement which shall comply with subsection 5.3.8 of this Standard;
- (e) contain only terms and conditions which are consistent with the rights and obligations set out in this Standard and any applicable mandatory standard on QoS; and
- (f) not contain any terms and conditions which are inconsistent with the rights and obligations set out in this Standard ~~-~~ or any applicable mandatory standard on QoS.

For clarification, the requirement to prepare and maintain a RAO shall be without prejudice to any rights and obligations of Access Providers and Access Seekers under an Access Agreement.

5.3.4 **Availability:** Each Access Provider shall ensure that each RAO prepared by it shall:

- (a) be in writing (which includes legible electronic format);
- (b) contain all information required to be included under subsection 5.3 of this Standard;
- (c) be accurate;
- (d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities and/or Services are available individually and separately under a RAO;
- (e) be consistent with:
 - (i) the Act;
 - (ii) this Standard and any applicable mandatory standard on QoS; and
 - (iii) any applicable decision or determination of the Commission;
- (f) be made available on the Access Provider's publicly accessible website as soon as the RAO is finalised by the Access Provider;
- (g) specify its date and version number, both on the cover and on each page of the document and on the Access Provider's publicly accessible website; and
- (h) be provided to the Commission within ten (10) Business Days after being made available under paragraph 5.3.4(f) of this Standard.

5.3.5 **Amendment:** If an Access Provider proposes to amend a RAO except to the extent relating to 5G Services, that Access Provider must, no less than twenty (20) Business Days before the Access Provider proposes to effect the

changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- (a) all Access Seekers who are being provided with access to Facilities and/or Services under the existing RAO; and
- (b) all Access Seekers who have requested access to Facilities and/or Services under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

If an Access Provider proposes to amend an RAO to the extent relating to 5G Services, then the Access Provider must:

- (c) consult with all Access Seekers who are being provided with, or have in the preceding three (3) months requested access to, 5G Services under the existing RAO for a period of up to thirty (30) days;
- (d) following such consultation, provide to such Access Seekers 30 Business Days' notice of any changes to the RAO; and
- (e) obtain written approval from the Commission to publish, and following such approval promptly publish, the updated RAO on the Access Provider's website.

For clarification:

- (i) nothing in subsection 5.3.5 of this Standard prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by an Access Provider under this subsection;
- (ii) where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker; and
- (iii) without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms

and conditions of that Access Agreement. upon expiry of the twenty (20) Business Days referred to in subsection 5.3.5 of this Standard. However, if the Access Seeker disputes the change to the existing RAO within such twenty (20) Business Days, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the Access Provider.

5.3.6 Amended RAO: Upon expiry of the twenty (20) Business Days in subsection 5.3.5 of this Standard (or such longer period as the Access Provider determines is necessary to finalise the amendments to its RAO), the Access Provider will:

- (a) make available the amended RAO on the Access Provider's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission within ten (10) Business Days after being made available under paragraph 5.3.6(a) of this Standard.

5.3.7 Information disclosure: An Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker for the provision of access (whether or not on the basis of a RAO):

- (a) any supplementary details of a Facility and/or Service offered by the Access Provider not included in the RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers;
- (b) any supplementary access charges for access to Facilities and/or Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels);
- (c) all supplementary technical information relating to the Facilities and/or Services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any proof of concept

(POC) information where available. physical and logical interfaces of ~~the~~ the Access Provider's Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's Network;

- (d) supplementary details of the Access Provider's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);
- (e) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (f) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the Facilities and/or Services which may be the subject of the Access Request;
- (g) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by the Access Provider under subsections 5.3.9, 5.3.10 and 5.3.11 of this Standard; and
- (h) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs 5.3.7(a) to 5.3.7(g) of subsection 5.3.7 of this Standard.

Prior to the provision of information under subsection 5.3.7 of this Standard, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.8 of this Standard.

5.3.8 Confidentiality Agreement: An Access Provider's confidentiality agreement:

- (a) shall be reciprocal;
- (b) shall be no broader than the confidentiality provisions in the Access Provider's RAO;

- (c) shall be no broader than necessary to protect the legitimate commercial interests of the Disclosing Party;
- (d) shall include provisions prohibiting the Receiving Party from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access; and
- (e) shall not prevent the disclosure of Confidential Information or other information to the Commission by the Receiving Party.

5.3.9 Security requirements:

- (a) An Access Provider shall not impose any security requirements on an Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.
- (b) An Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in the Access Provider's security policy and is commensurate with:
 - (i) a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:
 - for Facilities and/or Services with a minimum period of access, the minimum period of access to those Facilities and/or Services; and
 - for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services,in an Access Agreement;
 - (ii) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
 - (iii) security previously reasonably required by the Access Provider.

- (c) The Access Provider must not impose a security requirement on an Access Seeker which:
 - (i) exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services to be provided by the Access Provider to the Access Seeker; or
 - (ii) is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.

5.3.10 **Insurance requirements:** An Access Provider shall ensure that any insurance that it requires an Access Seeker to have in place extends no further than the reasonable insurable interest that the circumstances require and, without limiting the foregoing, shall not be permitted to require:

- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into; and
- (b) comprehensive general liability insurance in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

5.3.11 **Creditworthiness information:** An Access Provider may only request creditworthiness information from an Access Seeker:

- (a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) if the creditworthiness information sought is limited to information which is publicly available (on this basis, the Access Provider may request the Access Seeker to warrant that such information is accurate); and
- (c) to the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the

minimum period of access to Facilities and/or Services in an Access Agreement.

5.3.12 **Reporting obligations:** On 1 ~~April and 1~~ October of each year, in respect of the Facilities and/or Services set out in subsection 5.3.13 of this Standard, each Access Provider shall notify the Commission in writing in any form approved or notified by the MCMC from time to time, of:

- (a) each Facility and/or Service which is included in the Access Provider's RAO as published on its publicly accessible website;
- (b) each Facility and/or Service which is not included in the Access Provider's RAO as published on its publicly accessible website;
- (c) each Access Agreement which the Access Provider has entered into, including:
 - (i) the name and contact details of the relevant Access Seeker;
 - (ii) the Facilities and/or Services made available under the Access Agreement;
 - (iii) any other products or services made available under the Access Agreement;
 - (iv) the term of the Access Agreement;
 - (v) whether the Access Agreement is based on the terms of the Access Provider's RAO, is negotiated on amended terms of that RAO, or is negotiated on alternative terms; and
 - (vi) any further details of the Access Agreement that may be requested by the Commission from time to time;
- (d) each Facility and/or Service which has been supplied under an Access Agreement during the period since the previous reporting period under subsection 5.3.12 of this Standard and the name and details of the party to which they were supplied;

- (e) each Access Agreement which has expired or has been terminated (if any) since the previous reporting period under subsection 5.3.12 of this Standard;
- (f) details of any security required by the Access Provider from Access Seekers under subsection 5.3.9 or subsection 5.16.8 of this Standard, as revised or varied under subsection 5.16.7 of this Standard;
- (g) details of all ongoing negotiations with Access Seekers, including the date on which the negotiation commenced and updates where an extension of time for negotiation has been granted;
- (h) details of all ongoing disputes with Access Seekers to which the Dispute Resolution Procedures apply;
- (i) details of any ongoing space constraints at any POI and other locations including due to technical reasons;
- (j) details of any constrained capacity and how it has been allocated in accordance with the Access Provider's Capacity Allocation Policy (or the Access Provider's Capacity Allocation Policy for Duct and Manhole Access, as the case may be);
- (k) summary details of all refused requests for interconnection or access by Access Seekers since the previous reporting period under subsection 5.3.12 of this Standard;
- (l) the information required to be provided under subsections 6.6.16, 6.7.7, [6.8.15](#), 6.9.20, 6.11.7, 6.12.12, 6.13.8, [6.14.10](#), and [6.15.9](#) of this Standard; and
- (m) any other information requested by the Commission.

5.3.13 **Facilities and/or Services subject to reporting:** The reporting obligations set out in subsection 5.3.12 of this Standard apply to the following Facilities and/or Services:

- (a) HSBB Network Services;
- [\(b\)](#) Transmission Services;

(c) Infrastructure Sharing;

~~(b)~~(d) Network Co-Location Service;

~~(e)~~(e) Duct and Manhole Access;

~~(d)~~(f) Digital Terrestrial Broadcasting Multiplexing Service;

(g) MVNO Access;

(h) -Domestic Inter-Operator Roaming Service;

(i) 5G Services;

~~(e)~~(i) IP Transit Service; and

~~(f)~~(k) such other Facilities and/or Services that the Commission may nominate from time to time.

5.4 NEGOTIATION OBLIGATIONS

5.4.1 **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:

(a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;

(b) both parties shall use their best endeavours to conclude the Access Agreement within:

(i) where there is no Access Agreement in place between the Operators, four (4) months; or

(ii) where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months,

after a written request by the Access Seeker to commence negotiations under paragraph ~~5.4.6(d)~~5.4.6(e) of this Standard and the Access Provider's response confirming it is willing to proceed to negotiate under paragraph 5.4.7(b) of this Standard;

(c) if the negotiations are not completed within the applicable timeframe specified under paragraph 5.4.1(b) of this Standard; then the parties must refer the matter to the Commission within 10 Business Days after the expiry of the applicable timeframe specified under paragraph 5.4.1(b), setting out the issues and any other details or information which the parties consider would be useful to the Commission in assessing the matter;

(d) if the matter is capable of resolution, the Commission may facilitate the negotiations including through mediation, otherwise the Commission will direct the parties to initiate the Dispute Resolution Procedures (or any specific aspect of those Dispute Resolution Procedures).

the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or

(i) either party may initiate the Dispute Resolution Procedures; and

(d) if the Commission grants an extension of time under paragraph 5.4.1(c) of this Standard, it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

5.4.2 **Good faith:** An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes:

(a) acting promptly, honestly, and not perversely, capriciously or irrationally;

(b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and/or Services (such as refusing to provide particular forms of access that the Access Provider provides to itself); and

(c) avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 5.3.8 of this Standard.

5.4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.

5.4.5 **Access Request:** An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

- (a) there is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities and/or Services to which the Access Seeker seeks access; or
- (b) there is such an Access Agreement, but:
 - (i) the current term of that Access Agreement will expire or terminate within the next four (4) months; or
 - (ii) the requested Facilities and/or Services are outside the scope of that agreement.

The Access Provider shall develop a process for desk/field studies and Service Qualifications that an Access Seeker may take up prior to entering into an Access Agreement.

5.4.6 **Required information:** An Access Request must contain the following information:

- (a) the name and contact details of the Access Seeker;
- ~~(b)~~ the Facilities and/or Services in respect of which access is sought;
- ~~(b)~~(c) a list of the relevant licences held by Access Seeker;

~~(e)~~(d) whether the Access Seeker wishes to accept the Access Provider's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;

~~(d)~~(e) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 5.3.7 of this Standard;

~~(e)~~(f) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 5.3.8 of this Standard;

~~(f)~~(g) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;

~~(g)~~(h) relevant technical information relating to the interface standards of the Equipment of the Access Seeker;

~~(h)~~(i) relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;

~~(i)~~(j) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 5.3.11 of this Standard;

~~(j)~~(k) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 5.3.9 of this Standard;

~~(k)~~(l) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 5.3.10 of this Standard; and

~~(l)~~(m) such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

5.4.7 Obligations upon receipt: The Access Provider shall, within ten (10) Business Days of receipt of an Access Request, respond to the Access

Seeker in writing acknowledging receipt of the Access Request and stating that:

- (a) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will provide access in accordance with the RAO;
- (b) if paragraph 5.4.7(a) of this Standard does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- (c) the Access Provider refuses the Access Request in accordance with subsection 5.4.10 of this Standard; or
- (d) the Access Provider requires specified additional information to make a decision on the Access Request in accordance with paragraphs 5.4.7(a) to 5.4.7(c) of this Standard, and once such information is received from the Access Seeker, the Access Provider shall reconsider the Access Request in accordance with this subsection and the ten (10) Business Days for the Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

The Access Provider must provide a copy of its response to the Commission at the same time that the Access Provider provides the response to the Access Seeker.

5.4.8 Acceptance response: If the Access Provider responds that access will be provided in accordance with a RAO [as described in paragraph 5.4.7(a) of this Standard], the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO executed by the Access Provider to the Access Seeker and one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with paragraph ~~5.4.6(f)~~5.4.6(e) of this Standard] that has also been properly executed by the Access Provider.

5.4.9 Negotiation response: If the Access Provider is willing to proceed with negotiation of the Access Request [as described in paragraph 5.4.7(b) of this Standard], the Access Provider must set out in its response to the Access Seeker:

- (a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access Provider's response, when the Access Provider's representative that is authorised to negotiate on an Access Agreement, will be available for an initial meeting with the Access Seeker's representative that is authorised to negotiate on the Access Agreement; and
- (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with paragraph ~~5.4.6(f)~~5.4.6(e) of this Standard] that has also been properly executed by the Access Provider.

5.4.10 **Refusal response:** If the Access Provider decides to refuse the Access Request [as described in paragraph 5.4.7(c) of this Standard], the Access Provider must set out in its response to the Access Seeker:

- (a) the grounds in subsection 5.4.11 of this Standard on which the Access Provider is relying;
- (b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
- (c) a place, date and time, not later than seven (7) Business Days from the date of the Access Provider's response, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker, for the purpose of discussing the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:
 - (i) paragraph 5.4.11(b) of this Standard, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - (ii) paragraph 5.4.11(d) of this Standard, the Access Provider must identify when additional capacity or space is likely to be available; and

- (iii) paragraph 5.4.11(e) of this Standard, the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 5.3.9 of this Standard.

5.4.11 **Grounds for refusal:** Except where expressly permitted otherwise under the Act or section 6 of this Standard, an Access Provider shall not refuse an Access Request, except on the grounds that:

- (a) the Access Provider does not currently supply, or provide access to, the relevant Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the original supply of access to Facilities and/or Services to the Access Seeker;
- (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of this Standard;
- (c) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (d) subject to this Standard, the Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with this Standard;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services; or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

5.4.12 **Dispute resolution:** If, following the meeting between the parties required to be held pursuant to paragraph 5.4.10(c) of this Standard, for the purposes of discussing an Access Provider's refusal of an Access Request, the parties have been unable to resolve any differences about the validity of the Access Request and the Access Seeker disagrees with the Access Provider's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

5.4.13 **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 5.4.9(a) of this Standard and that such representatives:

- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under paragraph 5.4.1(b) of this Standard;
- (b) agree on negotiating procedures, including:
 - (i) calling and chairing meetings;
 - (ii) responsibility for keeping minutes of the meetings;
 - (iii) clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in the meetings;
 - (iv) procedures for consulting, and including in the negotiating process, relevant experts from each of the Operators; and
 - (v) procedures for preparing and exchanging position papers;
- (c) review the information requested and provided to date and identify information yet to be provided by each Operator; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.4.14 **Facilities and services not specified in the Access List Determination:** If an Access Seeker wishes to obtain access to additional facilities and/or services that are not specified in the Access List Determination, then the requirements under subsection 5.4 of this Standard may apply to any request

for access to such additional facilities and/or services to the extent agreed by the parties.

5.4.15 **Additional matters:** An Access Provider shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:

- (a) refuse to negotiate terms of access not related to price, for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
- (b) refuse to negotiate access to the Facilities and/or Services because the Access Seeker has not agreed to acquire access to other Facilities and/or Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Facility and/or Service;
- (c) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;

- (i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner;
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
 - (i) information about the Access Provider's Network that the Access Seeker reasonably requires in identifying the network elements or network components to which it requires access; and
 - (ii) information about the basis of the determination of rates, charges or fees.

5.4.16 **Non-permitted information:** Notwithstanding anything else in this Standard, an Access Provider shall not impose an obligation on an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested Facilities and/or Services);
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- (c) details of the Access Seeker's network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.11 of this Standard;

- (g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facility and/or Service; or
- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility and/or Service.

5.4.17 **Technical infeasibility:** For the purposes of paragraph 5.4.11(c) of this Standard, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, on its own, mean that the access is not technically feasible;
- (c) if the Access Provider asserts that meeting the Access Request would have an adverse impact on network reliability, the Access Provider must provide evidence that provision of the requested Facilities and/or Services would result in a specific and significant adverse impact on network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

5.4.18 **Capacity constraints:** An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space under paragraph 5.4.11(d) of this Standard where the Access Provider

notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to full capacity or near full capacity; or
- (b) already reserved for future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in subsection 5.4 of this Standard; and
- (c) in the case of both paragraphs 5.4.18(a) and 5.4.18(b) of this Standard, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

If the Access Provider refuses an Access Request for 5G Services on the ground that the Access Provider has insufficient capacity or space under subsection 5.4.11(d), then the Access Provider must, within 6 months of such refusal, and to the extent reasonably and commercially practicable, increase capacity on its 5G RAN or take such other measures that may be reasonably necessary to accept the Access Seeker's Access Request, following which:

- (d) the Access Provider must notify the Access Seeker of the completion of such measures; and
- ~~(e)~~(e) the Access Seeker may re-submit an Access Request in accordance with this Determination.

5.4.19 Reporting on refusals: If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 5.4.11 of this Standard.

5.4.20 Fast-track application and agreement: Notwithstanding and as an alternative process to that set out in subsections 5.4.1 to 5.4.18 of this Standard, an Access Provider shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process shall be limited to the criteria set out by the Access Provider in accordance with subsection 5.4.21 of this Standard;
- (b) the fast-track application form:
 - (i) shall be limited to gathering information from the Access Seeker as set out in paragraphs 5.4.6(a) and 5.4.6(b) of this Standard; and
 - (ii) in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 5.3.9 of this Standard within five (5) Business Days of the Access Provider's receipt of a fast-track application;
- (c) the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in paragraphs 5.4.11(a), 5.4.11(e) or 5.4.11(f) of this Standard;
- (d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the Access Provider's RAO; and
- (e) within ten (10) Business Days of the Access Provider's receipt of a fast-track application, the Access Provider must:
 - (i) provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under paragraph 5.4.20(c) of this Standard (including the basis on which those grounds apply); and
 - (ii) provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph 5.4.20(e)(i)~~5.4.20(e)i~~ of this Standard.

5.4.21 Principles for setting up fast-track process: The Access Provider shall set up, and publish on its publicly accessible website, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:

- (a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;

(b) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and

(c) the Facilities and/or Services which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, Transmission Services, Interconnect Link Service, and HSBB Network Services, ~~Digital Subscriber Line Resale Service and ANE.~~

5.4.22 Form of negotiation: Any meeting or negotiation under section 5.4 may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in a combined form).

5.5 CONTENT OBLIGATIONS: GENERAL

5.5.1 **Content Obligations:** The Content Obligations referred to in this Standard are as follows:

- (a) General Obligations as described in subsection 5.5 of this Standard;
- (b) Forecasting Obligations as described in subsection 5.6 of this Standard;
- (c) Ordering and Provisioning Obligations as described in subsection 5.7 of this Standard;
- (d) Point of Interface Procedures as described in subsection 5.8 of this Standard;
- (e) Decommissioning Obligations as described in subsection 5.9 of this Standard;
- (f) Network Change Obligations as described in subsection 5.10 of this Standard;
- (g) Billing and Settlement Obligations as described in subsection 5.11 of this Standard;
- (h) Operations and Maintenance Obligations as described in subsection 5.12 of this Standard;
- (i) Technical Obligations as described in subsection 5.13 of this Standard;
- (j) Term, Suspension and Termination Obligations as described in subsection 5.14 of this Standard;
- (k) Churn Obligations as described in subsection 5.15 of this Standard; and
- (l) Legal Boilerplate Obligations as described in subsection 5.16 of this Standard.

5.5.2 **Application:** Unless otherwise specifically provided in this Standard, the Content Obligations shall apply to all Facilities and/or Services subject to the Service Specific Obligations which are set out in section 6 of this Standard.

5.5.3 **General:** All Access Providers must:

- (a) include in each RAO, obligations which are consistent with these Content Obligations; and
- (b) not include in any RAO, obligations which are inconsistent with these Content Obligations.

5.5.4 **Compliance with Content Obligations:** Each Operator shall comply with:

- (a) subsection 5.5 of this Standard;
- (b) the following subsections 5.6 to 5.16 of this Standard (inclusive); and
- (c) the Service Specific Obligations in section 6 of this Standard, as may be applicable.

5.6 FORECASTING OBLIGATIONS

5.6.1 **General:** Subject to subsections ~~5.6.3~~5.6.3 and 5.6.4 of this Standard, an Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from an Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker provide Forecasts in good faith with regard to a certain period of supply of access to Facilities and/or Services in accordance with subsection 5.6 of this Standard.

5.6.2 **Prerequisite information:** The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.

5.6.3 **Confirmation of Forecast:** If an Access Provider, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this Standard, and subsection 5.7 of this Standard will apply.

5.6.4 **Alternative or no procedure:** An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that

set out in subsection 5.6 of this Standard as part of an Access Agreement, or to dispense with such procedure altogether. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure (or mutual dispensation) and not subsection 5.6 of this Standard.

5.6.5 **Non-binding:** Subject to subsection 5.6.3 of this Standard, an Access Provider shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that the Access Provider is permitted to recover costs and expenses as set out in subsection 5.6.16 of this Standard.

5.6.6 **Forecast request:** An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provider to carry out network planning and provisioning, the following information (“**Forecast Information**”):

- (a) the Facilities and/or Services in respect of which Forecasts are required;
- (b) the total period of time covered by each Forecast, which period:
 - (i) shall be determined having regard to the Access Provider’s own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker’s own business units in using the relevant Facilities and/or Services; and
 - (ii) shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes;
- (c) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provides forecasting to itself;
- (d) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own network planning and provisioning;

- (e) the frequency with which a Forecast must be updated or a further Forecast made in accordance with this Standard, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself with the updated or further Forecasts; and
- (f) such other information that the Access Provider reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities and/or services).

5.6.7 **Non-permitted information:** The Access Provider must not request an Access Seeker to provide a Forecast that contains:

- (a) any information that is or would allow the Access Provider to infer any non-permitted information listed under subsection 5.4.16 of this Standard; or
- (b) any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.

5.6.8 **Forecast provision:** An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.

5.6.9 **Use of Forecast Information:** Forecast Information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those personnel of the Access Provider whose role is within either:

- (a) the Access Provider's wholesale or interconnection group; or
- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access,

for the purpose of responding to and planning for the Forecast and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the Access Provider's Chief Executive Officer or Chief Operating Officer.

5.6.10 **Distribution of Forecast Information:** An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.9 of this Standard if:

- (a) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other Operators and the Access Provider's own requirements (so as to protect the confidentiality of the Forecast Information); and
- (b) the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its Customers in any manner.

5.6.11 **Time for response:** The Access Provider must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the Access Provider considers the Forecast to be in compliance with the Forecast Request and:

- (a) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or
- (b) if, the Access Provider considers that the Forecast does comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in paragraphs 5.6.12(a) to 5.6.12(d) of this Standard.

5.6.12 **Reasons for rejection:** An Access Provider may only reject a Forecast following provisional acceptance where the Access Provider reasonably believes that the Forecast is inaccurate or, there is insufficient capacity having regard to:

- (a) total current usage of the Facilities and/or Services by the Access Provider and all Access Seekers;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;

- (c) the current rate of growth of total usage of the Facilities and/or Services by the Access Provider and all Access Seekers; and
- (d) subject to subsections 5.7.31 and 5.7.32 of this Standard, the amount of capacity in the Facilities and/or Services that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

5.6.13 **Time for acceptance or rejection:** The Access Provider must give notice of any acceptance or rejection ("**Rejection Notice**") of a Forecast to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such Rejection Notice (if any) must specify:
 - (i) the grounds on which the Access Provider rejects the Forecast in accordance with subsection 5.6.12 of this Standard, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - (ii) an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker.

5.6.14 **Reconsideration by Access Seeker:** The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast, and explain why the Access Seeker considers that the Access Provider is obliged to accept the Forecast under this Standard; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.

5.6.15 **Reconsideration by Access Provider:** The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection 5.6.14 of this Standard and subsections 5.6.11 to 5.6.13 of this Standard shall re-apply.

5.6.16 **Recovery for over-forecasting:** An Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:

(a) the relevant portion of the Forecast that was not met by the Access Seeker does not relate to a Non-Binding Forecast Period;

~~(a)(b)~~ such costs and expenses were reasonably and necessarily incurred by the Access Provider;

~~(b)(c)~~ the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and

~~(c)(d)~~ the Access Provider only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under paragraph ~~5.6.16(c)5.6.16(c)5.6.16(b)~~ above.

5.6.17 **Meeting Forecasts:** Subject to subsections 5.6.11 to 5.6.13 of this Standard, an Access Provider must carry out network planning in order to enable Forecasts to be met. If an Access Seeker has confirmed a Forecast under subsection 5.6.3 of this Standard, it will be binding on the Access Seeker.

5.7 ORDERING AND PROVISIONING OBLIGATIONS

5.7.1 **Contact point or mechanism:** The Access Provider shall designate and notify an Access Seeker of one or more of the following:

(a) a person to whom Orders for access to Facilities and/or Services are to be delivered;

(b) a contact point to which Orders for access to Facilities and/or Services are to be delivered (such as an e-mail address); and

- (c) a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access Provider cannot require the Access Seeker to unreasonably invest in specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

5.7.2 **Order content:** Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and/or Services:

- (a) the Facilities and/or Services to which access is requested;
- (b) a requested date and time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and
- (e) such other information that the Access Provider reasonably requires in order for it to provision access to the Facilities and/or Services as requested by the Access Seeker, provided that such information shall not include any information which:
 - (i) the Access Provider does not require from itself for similar provisioning;
 - (ii) identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
 - (iii) is non-permitted information under subsection 5.4.16 of this Standard.

5.7.3 **Use of ordering information:** Ordering information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of

the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:

- (a) the Access Provider's wholesale or interconnection group; and
- (b) that part of the network engineering group of the Access Provider responsible for interconnection or access,

for the purpose of responding to and provisioning for the Order.

5.7.4 Treatment of Orders and Service Qualifications: An Access Provider shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Access Seekers;
- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of this Standard.

5.7.5 Acknowledgment of receipt: An Access Provider shall acknowledge receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purposes of this subsection 5.7.5 of this Standard.

5.7.6 Notice of Receipt: The Access Provider must include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;

~~(c) if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment~~

~~of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;~~

~~(d)~~(c) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and

~~(e)~~(d) the position of the Order in the Access Provider's queue.

5.7.7 **Further information:** The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under paragraph 5.7.6(b) of this Standard to provide the Access Provider with such information.

5.7.8 **Service Qualifications:** The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself (for example, for marketing purposes in respect of HSBB Network Service-based services offered to Customers). The Access Provider shall only require post-Order Service Qualifications to be requested if:

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under subsection 5.4.5 of this Standard;
- (b) the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available, for example in its Operational Support Systems; and
- (c) the Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) the Access Provider's Notice of Receipt under subsection 5.7.6 of this Standard, or, if further information has been requested under subsection 5.7.7 of this Standard, within two (2) Business Days upon the expiry of the period specified in subsection 5.7.7 of this Standard.

For clarification, an Access Seeker may also seek the consent of the Access Provider to perform a Service Qualification on its own, and such consent must not be unreasonably withheld.

5.7.9 Commencement and completion of Service Qualifications:

~~(d)~~(a) The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

(i) fifteen (15) Business Days after the date of the Notice of Receipt; and

(ii) the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself; ~~and-~~

(b) If the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall notify the Access Seeker, at the same time as providing notice under paragraph 5.7.9(a), of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;

5.7.95.7.10 Withdrawal of Order following Service Qualifications: An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

(a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under subsection 5.7.9 of this Standard; and

(b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.

~~5.7.10~~5.7.11 **Acceptance obligation:** An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of this Standard.

~~5.7.11~~5.7.12 **Time for acceptance or rejection:** The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:

- (a) the specified timeframe in the Service Specific Obligations for the purposes of this subsection 5.7.12; or
- (b) the timeframe within which it accepts or rejects equivalent Orders for itself,

whichever is shorter.

If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker of the grounds of rejection and whether the Access Provider would be able to accept the Order in a modified form.

~~5.7.12~~5.7.13 **Notice of Acceptance:** An Access Provider's Notice of Acceptance to the Access Seeker must contain the following information:

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
 - (i) the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purpose of this subsection ~~5.6.13~~5.7.13; or
 - (ii) the period of time taken by the Access Provider to deliver, or activate, such Facilities and/or Services for itself,

whichever is shorter;

- (b) the date when civil works (if any) are intended to commence;

- (c) the charges applicable to fulfil the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
- (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“**Validity Period**”).

5.7.135.7.14 **Commencement of delivery timeframes:** The applicable delivery timeframe for an Order, as determined under paragraph 5.7.13(a) of this Standard, shall commence from:

- (a) where the Access Seeker’s confirmation of an Order is required under subsection 5.7.15 of this Standard, the date the Access Seeker confirms the Order in accordance with that subsection; and
- (b) in any other case, from the start of the Validity Period.

5.7.145.7.15 **Access Seeker’s confirmation:**

- (a) The Access Seeker’s confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order.
- (b) Where the Access Seeker’s confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under paragraph 5.7.15(a) above, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.

5.7.155.7.16 **Estimated charges:** If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g. based on time and materials):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
 - (i) the estimate will likely be exceeded;
 - (ii) an explanation of the reasons for exceeding the estimate; and
 - (iii) a further estimate of the charges for the work necessary to fulfil the Order;
- (b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under paragraph 5.7.16(a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
 - (i) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - (ii) a change in the scope of work by the Access Seeker,the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- (d) the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in paragraphs 5.7.13(e) or 5.7.16(b) of this Standard, as applicable.

5.7.165.7.17 **Reasons for rejection:** An Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to subsection 5.4.17 of this Standard (as if references to 'Access Request' in that subsection were references to 'Order'), it is not

technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;

- (b) subject to compliance with subsections 5.7.31 and 5.7.32 of this Standard, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to subsection 5.7.19 of this Standard, the Order is in excess of the agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment;
- (e) ~~the Access Seeker has not obtained the necessary related agreements from the Access Provider (e.g. regarding access to a new Point of Interface);~~[Not used];
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this Standard);
or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

5.7.175.7.18 **Notice of rejection:** An Access Provider's notice of rejection of an Order to the Access Seeker must:

- (a) set out the grounds on which the Access Provider rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (b) offer to meet, and meet if the offer is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to

discuss the reasons for rejection and alternative methods of compliance.

5.7.185.7.19 **Order in excess of Forecast:** Notwithstanding paragraph 5.7.17(b) of this Standard, an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Seeker for Facilities and/or Services, which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. An Access Provider is not required to supply Facilities and/or Services in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all Access Seekers and/or itself.

5.7.195.7.20 **Required extra capacity:** An Access Provider may require an Access Seeker to procure additional capacity on the Access Seeker's side of the Network to the extent that the Access Provider, in good faith and reasonably, estimates that the Operators may require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of the Access Provider's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider must notify the Access Seeker in writing, and the Access Seeker and the Access Provider must meet [no later than five (5) Business Days after receipt of the notice from the Access Provider] to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block calls or traffic to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

5.7.205.7.21 **Other uses:** An Access Provider shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, at the Access Seeker's option.

5.7.215.7.22 **Delivery dates:** The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable)

as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with subsection 5.7.24 of this Standard.

5.7.225.7.23 **Early delivery dates:** If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date.

5.7.235.7.24 **Delayed delivery dates:** Where there is a delay in the delivery of an Order, and:

- (a) the delay is caused by either the Access Provider or by a third party, that is not acting under the Access Provider's direction or control:
 - (i) the Access Provider shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
 - (ii) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
- (b) where the delay is caused by the Access Seeker:
 - (i) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
 - (ii) the Access Provider and Access Seeker must work together to minimise the delay; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

~~5.7.24~~5.7.25 **Cancellation and variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 5.7.26 of this Standard.

~~5.7.25~~5.7.26 **Cancellation or variation penalty:** Except where this Standard provides that cancellation of an Order is to be at no penalty:

- (a) the Access Provider may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - (i) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
 - (ii) an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated, or would have been mitigated had the Access Provider used its best endeavours to do so.

~~5.7.26~~5.7.27 **Testing and provisioning:** An Access Provider ~~shall~~:

- (a) ~~shall~~ co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities and/or Services, including, but not limited to, by implementing a proof of concept if requested by the Access Seeker; and
- (b) ~~shall~~ treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself; and
- ~~(b)~~(c) may require reasonable co-operation by the Access Seeker in respect of such activities.

~~5.7.27~~5.7.28 **Resource charge:** An Access Provider:

- (a) may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Provider to test and fulfil an Order for new Facilities and/or Services, provided that such one-off fee is justified by the Access Provider, to the Access ~~Seeker~~Seeker's reasonable satisfaction, as necessary for the Access Provider to provide the requested Facilities and/or Services; and
- (b) must specify the methodology and unit costs (including any potential or contingent unit costs) for calculating any fees under paragraph 5.7.28(a) above, and in its RAO. An Access Provider may reasonably require that information under this subsection 5.7.28(b) be subject to a confidentiality agreement in accordance with subsection 5.3.8 of this Standard.

5.7.285.7.29 **Queuing policy:** An Access Provider shall establish and maintain a queuing policy for each Facility and/or Service, which:

- (a) shall be non-discriminatory;
- (b) shall be applied to Orders and Service Qualifications of all Access Seekers and Orders and Service Qualifications for itself for the same or similar Facilities and/or Services, and shall treat the Orders and Service Qualifications of Access Seekers on an equivalent basis to that which the Access Provider treats Orders and Service Qualifications for itself for the same or similar Facilities and/or Services; and
- (c) shall seek to maximise the efficiency of its ordering and provisioning process.

5.7.295.7.30 **Acceptance on queue:** An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5 of this Standard (and as specified in the Notice of Receipt under subsection 5.7.6 of this Standard), of their acceptance of, and position in, the Access Provider's queue.

5.7.305.7.31 **Constrained capacity:** If an Access Provider reasonably believes that the capacity in any Facilities and/or Services required by:

- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;

- (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and
- (c) the Access Provider, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:

- (d) notify all Access Seekers to whom relevant capacity is supplied; and
- (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

5.7.315.7.32 **Capacity Allocation Policy:** If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:

- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
- (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and any other Operator, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the other Operator;
- (c) shall:
 - (i) be fair and reasonable;

- (ii) be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - (iii) treat the requirements of all Access Seekers on an equivalent basis to the requirements of Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - (iv) allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

5.7.325.7.33 **Late delivery:** If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 5.7.24(a)(iii)~~5.7.24(a)(iii)~~ of this Standard, except where such failure has been caused solely by either the Access Seeker's delay or a ~~lack of authorisation~~delay by a third party, that is not acting under the Access Provider's direction or control (for example, where a local authority or landowner delays providing necessary approvals for works to commence), the Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 of this Standard or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay, and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or a ~~lack of authorisation~~delay by a third party not acting under the Access Provider's direction or control, the Access Provider shall have the burden of demonstrating:

- (a) that allegation; and
- (b) that the Access Provider has done all things reasonably practicable to minimise or avoid such failure.

5.7.34 Contractors under direction or control: For clarity, any employees and contractors of the Access Provider shall be deemed to be acting under the direction or control of the Access Provider for the purposes of section 5.7.33 of this Standard.

5.8 POINT OF INTERFACE PROCEDURES

5.8.1 **Interconnection:** Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

5.8.2 Point of Interface locations:

(a) Subject to subsection 6.9.31 of this Standard, each Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points:

(i) at which physical co-location is available;

(ii) in respect of which virtual co-location is available; and

(iii) in respect of which in-span interconnection is available,

on and from the date of publication for the following twelve (12) months.

(b) The Access Provider shall ensure that network co-location at each POI is offered to the Access Seeker in accordance with subsection 6.9 of this Standard.

5.8.3 **Access Seeker requested Point of Interface:** An Access Provider shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 5.8.2 of this Standard. The Access Provider shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

5.8.4 **Network responsibility:** Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the interconnection links and the transmission equipment) on its side of the Point of Interface.

5.8.5 **Third party Point of Interface:** An Access Provider shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between the Access Provider and the Access Seeker, provided that the Access Seeker remains responsible for the costs of such interconnection and access, and for the third party's act and omissions at the Point of Interface.

5.8.6 **Point of Interface factors:** When determining which locations are to be listed under paragraph ~~(a)5.8.2(a)~~ of this Standard, or when determining a request under subsection 5.8.3 of this Standard, each Access Provider must have regard to each of the following:

- (a) the Access Provider shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities;
- (b) in addition to offering POI and co-location in accordance with paragraph 5.8.6(a) above, the Access Provider shall offer interconnection and co-location at each other technically feasible point;
- (c) the Access Provider shall offer physical co-location in at least one POI location for every Closed Number Area throughout Malaysia in which the Access Provider has network facilities, but may additionally offer other forms of co-location in relation to a particular location (e.g. virtual co-location);
- (d) the Access Provider shall not reserve space other than current needs for itself, future needs for itself [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Access Provider; and
- (e) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

5.9 DECOMMISSIONING OBLIGATIONS

5.9.1 **Decommissioning notice:** Except where an Access Provider is required to vacate a site where a Point of Interface is located, or any other Facility and/or Service which relies on the Access Provider's use of that site, as a result of a

third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, an Access Provider must provide no less than:

- (a) one (1) year's notice in writing to all relevant Access Seekers prior to any decommissioning of a Point of Interface; or
- (b) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities and/or Services which rely on the Access Provider's use of that site.

Where an Access Provider is required to vacate the site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs 5.9.1(a) and 5.9.1(b) above.

5.9.2 **Co-operation:** An Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Facilities and/or Services.

5.9.3 **Alternative arrangements:** An Access Provider which notifies an Access Seeker of its intention:

- (a) to decommission a Point of Interface, shall provide to the Access Seeker a functionally equivalent interconnection at another Point of Interface on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Point of Interface that is proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning; or
- (b) to decommission any other Facilities and/or Services, shall provide to the Access Seeker access to alternative Facilities and/or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Facilities and/or Services that are proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

5.9.4 **Decommissioned Point of Interface compensation:** An Access Provider shall pay the Access Seeker reasonable costs, necessarily incurred in:

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned, that are, or will be, rendered redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.9.3(a) of this Standard; and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to paragraph 5.9.3(a) of this Standard for a period that is not less than three (3) years from the date of decommissioning.

5.9.5 Decommissioned Facilities and/or Services compensation: Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with paragraph 5.9.3(b) of this Standard; or
- (b) re-arranging Equipment to connect to alternative Services offered in accordance with paragraph 5.9.3(b) of this Standard.

5.10 NETWORK CHANGE OBLIGATIONS

5.10.1 Scope: This subsection 5.10 applies where an Operator proposes to implement a Network Change of a type referred to in subsection 5.10.2 of this Standard which necessitates a change in the hardware or software (including interface software) of the other Operator's Network in order to ensure the continued proper operation and compatibility of the Operators' respective Networks, services and procedures.

5.10.2 Types of changes: The following kinds of proposed Network Changes may be within the scope of subsection 5.10.1 of this Standard:

- (a) any change by the Operator proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");

(b) any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator (“**Recipient Operator**”) has access to, which will or might affect:

(i) the Recipient Operator’s Network; or

(ii) the Recipient Operator’s use of the Facilities and/or Services provided by the Notifying Operator,

(“**Facility and/or Service Change**”);

(c) any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator’s Network which will or might affect the Recipient Operator’s Network (“**Other Network Change**”);

(d) any change by the Notifying Operator to any of the Operational Support Systems used in inter-carrier processes, including without limitation:

(i) the billing system;

(ii) portals for service fulfilment, service assurance and network and home pass information;

~~(ii)~~(iii) the ordering and provisioning systems; or

~~(ii)~~(iv) the Customer’s Churn process,

(“**OSS Change**”); and

(e) any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:

(i) to itself; or

(ii) to any other Operator,

(“**Functionality Change**”),

(collectively, “**Relevant Changes**”).

5.10.3 **Notification of change:** If a Notifying Operator proposes to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing (“**Change Notice**”) of:

- (a) the nature, effect, technical details, potential impact on the Recipient Operator’s Network and the expected completion date of the proposed Relevant Change, described at a sufficient level of detail to enable the Recipient Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Days from the date of the Change Notice, on which the representatives of the Notifying Operator will be available to discuss with the representatives of the Recipient Operator, the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any case, with not less than the relevant notice period set out in the table below or such other notice period as agreed between the Notifying Operator and Recipient Operator in an Access Agreement:

Relevant Change	Notice period
Interface Change	Three (3) months
Other Network Change	Three (3) months
Facility and/or Service Change	Three (3) months
OSS Change	Three (3) months
Functionality Change	Three (3) months

5.10.4 **Post-notification procedures:** The Notifying Operator shall:

- (a) meet with the representatives of the Recipient Operator on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in subsection 5.10.3 of this Standard), for the purpose of discussing the Relevant Changes and

any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;

- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Operator to minimise any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

5.10.5 Testing: A Notifying Operator shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operators' respective Networks, including where required by implementing a POC; and
- (b) jointly carry out testing with the Recipient Operator in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 5.10.5(a) above.

5.10.6 Testing failure: Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under subsection 5.10.5 of this Standard, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Operators' respective Networks, services and procedures, the Notifying Operator must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Operators to repeat the steps in subsections 5.10.3 to 5.10.5 of this Standard.

5.11 BILLING AND SETTLEMENT OBLIGATIONS

- 5.11.1 **Invoices:** An Access Provider shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Cycle in accordance with subsection 5.11.3 of this Standard for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.
- 5.11.2 **Currency:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 5.11.3 **Billing Cycle:** An Access Provider shall issue Invoices in accordance with the Billing Cycles specified in the Service Specific Obligations, except where a different Billing Cycle is agreed with the Access Seeker in an Access Agreement.
- 5.11.4 **Billing verification information:** An Access Provider shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 5.11.5 **Other billing information:** An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.
- 5.11.6 **Summarised Invoice and billing information:** An Access Provider shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.
- 5.11.7 **Billing error:** If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 5.11.8 **Time for payment:** Subject to subsection 5.11.11 of this Standard, an Access Provider shall allow an Access Seeker no less than one (1) month from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.11.8 should not be construed as preventing an Access Provider

from granting a discount to an Access Seeker as an incentive to make early payments.

5.11.9 **Method of payment:** An Access Provider shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Access Provider.

5.11.10 **No set-off:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, an Access Provider may not set-off Invoices except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

5.11.11 **Withholding of disputed amounts:** An Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:

- (a) the Access Seeker notifies the Access Provider within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement); and
- (b) the Access Seeker's notification specifies the information referred to in subsection 5.11.13 of this Standard.

5.11.12 **Billing Disputes:** An Access Provider shall allow an Access Seeker to dispute any amount in an Invoice if:

- (a) in the case of domestic calls and interconnection, the Access Seeker notifies the Access Provider within thirty (30) Business Days after the date of receipt of such Invoice;
- (b) in the case of outgoing and incoming international calls and interconnection, the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such Invoice; or
- (c) in case of any other Facilities and/or Services, the Access Seeker notifies the Access Provider within thirty (30) Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in subsection 5.11.13 of this Standard.

5.11.13 Notification of Billing Dispute: An Access Provider may require an Access Seeker to provide the following information when disputing any amount in an Invoice:

- (a) the reasons for which the Invoice is disputed;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
 - (i) the account number;
 - (ii) the Invoice reference number;
 - (iii) the Invoice date;
 - (iv) the Invoice amount; and
 - (v) billing verification information; and
- (d) evidence in the form of a report, indicating **the any** relevant traffic data which is in dispute.

5.11.14 Billing Dispute resolution: An Access Provider and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.

5.11.15 Interest: Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.11.12 of this Standard, an Access Provider may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Access Provider. The interest that may be charged by the Access Provider shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of

receipt by the Access Provider of full payment. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

5.11.16 **Backbilling:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, the Access Provider may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that the Access Provider is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the calls were made or in which other Facilities and/or Services were provided.

5.11.17 **Provisional billing:** Where an Access Provider is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 5.11.1 of this Standard, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (“**Provisional Invoice**”). In such circumstances, the Access Provider may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, the Access Provider may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

5.11.18 **Adjustment Period:** Where a Provisional Invoice is issued by the Access Provider, within the next two (2) months or such other time period as may be agreed in the Access Agreement (“**Adjustment Period**”), the Access Provider must issue an Invoice for the actual amount due for access to the relevant Facilities and/or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Provider. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then the Access Provider will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

5.12 OPERATIONS AND MAINTENANCE OBLIGATIONS

- 5.12.1 **Operations and maintenance responsibility:** Each Operator shall be responsible for the operations and maintenance of its own facilities and services.
- 5.12.2 **Fault reporting service:** Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.
- 5.12.3 **Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 5.12.2 of this Standard.
- 5.12.4 **Non-discriminatory fault reporting and identification:** An Operator shall:
- (a) perform fault reporting and identification on a non-discriminatory basis; and
 - (b) treat the faults reported by another Operator on an equivalent basis as it treats the faults reported by itself.
- 5.12.5 **Cross-referrals:** If a Customer reports a fault to an Operator:
- (a) when the Customer is directly connected to another Operator; or
 - (b) which clearly relates to a Network, Facility and/or Service of another Operator,
- the Operator which receives the report shall promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.
- 5.12.6 **Network fault responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services (such as Transmission Services or HSBB Network Services) which are used in another Operator's Network.

5.12.7 **Major inter-working faults:** If a major fault occurs which affects communication that crosses or would cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

5.12.8 **Faults affecting other Networks or Equipment:** If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on another Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first-mentioned Operator to rectify the identified faults and restore the service; and
- (c) the outcome of those actions.

5.12.9 **Bear own costs:** Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

5.12.10 **Fault priority:** Each Operator shall give priority to faults in the following order:

- (a) the highest service loss impact in terms of the number of Customers affected;
- (b) those which have been reported on previous occasions and have re-occurred; and
- (c) all other faults.

5.12.11 **Fault rectification:** Each Operator shall rectify faults on a non-discriminatory basis.

5.12.12 **Target times:** Each Operator shall respond to and rectify faults within the lesser of:

- (a) timeframes set out in a relevant Service Specific Obligation or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;

- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which the Access Provider provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	<ul style="list-style-type: none"> 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls 	Within one (1) hour	Every one (1) hour	Four (4) hours
Level 2	<ul style="list-style-type: none"> 1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-30% 5. Cross line and silent calls 6. Mobile number portability issues 	Within four (4) hours	Every four (4) hours	Twenty-four (24) hours
Level 3	<ul style="list-style-type: none"> 1. Faults affecting single or small number of Customers 2. Route blocking <10% 	Within twenty-four (24) hours	Every twenty-four (24) hours	Seventy-two (72) hours
Level 4	<ul style="list-style-type: none"> 1. Remote congestion 2. External Technical Irregularities (“ETI”) 3. Other performance related issues 	Within forty-eight (48) hours	Every forty-eight (48) hours	Ten (10) Business Days

Explanatory Notes to subsection 5.12.12 of this Standard:

- (a) All faults reported shall be ascribed with a ‘Priority Level’ as set out in the table above for response and rectification purposes and the Operators involved shall cooperate with one another to achieve the target timeframes corresponding to the severity of the fault reported as set out in that table.
- (b) The ‘Fault Types’ listed in the table above are only examples of possible types of faults. Operators are required to categorise all faults by reference to the specified ‘Priority Levels’, ‘Response Timeframes’ and ‘Rectification Timeframes’.
- (c) ‘Response Timeframe’ refers to the timeframe for the Operator whose Network, Facility and/or Service is faulty to respond to and appropriately attend to the

fault. 'Response Timeframes' are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the fault, whichever is the earlier.

- (d) 'Progress Update Frequency' refers to the frequency to update the other Operator until the fault is rectified.
- (e) 'Rectification Timeframe' refers to the time taken by the Operator to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the Operator and the rectification of the fault on a permanent or temporary basis (provided that if rectified on a temporary basis, the Operator must continue attempting to achieve a permanent rectification without delay).

5.12.13 Planned maintenance: If an Operator intends to undertake planned maintenance ("Maintenance Operator") which may affect an Access Seeker's Network, Facilities and/or Services, the Maintenance Operator must:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

5.12.14 Planned maintenance windows: A Maintenance Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least effect on end users.

5.12.15 Emergency maintenance: If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:

- (a) provide at least twenty-four (24) hours' notice of the planned maintenance;

- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

5.12.16 **Hours of fault reporting and rectification:** An Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

5.12.17 **Complaints handling:** The Operators must report all interconnection and access outages that relate to Networks, Services and/or Facilities to the Access Provider's relevant fault reporting and rectification service.

5.12.18 **Routine testing:** The Operators shall conduct interconnection service tests at agreed annual intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission.

5.13 TECHNICAL OBLIGATIONS

5.13.1 **Compliance:** Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked and are not inconsistent with any technical obligations set out in this Standard.

5.13.2 **Prevention of technical harm:** An Operator must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Operator's Network, which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

5.13.3 **Technical Standards:** An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

5.13.4 **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

- (a) causes interference; or

- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.

5.13.5 **Notice of interference and rectification:** If an Operator notifies (“**Notifying Operator**”) another Operator that the other Operator’s Network, network facilities, network services or Equipment is causing interference to the Notifying Operator’s Network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- (b) if the other Operator is not able to locate the source of the interference within twenty-four (24) hours under paragraph 5.13.5(a) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other’s Network, network facilities, network services or Equipment to locate the source of the interference.

5.14 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

5.14.1 **Term:** An Operator shall, unless otherwise required by the Access Seeker, enter into Access Agreements with a term of no less than three (3) years from the date of execution of the Access Agreement.

5.14.2 **Term of supply:** Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, the Access Provider shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows:

Facilities and/or Services	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Access to Network Elements	Twelve (12) months
Transmission Services	Twelve (12) months <u>or</u>

Facilities and/or Services	Minimum term
	<u>Twenty-four (24) months (at the Access Provider's discretion)</u>
HSBB Network Services	Twelve (12) months
Network facilities <u>Facilities</u> access <u>Access</u>	Three (3) years

5.14.3 **Termination circumstances:** Subject to subsection 5.14.6 of this Standard, an Access Provider may only terminate an Access Agreement, whether in whole or in part (for example, only to the extent relating to a particular Facility or Service, or at a particular site), if any of the circumstances referred to in paragraphs 5.14.3(a), 5.14.3(b) or 5.14.3(c) of this Standard apply, and the Access Provider has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access Agreement, the Access Provider has notified the Access Seeker that it will terminate in no less than one (1) month if the Access Seeker has not remedied its breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such a notification;
- (b) the Access Seeker has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
- (c) a Force Majeure has continued for a period of more than three (3) months.

The Access Provider shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. For clarification, a notice to be given under this subsection 5.14.3 is in addition to the notice required under subsection 5.14.6 of this Standard.

5.14.4 **Change in law:** Where continued operation of an Access Agreement or access to any Network, Facilities and/or Services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and the

Access Provider must meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Network, Facilities and/or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). ~~If the parties cannot agree to the provision of access on different terms and conditions, the Access Provider may terminate the provision of access to the relevant Network, Facilities and/or Services.~~

5.14.5 **Suspension:** Subject to subsection 5.14.6 of this Standard, an Access Provider may only suspend access to any Facilities and/or Services, whether in whole or in part, in the following circumstances:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of the Access Provider or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 5.11 of this Standard (and subject to any right that the Access Seeker has under subsection 5.11 of this Standard to dispute any amount in an Invoice);
- (e) where the Access Seeker has failed to provide the new security amount as required under subsections 5.3.9, 5.16.7 and 5.16.8 of this Standard;
- (f) where Force Majeure applies; or
- (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/or Services under this Access Agreement.

For the purposes of this subsection 5.14.5, an Access Provider must provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/or Services. The Access Provider

shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 5.14.5 is in addition to the notice required under subsection 5.14.6 of this Standard.

5.14.6 **Notice:** Prior to terminating, suspending, or seeking to materially vary an Access Agreement (including any part thereof) or access to any Facilities and/or Services provided under it, an Access Provider must notify the Commission in writing of the action the Access Provider proposes to take and the reasons why it considers such action is appropriate. The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. The Access Provider:

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to respond to the Access Provider's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (b) must not give effect to the proposed termination, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.

5.14.7 **Undertakings:** If the parties to an Access Agreement adopt the terms and conditions specified in an access undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

5.14.8 **Post-termination fees:** An Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services provided under it except:

- (a) charges invoiced in arrears and not yet paid; or
- (b) charges arising during an applicable minimum contractual period (as described in subsection 5.14.2 of this Standard) provided that:
 - (i) such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - (ii) the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph 5.14.8(b)(i)~~5.14.8(b)(i)~~ above.

5.14.9 **Upfront charges refund:** On termination of an Access Agreement or access to any Facilities and/or Services provided under it, the Access Provider shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

5.14.10 **Deposits and guarantees:** Notwithstanding the obligation in subsection 5.14.9 of this Standard, the Access Provider shall:

- (a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to the Access Provider have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to the Access Provider as at the date of termination.

5.15 CHURN OBLIGATIONS

5.15.1 Application: This section 5.15 applies to all Facilities and Services other than HSBB Network Services.

~~5.15.15.15.2~~ **Authorisation of Releasing Service Provider:** The Releasing Service Provider must not object to the Access Service Provider implementing any Customer's Churn request, where such request is received by the Access Service Provider from a Gaining Service Provider.

~~5.15.25.15.3~~ **Notifications:** Except where the Releasing Service Provider and the Access Service Provider are the same person, the Gaining Service Provider must notify the Releasing Service Provider of each proposed Churn prior to forwarding a Transfer Request to the Access Service Provider.

~~5.15.35.15.4~~ **Notification of invalid Churns:** Within two (2) Business Days of the receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under subsection ~~5.15.35.15.35.15.2~~ of this Standard, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:

- (a) the Transfer Request resulted from a processing error; or
- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form).

For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider (where the Access Service Provider is a different person to the Releasing Service Provider).

~~5.15.45.15.5~~ **Response to invalid Churn notification:** If a notification is made under subsection ~~5.15.45.15.45.15.3~~ of this Standard, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request ~~may~~**must** be provided to the Access Service Provider immediately.

~~5.15.55.15.6~~ **Implementation of Churn:** Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement

the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.

~~5.15.65.15.7~~ **Facilitation of Churn:** An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection ~~5.15.65.15.65.15.5~~ of this Standard, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.

~~5.15.75.15.8~~ **Confidentiality:** Unless otherwise specifically provided in this Standard, the Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as Confidential Information of the Gaining Service Provider, and must not use such information in connection with marketing to, or offering services to, a Customer.

~~5.15.85.15.9~~ **Availability:** If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of this Standard) must not refuse an Access Request (under subsection 5.4.10 of this Standard) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

5.16 LEGAL BOILERPLATE OBLIGATIONS

5.16.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to Facilities and/or Services in accordance with this Standard. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfilment of the Operator's obligation under this Standard.

5.16.2 **Mutual compensation:** Each Operator must establish mutually acceptable compensation arrangements with each other Operator (including bill-and-keep arrangements).

5.16.3 **Equal representatives:** Each Operator must appoint an equal number of representatives to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely

implementation of the terms and conditions of Access Agreements or Dispute Resolution Procedures, as applicable.

5.16.4 **Dispute resolution:** Each Operator must comply with the Dispute Resolution Procedures.

5.16.5 **Complete charges:** ~~Each Operator~~An Access Provider shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in this Standard.

5.16.6 **Intellectual Property:** Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the inter-operability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.

5.16.7 **Security review:** An Operator shall only vary the amount and type of any security requirements imposed on another Operator:

- (a) a maximum of once in any twelve (12) month period;
- (b) if there is a material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraphs 5.3.9(b)(i)~~5.3.9(b)(i)~~ and 5.3.9(b)(ii) of this Standard; and
- (c) if the Operator determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.

If amounts contained in Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Operator for the purposes of paragraph 5.16.7(b) above.

5.16.8 **Additional security:** For the purposes of subsection 5.16.7 of this Standard, an Operator may only request additional or substitute security from another Operator, in a manner consistent with subsection 5.3 of this Standard, if the other Operator was making a new Access Request under subsection 5.3 of this Standard.

5.16.9 **Assignment:** An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.

5.16.10 **Review:** An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:

- (a) if the Minister issues a direction or determination relating to its subject matter;
- (b) if the Commission issues a direction or determination relating to its subject matter;
- (c) if the Act or this Standard is amended in relation to its subject matter;
- (d) by agreement of each of the parties; or
- (e) if a condition of the Operator's licence is amended or deleted or a new condition is imposed in relation to its subject matter.

5.16.11 **Costs and expenses:** Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.

5.16.12 **Applicable laws:** An Operator shall include a provision in all Access Agreements prepared by it which provides that the Access Agreements will be governed by the laws of Malaysia and that Operators will comply with all applicable directions issued by the Malaysian regulatory authorities.

5.16.13 **Reciprocity:** An Access Provider must offer to acquire access to Facilities and/or Services on the same terms that it provides access to those Facilities and/or Services, where the Facilities and/or Services are the same or similar in nature.

5.16.14 **Conditional supply:** An Access Provider shall not require an Access Seeker to acquire:

- (a) other facilities and/or services from the Access Provider as a condition of providing access to Facilities and/or Services under this Standard (for example, an Access Provider shall not make access to Facilities

conditional on the acquisition of Services, such as Transmission Services, or other services, such as maintenance services); and

- (b) any Facilities and/or Services, or any elements thereof (for example, ports or lines) in any minimum or maximum quantity or ratio, including for example any minimum bandwidth.

SECTION 6: SERVICE SPECIFIC OBLIGATIONS

6.1 O&T SERVICES

- 6.1.1 **Application:** This subsection 6.1 applies where access to an O&T Service has been requested or is to be provided.
- 6.1.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding O&T Services is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding O&T Services is six (6) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding O&T Services is once every six (6) months.
- 6.1.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for an O&T Service within one (1) Business Day.
- 6.1.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for an O&T Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.1.5 **Indicative delivery timeframe:** For the purposes of paragraph [5.7.13\(a\)\(i\)](#) ~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for O&T Services is twenty (20) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.1.5 commences from the Notice of

Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.1.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for O&T Services will be monthly.
- 6.1.7 **Non-discrimination:** An Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs Network Conditioning for itself for the same or similar type of O&T Services.
- 6.1.8 **Impact of retail commercial arrangements:** An Access Provider must not refuse to commence or complete Network Conditioning on the basis that the commercial arrangements (other than arrangements in relation to matters specified under subsection 6.1.9 of this Standard, to the extent relevant) are not agreed between the parties in relation to the retail service for which Network Conditioning is to be provided.
- 6.1.9 **Commencement of Network Conditioning:** An Access Provider must commence Network Conditioning for a Facility and/or Service which requires the Access Provider to conduct such Network Conditioning immediately following the acknowledgement of receipt of an Order from an Access Seeker and agreement by the Access Provider and the Access Seeker in relation to the following matters, to the extent relevant:
- (a) geographical coverage;
 - (b) number information (i.e. length and code allocation);
 - (c) origins from or destinations to which access is required;
 - (d) network routes (including which Operator is responsible for the provisioning of the interconnection links); and
 - (e) handover arrangements and relevant Points of Interface.
- 6.1.10 **Number range activation:** Subject to subsection 6.1.11 of this Standard, if the supply of a Facility and/or Service requires the Access Provider to activate a code or number range on its Network, the Access Provider shall:
- (a) use its best endeavours to activate in the Access Provider's Network the code or number range within the shorter of the timeframe between

the time that the Access Provider would activate the code or number range for itself, including on an urgent basis, and ten (10) Business Days of being requested to do so by the Access Seeker; and

- (b) in any event, activate the code or number range within one (1) month of being requested to do so by the Access Seeker.

6.1.11 Intra-Network codes and numbers: Subsection 6.1.10 of this Standard does not apply to codes or number ranges not intended for use across interconnected Networks.

~~6.1.12 Inter-Closed Number Area service: An Access Provider shall offer interconnection to permit calls to be transmitted across Closed Number Area boundaries, whether directly or in transit.~~

6.1.12 [Not used]

6.1.13 Costs: The costs incurred in Network Conditioning shall be apportioned between the Operators as follows:

- (a) if the work has been carried out in accordance with a Government or Commission requirement, the Operators will bear their own costs; and
- (b) if the work has been carried out to fulfil an Order made in accordance with this Standard, the costs shall be apportioned in an equitable manner between the Operators having regard to cost causation.

~~6.1.14 Handover principles: Where access is provided to an O&T Service, an Operator shall handover interconnected calls to the other Operator on the basis requested by the Access Seeker, unless otherwise agreed in an Access Agreement. For clarification:~~

- ~~(a) for originating Services provided by an Access Provider, the terminating Operator (as an Access Seeker) may elect whether handover will be on a Near End Handover basis or on a Far End Handover basis; and~~
- ~~(b) for terminating Services provided by an Access Provider, the originating Operator (as an Access Seeker) may elect whether handover will be on a Near End Handover or on a Far End Handover basis.~~

6.1.14 [Not used]

6.1.15 **CLI:** For the purpose of billing reconciliation and call charge verification, Operators will provide CLI to each other subject to CLI being forwarded to it from another Network with which its Network is interconnected.

6.1.16 **Dummy CLIs:** An Operator must route a Customer's original CLI and must not translate numbers, use dummy numbers or dummy CLI, or use any means to alter numbers which may confuse or have the tendency to confuse the other Operator's Network ~~(including transit Networks)~~ or billing systems. Where technical problems for routing or billing so demand, then the use of dummy numbers shall only be permitted as agreed between the Operators.

6.1.17 **Quality of service:** An Access Provider shall provide access to O&T Services for Access Seekers in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:

Network Quality	Threshold %	Remarks
1.0 Successful Call 1.1 Answered Call 1.2 Busy Call 1.3 No Answer Call 1.4. Call Abandon	≥ 94%	Number of calls that successfully seized a trunk group and are answered. Number of calls that successfully seized a trunk group and are terminated after connection due to 'terminating subscriber is busy'. Number of calls that successfully seized a trunk group and are rejected because either the called device did not answer or the calling party went on-hook during ringing. Indicates the unallocated numbers and incomplete dialling from calling party.
Call Establishment Rate (1.1 + 1.2 + 1.3)	≥ 85%	Expressed as the sum of Answered, Busy and No Answer Calls and indicates the proportion of calls that successfully seized the circuits out of the total call attempts.
2.0 Unsuccessful Call 2.1 Network Congestion Internal Congestion (ICONG)	≤ 6% ≤ 3% ≤ 1%	Number of calls offered to a trunk group that successfully overflowed or are rejected in their own switch. Internal congestion of

Network Quality	Threshold %	Remarks
		originating POI and interconnect route congestion are due to insufficient capacity to support the current traffic. Short message service (“ SMS ”) is to be agreed with Access Seekers in accordance with best practices.
<p>External Congestion (OCONG)</p> <p>2.2 Network Fault</p> <p>External Technical Irregularities/Error (ETI)</p> <p>Internal Technical Irregularities/Error (ITI)</p>	<p>≤ 2%</p> <p>≤ 3%</p> <p>≤ 2%</p> <p>≤ 1%</p>	<p>Number of calls that, after a trunk group is seized, are rejected upon receiving a backward signal indicating that far end congestion has occurred within the terminating POI and the subsequent terminating Network. SMS is to be agreed with Access Seekers in accordance with best practices.</p> <p>Calls which are successfully connected through the Network are rejected upon detection of technical irregularities or faults in the far end radio subsystem in the other network element.</p> <p>Calls which are successfully connected through the Network are rejected upon detection of technical irregularities in the originating Network.</p>

6.2 ~~WHOLESALE LINE RENTAL SERVICE~~

~~6.2.1~~ **Application:** This subsection 6.2 applies where access to the Wholesale Line Rental Service has been requested or is to be provided.

~~6.2.2~~ **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:

~~(a)~~ the maximum period of time covered by Forecasts regarding Wholesale Line Rental Service is three (3) months;

~~(b)~~ the minimum intervals or units of time to be used in Forecasts regarding Wholesale Line Rental Service is one (1) month; and

~~(c)~~ the maximum frequency to update or to make further Forecasts regarding Wholesale Line Rental Service is once a month.

~~6.2.3~~ **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Wholesale Line Rental Service within one (1) Business Day.

~~6.2.4~~ **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Wholesale Line Rental Service is accepted or rejected within one (1) Business Day after:

~~(a)~~ issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or

~~(b)~~ providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

~~6.2.5~~ **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative delivery timeframe for Wholesale Line Rental Service is five (5) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.2.5 commences from the Notice of Acceptance

~~or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.~~

~~6.2.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Wholesale Line Rental Service will be monthly.~~

~~6.2.7 **Sole relationship with Customer:** The Access Seeker has the sole relationship with the Customer when providing a service to the Customer which uses the Wholesale Line Rental Service as an input to that service provision.~~

6.2 NOT USED

~~6.2.8 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:~~

~~(a) information on the Customer is publicly available; or~~

~~(b) information on the Customer has been received or developed by the Access Provider from sources other than the Access Seeker,~~

~~and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the Wholesale Line Rental Service. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the Wholesale Line Rental Service as an input or more generally, or to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.~~

6.3 INTERCONNECT LINK SERVICE

- 6.3.1 **Application:** This subsection 6.3 applies where access to the Interconnect Link Service has been requested or is to be provided.
- 6.3.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Interconnect Link Service is three (3) years;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Interconnect Link Service is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Interconnect Link Service is once a year.
- 6.3.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for an Interconnect Link Service within two (2) Business Days.
- 6.3.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for an Interconnect Link Service is accepted or rejected within fifteen (15) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.3.5 **Indicative delivery timeframe:** For the purposes of paragraph [5.7.13\(a\)\(i\)](#)~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for Interconnect Link Service is:

- (a) twenty (20) Business Days if the Interconnect Link Service is requested at an existing POI between the Access Provider and the Access Seeker;
or
- (b) four (4) months if the Interconnect Link Service is requested at a new POI between the Access Provider and the Access Seeker.

For clarification, the activation timeframe in this subsection 6.3.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.3.6 **Billing cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Interconnect Link Service will be quarterly.

~~6.4 ACCESS TO NETWORK ELEMENTS~~

~~6.4.1 Application: This subsection 6.4 applies where Access to Network Elements has been requested or is to be provided.~~

~~6.4.2 Seven access elements: The elements to which access is required to be provided are as follows:~~

~~(a) access to the copper elements of the access network, being:~~

~~(i) the Full Access Service;~~

~~(ii) the Line Sharing Service;~~

~~(iii) the Bitstream Service with Network Service;~~

~~(iv) the Bitstream without Network Service; and~~

~~(v) the Sub-loop Service;~~

~~(b) access to associated optical fibre services in the Full Access Service, the Line Sharing Service and the Sub-loop Service;~~

~~(c) access to Network Co-Location Service in accordance with subsection 6.9 of this Standard and associated tie cable services;~~

~~(d) access to Transmission Services in accordance with subsection 6.7 of this Standard (though such access shall not be a condition to the supply of ANE);~~

~~(e) access to shared splitting services;~~

~~(f) access to interfaces to Operational Support Systems in accordance with subsection 6.4.9 of this Standard; and~~

~~(g) access to network information in accordance with subsection 6.4.3 of this Standard.~~

~~6.4.3 Access to network information: At an Access Seeker's request, subject to the Access Provider's confidentiality obligations in respect of the information, an Access Provider must provide the Access Seeker with the equivalent~~

network information as it gives to itself including (but not limited to) the following types of information:

~~(a) basic information on the cabling system, which includes but is not limited to the following:~~

~~(i) a list and/or map of MDFs including total number of usable loops and number of loops in use;~~

~~(ii) data on known disturbers per MDF and per cable;~~

~~(iii) line distribution per MDF (weighted average distribution);~~

~~(iv) general information concerning cable characteristics including typical type and quality of cable (e.g. diameter, results from quality tests that have been conducted, number of lines, technical interference control and spectral management plan);~~

~~(v) statistical information about the network e.g. loop characteristics;~~

~~(vi) standard spectrum masks and/or list of approved systems;~~

~~(vii) availability of co-location space and type;~~

~~(viii) availability of power;~~

~~(ix) availability of space at MDF; and~~

~~(x) co-location environmental services (such as air conditioning, uninterruptible power supply, security);~~

~~(b) detailed information on the cabling system, which includes but is not limited to the following:~~

~~(i) the latest update of information in addition to line distribution per MDF, described in paragraph 6.4.3(a)iii above, where the Access Seeker wants to have access;~~

~~(ii) location (physical address information) associated with the MDFs and the name of the associated local switch and/or number ranges associated with MDFs;~~

- ~~(iii) exact customer coverage of each MDF;~~
- ~~(iv) detailed information concerning loop characteristics, any known limitations or incompatibilities;~~
- ~~(v) results of any DSL tests;~~
- ~~(vi) any foreseeable limitations of space for MDF extensions; and~~
- ~~(vii) detailed description of procedures and conditions relating to requested form of ANE;~~
- ~~(c) detailed information on access to MDFs, which includes, but is not limited to the type of access proposed by Access Provider, being one of:
 - ~~(i) directly on the MDF;~~
 - ~~(ii) in-house on HDF [distance, cable type and size (number of pairs)];~~
 - ~~(iii) outside (remote) on HDF [distance, cable type and size (number of pairs)]; or~~
 - ~~(iv) cable entry points and capacity available; and~~~~
- ~~(d) detailed information on co-location, which includes but is not limited to:
 - ~~(i) availability of co-location space and type, detailed floor plan, if space is required by the Access Seeker;~~
 - ~~(ii) co-location environmental services (such as air conditioning, uninterruptible power supply, security), technical constraints (if any), terms and conditions of use; and~~
 - ~~(iii) conditions of physical access to the facilities.~~~~

~~6.4.4 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:~~

- ~~(a) — the maximum period of time covered by Forecasts regarding Access to Network Elements is three (3) months;~~
- ~~(b) — the minimum intervals or units of time to be used in Forecasts regarding Access to Network Elements is one (1) month; and~~
- ~~(c) — the maximum frequency to update or to make further Forecasts regarding Access to Network Elements is once a month.~~

~~6.4.5 — **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Access to Network Elements within one (1) Business Day.~~

~~6.4.6 — **Grounds for refusal:** In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request, or an Order, for access to ANE in respect of specific premises if the Access Provider provides evidence to the Access Seeker that those premises are actively connected to and retail services are being provided using HSBB Network Service. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection.~~

~~6.4.7 — **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Access to Network Elements is accepted or rejected within one (1) Business Day after:~~

6.4 NOT USED

6.5 NOT USED

- ~~(a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or~~
- ~~(b) providing the Access Seeker with the result of post Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post Order Service Qualification for that Order under subsection 5.7.8 of this Standard.~~

~~6.4.8—**Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Access to Network Elements will be monthly.~~

~~6.4.9—**Interface to OSS:** The Access Provider shall make available, for all Access Seekers, access to its OSS for ordering, maintenance, fault reporting and billing purposes on an equivalent basis as it provides to itself, including through an electronic interface between the Access Provider's and the Access Seeker's systems which may be developed jointly by the Access Provider and the Access Seeker or as otherwise agreed between the parties. For the purposes of this subsection 6.4.9, the Access Provider must provide the Access Seeker with the necessary technical specifications for the development and use of the electronic interface between its own and the Access Seeker's systems.~~

~~6.4.10—**Indicative activation timeframes:** For the purposes of paragraph 5.7.13(a) of this Standard, with respect to each of the Services described in paragraph 6.4.2(a) of this Standard, the indicative activation timeframes are as follows:~~

Service	Indicative activation timeframe
Full Access Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Line Sharing Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Bitstream with Network Service	Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)

Bitstream without Network Service	Within five (5) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)
Sub-loop Service	Within two (2) Business Days of the Notice of Acceptance or confirmation of the Order (if applicable)

~~6.4.11—Retail line rental services:~~ The Access Provider shall not require an end user to acquire a retail line rental service if the Access Seeker is acquiring the Wholesale Line Rental Service, Full Access Service, Bitstream with Network Service, Bitstream without Network Service or Sub-loop Service.

~~6.4.12—Implementation and migration plan:~~ For clarification, subsection 6.6.10 of this Standard shall apply in relation to an Access Seeker who:

- ~~(a) — has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Bitstream with Network Service, Bitstream without Network Service and/or Sub-loop Service; and~~
- ~~(b) — is acquiring the Facilities and/or Services specified in paragraph 6.4.12(a) above at premises that will be served by a HSBB Network Service within five (5) years or less.~~

~~6.5 DIGITAL SUBSCRIBER LINE RESALE SERVICE~~

~~6.5.1 Application: This subsection 6.5 applies where access to the Digital Subscriber Line Resale Service has been requested or is to be provided.~~

~~6.5.2 Forecasts: For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:~~

~~(a) the maximum period of time covered by Forecasts regarding Digital Subscriber Line Resale Service is three (3) months;~~

~~(b) the minimum intervals or units of time to be used in Forecasts regarding Digital Subscriber Line Resale Service is one (1) month; and~~

~~(c) the maximum frequency to update or to make further Forecasts regarding Digital Subscriber Line Resale Service is once a month.~~

~~6.5.3 Grounds for refusal: In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request, or an Order, for the Digital Subscriber Line Resale Service in respect of specific premises if the Access Provider provides evidence to the Access Seeker that those premises are actively connected to and retail services are being provided using HSBB Network Service. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection.~~

~~6.5.4 Acknowledgement of receipt: For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Digital Subscriber Line Resale Service within one (1) Business Day.~~

~~6.5.5 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Digital Subscriber Line Resale Service is accepted or rejected within one (1) Business Day after:~~

~~(a)(b) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or~~

~~(b)(c) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access~~

~~Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.~~

~~6.5.6—**Indicative activation timeframe:** For the purposes of paragraph 5.7.13(a)i of this Standard, the indicative activation timeframe for Digital Subscriber Line Resale Service is five (5) Business Days. For clarification, the indicative activation timeframe in this subsection 6.5.6 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.~~

~~6.5.7—**Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Digital Subscriber Line Resale Service will be monthly.~~

6.6 HSBB NETWORK SERVICES

- 6.6.1 **Application:** This subsection 6.6 applies where access has been requested or is to be provided to HSBB Network Services.
- 6.6.2 **Forms of HSBB Network Services:** There are two (2) forms of HSBB Network Services:
- (a) Layer 2 HSBB Network Services with QoS; and
 - (b) Layer 3 HSBB Network Service.
- 6.6.3 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding HSBB Network Services is ~~one (1) year~~three (3) years, provided that any period of time that is greater than one (1) year shall be a Non-Binding Forecast Period;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding HSBB Network Services is three (3) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding HSBB Network Services is once every three (3) months.
- 6.6.4 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a HSBB Network Service within one (1) Business Day.
- 6.6.5 **Commencement and completion of post-Order Service Qualifications:** For the purposes of subsection 5.7.9 of this Standard, the Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any post-Order Service Qualification within the shorter of:
- (a) five (5) Business Days after the commencement of the post-Order Service Qualification; and

- (b) the time within which the Access Provider performs and notifies the result of an equivalent post-Order Service Qualification undertaken for itself.

In addition to subsection 5.7.8 of this Standard, the Access Provider shall only require post-Order Service Qualification to be requested in respect of a premises on a street that is not connected to the HSBB Network Service.

6.6.6 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a HSBB Network Service is accepted or rejected within one (1) Business Day after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.6.7 Indicative activation timeframe: For the purposes of paragraph 5.7.13(a)(i)~~5.7.13(a)i~~ of this Standard, the indicative activation timeframe for HSBB Network Services is:

- (a) in respect of a premises on a street that is connected to the HSBB Network, five (5) Business Days including the date of the Broadband Termination Unit (“BTU”) installation appointment; (whether or not a BTU has been installed at such premises as at the date of the relevant Notice of Acceptance); or
- (b) otherwise, up to twenty-fourteen ~~(2014)~~ Business Days including the date of the BTU installation appointment.

The Access Provider will perform activations, and must ensure it has sufficient BTU stock to perform activations, within the shorter of the timeframe specified in this subsection 6.6.7, the time within which the Access Provider performs activations for itself and the time which would permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access

Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time. For clarification, the indicative activation timeframe in this subsection 6.6.7 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.6.8 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for HSBB Network Services will be monthly.

6.6.9 **Public Portal information:** Each Access Provider must make available, ~~on its publicly accessible website or~~ through an interactive self-service portal in accordance with subsections 6.6.13 and 6.6.14 of this Standard, access to a mechanism which allows Access Seekers to query:

- (a) whether:
 - (i) a premises is on a street which is connected to a HSBB Network and where a BTU is installed;
 - (ii) a premises is on a street which is connected to the HSBB Network, but where a BTU is not installed; or
 - (iii) a premises is in an exchange service area or part of an exchange service area in which the Access Provider has a HSBB Network;
- (b) whether the Access Provider offers the Layer 2 HSBB Network Service with QoS and/or the Layer 3 HSBB Network Service in respect of the premises, street, exchange area or part thereof;
- (c) the maximum bit rate at which the Access Provider offers the HSBB Network Service (subject to any necessary provisos or qualifications related to technology or network facility limitations);
- (d) the exchange buildings and other Access Provider premises at which Access Seekers may establish a POI to acquire the HSBB Network Services; ~~and~~
- (e) information and parameters concerning service restoration including, without limitation, throughput achieved at the service boundaries of the

HSBB Network Service, equivalent to that which the Access Provider provides to itself; and

(f) the total number and availability of BTU ports, on a premises-by-premises basis.

The Access Provider shall ensure that the information specified in subsections 6.6.9 and ~~6.6.10~~ 6.6.10 of this Standard is accurate and made available as soon as the Access Provider makes that information available to itself and in any case, on and from the date of inclusion of the premises or exchange service area (or part thereof) in the implementation and migration plan or any subsequent updates. The Access Provider shall pay to an Access Seeker on request, a rebate of RM 44.75, or such other amount as agreed between the parties, for each item of information that the Access Provider fails to provide, or which is inaccurate, in contravention of subsections 6.6.9 and 6.6.10 of this Standard. The Access Provider may, at its discretion, require the Access Seeker to submit a claim for such rebates, provided that:

(g) the Access Provider must not request information, evidence or other materials from the Access Seeker beyond the minimum amount that is reasonably necessary to validate the Access Seeker's claim;

(h) the Access Provider must, within such timeframes as agreed with the Access Seeker, pay any rebates validly claimed by the Access Seeker or notify the Access Seeker that some or all of the Access Seeker's claim is rejected; and

(f)(i) if the Access Provider rejects a claim by an Access Seeker, the Access Provider must provide reasons for such rejection.

6.6.10 Implementation and migration plan: The Access Provider shall maintain and publish ~~on its publicly accessible website~~, through an interactive self-service portal in accordance with subsections 6.6.13 and 6.6.14 of this Standard, a detailed up-to-date implementation plan that provides its procedures and timing for the HSBB Network Services that includes:

- (a) the implementation plan covering a total period of time for which the Access Provider has any internal rollout plans;
- (b) the migration from copper to fibre at all existing nodes by location;

- (c) the construction of new nodes by location;
- (d) notification processes to Customers and Access Seekers for such migration and the minimum notice periods to be provided; and
- (e) ordering and provisioning procedures for HSBB Network Services including the applicable terms and conditions- and BTU port availability.

The Access Provider shall manage the implementation plan in a non-discriminatory manner. This includes giving the same information and priority to Access Seekers as it gives to itself in the handling of the migration or orders for HSBB Network Services. The information provided to Access Seekers must allow Access Seekers to:

- (f) market HSBB Network-based retail services to Customers and potential Customers;
- (g) compete for the delivery of HSBB Network-based retail services to Customers and potential Customers; and
- (h) order HSBB Network Services in order to deliver HSBB Network-based retail services to Customers and potential Customers,

on the same basis as the Access Provider (including with regard to Customers and potential Customers who are at the time acquiring retail services to which ~~ANE Services or the Digital Subscriber Line Retail Service~~ any copper-based services are an input).

6.6.11 Availability to Access Seeker: The implementation and migration plan specified in subsection 6.6.10 of this Standard shall be made available in electronic form to any Access Seeker on request.

~~6.6.12 Mandatory Standard on QoS: Each RAO for a HSBB Network Service shall:~~

- ~~(a) contain only terms and conditions which are consistent with the rights and obligations set out in any applicable mandatory standard on QoS; and~~
- ~~(b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in any applicable mandatory standard on QoS.~~

6.6.12 [Not used]

6.6.13 **Service fulfilment timeline:** An Access Provider shall comply with the following service fulfilment timelines and obligations for the HSBB Network Service:

Parameters	Timelines and obligations
Service Gateway (“SG”) configuration	The SG configuration shall be performed and completed by the Access Provider within fourteen <u>twenty (1420)</u> Business Days from the date on which connectivity to the Access Seeker’s equipment has been established.
Service availability check	<ul style="list-style-type: none"> • The Access Provider shall enable the Access Seeker to check whether a premises or exchange service area (or part thereof) is serviceable by the HSBB Network Service via its publicly accessible website or an interactive self-service portal in accordance with subsection 6.6.9 of this Standard. • The Access Provider shall provide the Access Seeker with access to the interactive self-service portal upon establishment of the SG and service acceptance handover. • The Access Seeker may request an appointment in an available appointment slot for a BTU installation in respect of a premises that is serviceable by the HSBB Network Service. • <u>Where information about a premises or exchange service area (or part thereof) is not available on its publicly accessible website or through the interactive self-service portal, the Access Provider shall inform the Access Seeker, <u>within five (5) Business Days of an Access Seeker’s request,</u> whether the premises or exchange service area (or part thereof) is serviceable by the HSBB Network Service within five (5) Business Days of an Access Seeker’s request.</u> • <u>If the relevant premises or exchange service area (or part thereof) is not serviceable by the HSBB Network Service, the Access Provider must provide to the Access Seeker information regarding the Access Provider’s plan for servicing that premises, including an indicative timeframe for service availability.</u>

Parameters	Timelines and obligations
BTU installation appointment	BTU installation appointments to be confirmed within one (1) Business Day of the Access Seeker requesting an appointment in an available appointment slot.
BTU installation	<ul style="list-style-type: none"> • Fifty percent (50%) of BTU installations per month to be completed within four (4) hours from the agreed installation time. • Eighty percent (80%) of BTU installations per month to be completed within six (6) hours from the agreed installation time. • One hundred percent (100%) of BTU installations per month to be completed within eight (8) hours from the agreed installation time.
Return Order management	For any faulty or incomplete BTU installations, the Access Provider shall resolve the problem and complete the installation within five (5) Business Days of Access Seeker's notification unless the installation was faulty or incomplete for reasons outside the Access Provider's reasonable control.
SG upgrade/downgrade	Within five (5) Business Days from the date that the Access Seeker's request is received if the HSBB Network has sufficient capacity to support the request (otherwise a notification of rejection on the basis of insufficient capacity will be provided to the Access Seeker and the Commission within one (1) Business Day of such request).
BTU upgrade/downgrade	Within two (2) Business Days from the date that the Access Seeker's request is received if the HSBB Network has sufficient capacity to support the request (otherwise a notification of rejection on the basis of insufficient capacity will be provided to the Access Seeker and the Commission within one (1) Business Day of such request).

6.6.14 **Service assurance timeline:** An Access Provider shall comply with the following service assurance timelines and obligations for the HSBB Network Service:

Parameters	Timelines and obligations
Mean time to restore for fault due to	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired)

Parameters	Timelines and obligations
infrastructure from SG to BTU	Broadband—Access—ServiceCustomer Service), Determination No. 42 of 20 2146 including such modification or variation as may be determined by the Commission from time to time.
A complete failure of network elements and causing all services to be totally disrupted	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband—Access—ServiceCustomer Service), Determination No. 42 of 20 2146 including such modification or variation as may be determined by the Commission from time to time.
Any fault relating to breakdown of passive fibre	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband—Access—ServiceCustomer Service), Determination No. 42 of 20 2146 including such modification or variation as may be determined by the Commission from time to time.
On-site support	The Access Provider shall provide on-site support during Business Days.
Appointment for service restoration	The Access Provider shall provide an interactive service assurance portal, in accordance with subsection 6.6.9 of this Standard, to the Access Seeker which shall include the following functionality: <ul style="list-style-type: none"> • a common ticketing system to log, review and generate reports and progress updates; and • a common slotting system to enable the Access Seeker to view and book available appointment slots.
Throughput	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 1 of 20 21 including such modification or variation as may be determined by the Commission from time to time.
Network Latency (Layer 2 HSBB)	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 1 of 20 21

Parameters	Timelines and obligations
Network Service with QoS only)	including such modification or variation as may be determined by the Commission from time to time.
Packet Loss and Jitter	As required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 1 of 2021 including such modification or variation as may be determined by the Commission from time to time.
Service availability	The higher of ninety-five percent (95%) or such service availability required to permit the Access Seeker or a downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time.
<u>Network utilisation and performance</u>	<u>The Access Provider shall provide to the Access Seeker, through an interactive service assurance portal that is in accordance with subsection 6.6.96-6-9 of this Standard, a network utilisation and performance report at intervals of no greater than one (1) month.</u>

6.6.15 **QinQ implementation:** An Access Provider shall provide the QinQ implementation to the Access Seeker to allow the Access Seeker freedom in choosing their VLAN identifiers. The QinQ features include:

- (a) providing a simple layer 2 virtual private network tunnel for the end user;
- (b) shielding the VLAN identifier of the end user, so as to save the public network VLAN identifier resource of the Access Seeker; and
- (c) enabling the Access Seeker to plan their private network VLAN identifier to avoid any conflict with the Access Provider and other operators' VLAN identifiers and to ensure that the Access Seeker's VLANs are not fully visible to the Access Provider.

6.6.16 Reporting:

~~(d)~~(a) As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (i) the locations at which the Access Provider offers for supply any services over the HSBB Network including to its own end user customers, together with the network types (e.g. fibre to the node or fibre to the home) which form the basis of the offer for supply at each location;
- (ii) the locations at which the Access Provider supplies HSBB Network Services, together with the type of HSBB Network Service supplied at each location (being the Layer 2 HSBB Network Service with QoS or the Layer 3 HSBB Network Service);
- (iii) the locations at which the Access Provider supplies an alternative commercially negotiated service to another Operator using the HSBB Network and any details of each such commercially negotiated service which may be requested by the Commission from time to time;
- (iv) each Class of Service or QoS Class (as applicable); and

(v) each bit rate offered in respect of each HSBB Network Service.

(b) An Access Provider must, by the day that is on or about twenty (20) Business Days after the end of a calendar quarter (or such other period agreed with Access Seekers), provide to Access Seekers a report on the Access Provider's performance in each month of that quarter, against key operational metrics in respect of services supplied by the Access Provider over the HSBB Network, including, without limitation:

(i) network utilisation;

(ii) throughput;

(iii) latency;

(iv) packet loss;

(v) service fulfilment; and

(vi) service assurance.

6.6.166.6.17 Equivalence of Inputs: An Access Provider must:

- (a) provide HSBB Network Services on an Equivalence of Inputs basis to Access Seekers, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself;
- (b) provide access to Operational Support Systems for HSBB Network Services to itself and to Access Seekers using the same systems and processes (including for billing, information management, service fulfilment, service assurance and network performance); and
- (c) ensure that Access Seekers are able to use the HSBB Network Services, the OSS, the systems and processes that are used by the Access Provider in the same way and with the same degree of reliability, performance, accuracy and up-to-date information as it provides to itself, including by means of API integration if requested by an Access Seeker.

6.6.18 Modularity: An Access Provider must provide HSBB Network Service on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities and/or Services that are not required for HSBB Network Services to be provided.

6.6.19 Churn Obligations: The following obligations apply in relation to a Churn:

- (a) The Releasing Service Provider and Access Service Provider must not object to, impose any conditions on any party, or take any other steps, that have the effect of delaying or impeding, the implementation of a valid Churn request by a Gaining Service Provider, including imposing any conditions requiring the Customer of the Releasing Service Provider to visit any physical location to facilitate a Churn;
- (b) Within one (1) Business Day of the date of receipt of the Gaining Service Provider's Transfer Request:
 - (i) the Releasing Service Provider must either:

- A. approve the Transfer Request and request the Access Service Provider to implement the Churn; or
 - B. notify the Gaining Access Provider that the Transfer Request is invalid or incomplete, in which case paragraph 6.6.19(c) shall apply; and
- (ii) the Access Service Provider must reserve an available BTU port for the Gaining Service Provider to be used solely in connection with the Churn;
- (c) If a notification is made under paragraph 6.6.19(b)(i) ~~B.6.6.19(b).i.B~~ of this Standard, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request must be provided to the Access Service Provider immediately;
- (d) Upon receipt of a notice under paragraph 6.6.19(b)(i) ~~A.6.6.19(b).i.A~~ above, the Access Service Provider must promptly, and in any event within one (1) day of such receipt, request the Gaining Service Provider to reserve an available appointment slot for activation of the relevant service;
- (e) The Gaining Service Provider must, within one (1) day of receiving a notice under paragraph 6.6.19(c) above, submit with the Access Service Provider an Order for, and book an available appointment slot for activation of, the relevant service;
- (f) Each party shall use its best endeavours to ensure that the relevant Churn is implemented, and the relevant service activated, within five (5) days from the date of the Gaining Service Provider's first valid Transfer Request;
- (g) Unless otherwise specifically provided in this Standard, the Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information

contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as Confidential Information of the Gaining Service Provider, and must not use such information in connection with marketing to, or offering services to, a Customer; and

- (h) If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of this Standard) must not refuse an Access Request (under subsection 5.4.10 of this Standard) on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.
- (i) If, in respect of a Churn, the Releasing Service Provider and Access Service Provider are the same person, any acts required under this subsection 6.6.19 as between the Releasing Service Provider and Access Service Provider shall be deemed to occur instantaneously.

6.6.20 Customer Demand List: The following process shall apply to the submission of Customer Demand Lists by an Access Seeker:

- (a) The Access Provider must permit (but must not require) the Access Seeker to submit Customer Demand Lists on at least a monthly basis.
- (b) The Access Provider must provide an acknowledgement to the Access Seeker of its receipt of each Customer Demand List within one (1) Business Day of such receipt.
- (c) The Access Provider must investigate and resolve any issues identified in the Customer Demand List within three (3) Business Days of its receipt (for example, by availing or augmenting any ports identified as being full, or updating its records to correct instances of missing address information).
- (d) The Access Provider must permit the Access Seeker to submit Customer Demand Lists through an interactive self-service portal if requested by an Access Seeker.
- ~~(d)~~(e) The Access Provider must treat the Customer Demand List as the Confidential Information of the Access Seeker and must not use the Customer Demand List for any purpose other than as described in

subsection 6.6.20(c). For clarity, the Access Provider must not use the Customer Demand List to contact any Customers identified therein or in connection with any of the Access Provider's marketing and promotional activities.

6.7 TRANSMISSION SERVICES

- 6.7.1 **Application:** This subsection 6.7 applies where access to a Transmission Service has been requested or is to be provided.
- 6.7.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Transmission Services is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Transmission Services is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Transmission Services is once a year.
- 6.7.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Transmission Service within two (2) Business Days. For clarification, an Access Provider may acknowledge receipt of Orders in batches of no more than 20 Orders per batch.
- 6.7.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Transmission Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.7.5 **Indicative delivery timeframe:** For the purposes of paragraph ~~5.7.13(a)(i)~~~~5.7.13(a)~~ of this Standard, and unless otherwise agreed between the Access Provider and Access Seeker having regard to the volume of the relevant Order(s), the indicative delivery timeframe for Transmission Services is:

- (a) if no new network facilities are required to supply the Transmission Services, twenty (20) Business Days; or
- (b) if new network facilities are required to supply the Transmission Services, sixty (60) Business Days.

For clarification, the indicative delivery timeframe in this subsection ~~6.7.5~~~~6.7.5~~ commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection ~~5.7.14~~~~5.7.14~~ of this Standard.

6.7.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Transmission Services will be quarterly.

6.7.7 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing, in respect of each type of Transmission Service (i.e. any Trunk Transmission Service, Wholesale Local Leased Circuit Service or End-to-End Transmission Service) offered or supplied by the Access Provider, details of:

- (a) each technically feasible network point at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those points);
- (b) each network interface through which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied using those interfaces);
- (c) each bit rate at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those bit rates); and
- (d) whether the Transmission Service is supplied in conjunction with any other Facility and/or Service.

6.7.8 No bundling: An Access Provider shall not require an Access Seeker to purchase a Transmission Service together with any other Transmission Service. For example, an Access Provider shall not require an Access Seeker to purchase a Trunk Transmission Service between a pair of technically feasible network transmission points with another Trunk Transmission Service between another pair of technically feasible network transmission points.

6.7.9 [Quality of service: An Access Provider shall provide access to the Trunk Transmission Service to Access Seekers in accordance with the quality of service parameters set out in the table below, and otherwise on an equivalent basis as it provides for itself:]

<u>Parameter</u>	<u>Threshold %</u>
<u>Network availability (Trunk Transmission Service only)</u>	<u>≥ 99.992%</u>
<u>Latency (Intra-region):</u> <ul style="list-style-type: none"> • <u>within Peninsular Malaysia</u> • <u>within Sabah</u> • <u>within Sarawak</u> 	<u>Between >1ms and <40ms</u>
<u>Latency (Inter-region)</u> <ul style="list-style-type: none"> • <u>between Peninsular Malaysia and Sabah</u> • <u>between Peninsular Malaysia and Sarawak</u> • <u>between Sabah and Sarawak</u> 	<u>≥ 40ms</u>

6.7.10 Rebate: An Access Provider shall discuss and negotiate with the Access Seeker in good faith the provision of a rebate in respect of each Billing Cycle in which the service level availability of any Transmission Service provided by the Access Provider does not meet the relevant service level availability specified in the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time, other than to the extent to which such non-compliance arises due to:

(a) any act or omission of the Access Seeker other than in accordance with the directions of the Access Provider;

(b) Force Majeure; or

(c) any other excluded reason specified in that Determination.

6.7.11 Amount of rebate: The amount of any rebate for the purposes of section 6.7.10 shall, at a minimum, reflect:

(a) the reduced costs that would have been incurred by the Access Seeker in acquiring the relevant Transmission Service with a service level availability equivalent to that provided by the Access Provider; and

(b) any other diminution in value (including any rebates paid by the Access Seeker to end users) in the Transmission Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time.

6.8 INFRASTRUCTURE SHARING

- 6.8.1 **Application:** This subsection 6.8 applies where Infrastructure Sharing has been requested or is to be provided.
- 6.8.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.
- 6.8.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.
- 6.8.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.8.5 **Indicative delivery timeframe:** For the purposes of paragraph ~~5.7.13(a)(i)~~ ~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for Infrastructure Sharing is ~~forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.8.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.~~

(a) for ground-based towers and new sites, ninety (90) Business Days; and

(b) for Common Antenna Systems in High Priority Areas, ten (10) Business Days;

(c) for fixed telecommunications poles, ten (10) Business Days; and

(d) for all other structures, forty (40) Business Days.

For clarification, the indicative delivery timeframe in this subsection 6.8.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.8.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

6.8.7 **Physical access:** Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself.

6.8.8 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.8.7, 6.8.9 and 6.8.10 of this Standard will be reasonable, having regard to:

(a) the position of each person and the number of persons nominated; and

(b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

6.8.9 **Escorts:** An Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same

circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.8.9(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to paragraph 6.8.9(d) of this Standard, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
 - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.8.9(b) or 6.8.9(c) of this Standard (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
 - (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.8.10 Absence of escort: For the purposes of subsection 6.8.7 of this Standard, if an escort does not arrive at the Access Provider's property within the timeframe specified in subsection 6.8.9, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

6.8.11 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.8.12 **Utilities and ancillary services:** The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back-up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

6.8.13 **Cost:** The utility and ancillary costs in respect of the network facilities provided by the Access Seeker to the Access Provider as contemplated in subsection 6.8.12 of this Standard shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

6.8.14 **Augmentation of Common Antenna Systems:** The Access Provider shall use all reasonable endeavours to augment in-building Common Antenna Systems to the extent required to enable the Access Provider to supply access to such in-building Common Antenna Systems on request by an Access Seeker.

6.8.15 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, the Access Provider shall notify the Commission in writing of any specified network facilities (as that term is used in the description of the Infrastructure

Sharing Service) that support, or have the capability to support, the installation of mobile network equipment along, or in close proximity to:

(a) a street;

(b) a road;

(c) a path;

(d) a railway corridor;

(e) a park; or

(f) such other outdoor area that may be accessed by members of the public,

including but not limited to billboards, public transit shelters, poles, traffic light poles, bridges, and road gantries.

6.8.16 Maintenance and rectification: An Access Provider shall:

(a) ensure that it maintains in reasonable working condition all fixed telecommunications poles which comprise specified network facilities (as that term is used in the description of the Infrastructure Sharing Service), subject to paragraph 6.8.16(b); and

(b) on notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications pole does not comply with paragraph 6.8.16(a), perform within forty (40) Business Days such activities as required to rectify such non-compliance.

6.9 NETWORK CO-LOCATION SERVICE

- 6.9.1 **Application:** This subsection 6.9 applies where access to the Network Co-Location Service has been requested or is to be provided.
- 6.9.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Network Co-Location Service is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Network Co-Location Service is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Network Co-Location Service is once a year.
- 6.9.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Network Co-Location Service within two (2) Business Days.
- 6.9.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Network Co-Location Service is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.9.5 **Indicative delivery timeframe:** For the purposes of paragraph [5.7.13\(a\)\(i\)](#) ~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for Network Co-Location Service is twenty (20) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.9.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.9.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Network Co-Location Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 6.9.7 **Inspection:** An Access Provider shall allow nominated employees and/or contractors of a potential Access Seeker to physically inspect network facilities of the Access Provider during normal business hours provided that the Access Seeker has provided no less than five (5) Business Days' notice of its request to perform a physical inspection and details of its nominees.
- 6.9.8 **Physical access:** Where required to fulfil an Order for a Network Co-Location Service or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the obligations under paragraph 6.9.31(b) of this Standard.
- 6.9.9 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.9.7, 6.9.8, 6.9.10 and 6.9.11 of this Standard will be reasonable, having regard to:
- (a) the position of each person and the number of persons nominated; and
 - (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.
- 6.9.10 **Escorts:** An Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the

Access Seeker wish to enter into the Access Provider's property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.9.10(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to paragraph 6.9.10(d) of this Standard, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
 - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.9.10(b) or 6.9.10(c) of this Standard (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
 - (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.9.11 **Absence of escort:** For the purposes of subsection 6.9.10 of this Standard, if an escort does not arrive at the Access Provider's property within the timeframe specified in subsection 6.9.10, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

6.9.12 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's

behalf, which must be made available for inspection by the Access Provider, upon request.

6.9.13 Publication of co-location locations and provision of co-location by Access Provider:

- (a) Subject to subsection 6.9.31 of this Standard, each Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points at which physical co-location is available;
- (b) Subject to subsection 6.9.15 of this Standard, where required due to physical constraints, Access Providers should jointly agree with Access Seekers as to which Access Seekers should be given the right to physically co-locate at each POI and each network facility and such access shall be granted on a non-discriminatory basis; and
- (c) ~~Where physical co-location cannot be granted to an Access Seeker,~~ theThe Access Seeker shall be granted either physical co-location, virtual co-location or in-span interconnection as requested by the Access Seeker.

6.9.14 Deemed Access Providers: If an Access Seeker (referred to in this subsection 6.9.14 as the “**Deemed Access Provider**”) obtains physical co-location at a POI or network facility from an Access Provider (referred to in this subsection 6.9.14 as the “**Principal Access Provider**”), and the Principal Access Provider is unable to provide virtual co-location or in-span interconnection as required under paragraph ~~(c)6.9.13(c)~~ of this Standard, it shall be deemed to be an Access Provider for the purposes of this subsection 6.9. The Deemed Access Provider shall be required to permit access to Access Seekers following the same procedures for permitting access as those required to be followed by the Principal Access Provider. Within two (2) Business Days of reaching a co-location agreement with an Access Seeker, the Deemed Access Provider must notify the Principal Access Provider of the existence of the agreement and the identity of the Access Seeker, and must ensure that the Access Seeker complies with the relevant co-location obligations contained in subsection 6.9 of this Standard. The Deemed Access Provider shall be responsible to the Principal Access Provider for all acts and omissions of any Access Seekers in connection with providing access to Facilities and/or Services under its co-location agreement.

6.9.15 **Lack of space:** Subject to subsection 6.9.16 of this Standard, if there are space constraints at a particular location, the Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of facilities and transferring Equipment to an alternative location. If the Access Provider has used its best efforts to accommodate all Access Seekers, and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall:

- (a) notify the Commission of the lack of space at the location;
- (b) provide any supplementary information which may be requested by the Commission (which may include physical inspections by the Commission); and
- (c) be excused from providing physical co-location at that location unless and until the Commission notifies the Access Provider that the Commission considers that physical co-location can and must be provided, in which case the Access Provider shall provide physical co-location as directed by the Commission.

6.9.16 **Reservation of space:** An Access Provider shall not reserve space other than for its own current needs, its future needs, [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered space from that Access Provider.

6.9.17 **Allocation of space:** An Access Provider shall allocate space at each location where physical co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.

6.9.18 **No minimum space requirements:** An Access Provider shall not impose minimum space requirements on an Access Seeker.

6.9.19 **Notice of refusal:** If an Access Provider proposes to refuse, or refuses, a request for physical co-location from an Access Seeker on the basis of current or future needs of the Access Provider and/or the needs of other Access Seekers who are currently occupying or have ordered additional space from the Access Provider, it must also notify the Access Seeker and the Commission of:

- (a) the space currently used by the Access Provider;

- (b) the amount of space reserved for the Access Provider's future needs;
- (c) the space currently occupied by other Access Seekers;
- (d) the space ordered by other Access Seekers; and
- (e) the total amount of space potentially available but for the uses set out above.

6.9.20 Reporting: As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (a) its space requirements over the three (3) year period from the date of such notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs; and
- (b) in respect of its POIs and other Facilities, including the locations which are the subject of subsection 6.9.31 of this Standard, to provide:
 - (i) details of the locations at which the Network Co-Location Service is provided to another Operator; and
 - (ii) details of locations in respect of which any request for Network Co-Location Service was refused, together with the reasons for the refusal.

6.9.21 Preparatory work by the Access Seeker: If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on an Access Provider's network facilities, such Access Provider shall permit the Access Seeker's employees and/or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the policy referred to in this subsection 6.9.21) that such employees and/or contractors have the necessary qualifications. Each Access Provider shall publish and make available a policy about the necessary qualifications applicable to employees and/or contractors who will be permitted to perform preparatory work under this subsection 6.9.21, and such policy to be non-discriminatory in its application to the Access Provider's personnel and the Access Seeker's employees and/or contractors who perform similar functions.

6.9.22 **Preparatory work by the Access Provider:** If the Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis):

- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:
 - (i) the estimate will likely be exceeded; and
 - (ii) a further estimate of the charges for the work necessary to complete the preparatory work; and
- (b) the Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate.

6.9.23 **Delays:** If the Access Provider agrees to perform preparatory work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 6.9.23(a) above to cancel the preparatory work without penalty if the delay is longer than ten (10) Business Days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

6.9.24 **Utilities and ancillary services:** If an Access Provider has permitted access or physical co-location at a particular location or network facilities, that Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back-up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

6.9.25 **Cost:** The utility and ancillary costs in respect of the network facilities as contemplated in subsection 6.9.24 of this Standard shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

6.9.26 **Security caging:** An Access Provider shall not require the use of cages or similar structures to physically segregate co-located Equipment, or Equipment located at or on network facilities of the Access Provider.

6.9.27 **Equipment allowance:** An Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 6.9.27.

6.9.28 **Marking:** All Operators shall mark or label their Equipment, wires, cables, batteries and distribution boards in such a manner that they can be easily identified as the Equipmentproperty of the relevant Operator.

6.9.29 **Maintenance:** An Access Provider shall permit, and do all things reasonably necessary to allow, an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted under subsection 6.9.8 of this Standard.

6.9.30 **Extensions:** The Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

6.9.31 **Security and critical national information infrastructure:**

- (a) An Access Provider may decline to publish information in connection with particular Points of Interface and other locations where Facilities are located, for national or operational security reasons, but in such circumstances, an Access Provider must:
 - (i) promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
 - (ii) offer to provide, and if the offer is accepted, provide, updated location details to such Operators as Points of Interface and Facilities are withdrawn, introduced and changed; and
 - (iii) provide all such information to the Commission and, on a 6-monthly basis, the locations at which the Access Provider is offering to supply Network Co-Location Service, the locations at which Access Seekers have requested Network Co-Location Service and the locations at which the Access Provider is actively supplying Network Co-Location Service.

- (b) An Access Provider may establish reasonable security procedures and processes (such as identity checks) to apply to personnel of Access Seekers who will physically access Points of Interface or other locations where Facilities are located. However, such procedures and processes shall:
 - (i) not completely or substantially prohibit an Access Seeker from physically accessing a Point of Interface or other relevant location unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
 - (ii) be no more restrictive or onerous than the procedures and processes that the Access Provider imposes on its own

personnel who physically access the same Points of Interface and locations.

6.10 DOMESTIC CONNECTIVITY TO INTERNATIONAL SERVICES

6.10.1 **Application:** This subsection 6.10 applies where access to Domestic Connectivity to International Services has been requested or is to be provided.

6.10.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Domestic Connectivity to International Services is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Domestic Connectivity to International Services is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Domestic Connectivity to International Services is once a year.

6.10.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Domestic Connectivity to International Services within two (2) Business Days.

6.10.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Domestic Connectivity to International Services is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.10.5 **Indicative delivery timeframe:** For the purposes of paragraph [5.7.13\(a\)\(i\)](#) ~~5.7.13(a)i~~ of this Standard, the indicative delivery timeframe for

Domestic Connectivity to International Services is ten (10) Business Days. For clarification, the activation timeframe in this subsection 6.10.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.10.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Domestic Connectivity to International Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 6.10.7 **Any cable system:** An Access Provider must provide connection services to an Access Seeker:
- (a) in respect of a cable system which the Access Seeker is authorised to connect to, irrespective of whether that Access Seeker is authorised by a third party or by virtue of its control over the cable system; and
 - (b) to enable transit between cable systems.
- 6.10.8 **New cable systems:** An Access Provider must provide each Domestic Connectivity for International Service in respect of all existing and new cable systems to which the Access Provider has access at equivalent times and in accordance with equivalent processes and procedures as that which it provides to itself. Such services must be provided from the ready-for-service date of the relevant cable system.
- 6.10.9 **Access and co-location:** An Access Provider must offer, and if requested by an Access Seeker, provide in accordance with this Standard, physical access to, and physical co-location at, any network facility or site to which the Access Seeker requires physical access or physical co-location in order to have the benefit of a Domestic Connectivity to International Service. The physical access or physical co-location to be provided to the Access Seeker, its nominated employees and/or contractors is at equivalent times and in accordance with equivalent processes and procedures as are applicable to the Access Provider. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with paragraph 6.9.31(b) of this Standard.

6.10.10 Nominated personnel: The employees and/or contractors nominated by the Access Seeker under subsections 6.10.9, 6.10.11 and 6.10.12 of this Standard will be reasonable, having regard to:

- (a) the position of each person and the number of persons nominated; and
- (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

6.10.11 Escorts: An Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall:

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.10.11(d) of this Standard, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (c) subject to paragraph 6.10.11(d) of this Standard, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
 - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
 - (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.10.11(b) or 6.10.11(c) of this Standard (as applicable) plus a reasonable window to allow for travel time

(which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and

- (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

6.10.12 Absence of escort: For the purposes of subsection 6.10.10 of this Standard, if an escort does not arrive within the timeframe specified in subsection 6.10.11, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

6.10.13 Site register: The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.10.14 Publication of locations: The Access Provider must make available on its publicly available website the locations at which the Domestic Connectivity to International Services is available. An Access Provider may decline to publish for national or operational security reasons information in connection with particular locations where Domestic Connectivity to International Services is available, but in such circumstances, an Access Provider must:

- (a) promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
- (b) offer to provide, and if the offer is accepted, provide, updated location details to such Operators as locations are withdrawn, introduced and changed; and
- (c) provide all such information to the Commission.

6.11 DUCT AND MANHOLE ACCESS

- 6.11.1 **Application:** This subsection 6.11 applies where Duct and Manhole Access has been requested or is to be provided.
- 6.11.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:
- (a) the maximum period of time covered by Forecasts regarding Duct and Manhole Access is one (1) year;
 - (b) the minimum intervals or units of time to be used in Forecasts regarding Duct and Manhole Access is one (1) year; and
 - (c) the maximum frequency to update or to make further Forecasts regarding Duct and Manhole Access is once a year.
- 6.11.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Duct and Manhole Access within two (2) Business Days.
- 6.11.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Duct and Manhole Access is accepted or rejected within ten (10) Business Days after:
- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.
- 6.11.5 **Indicative delivery timeframe:** For the purposes of paragraph [5.7.13\(a\)\(i\)](#) ~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for Duct and Manhole Access is ten (10) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.11.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.11.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Duct and Manhole Access will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

6.11.7 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing details of:

(a) each area in which the Access Provider has built or assumed maintenance obligations in respect of ~~lead~~Lead-in ducts and Ducts, Mainline Ducts, Inter-exchange Ducts or manholes, including any manholes associated ~~manhole~~with any infrastructure; referred to in this paragraph 6.11.7(a);

(b) each area in which the Access Provider has been granted exclusive rights to develop or maintain ~~mainline ducts~~Mainline Ducts, Inter-exchange Ducts and associated manhole infrastructure;

~~(c) each area in which an Access Seeker has requested the supply of Duct and Manhole Access in respect of mainline ducts and associated manholes but in which the Access Provider has not been granted exclusive rights to develop or maintain the duct and manhole infrastructure;~~

~~(d)~~(c) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which the Access Provider has therefore offered to supply access to its own sub-ducts; and

~~(e)~~(d) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which there is also no room in the Access Provider's own sub-ducts.

6.11.8 **Physical access:** Where required to fulfil an Order for Duct and Manhole Access or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities,

at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. The Access Provider shall provide:

- (a) immediate physical access to Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (b) physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
 - (i) two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance.

6.11.9 **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsection 6.11.8 of this Standard will be reasonable, having regard to:

- (a) the position of each person and the number of persons nominated; and
- (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

6.11.10 **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

6.11.11 **Joint survey:** For the purposes of subsection 5.7.8 of this Standard and subject to the timeframe specified under subsection 5.7.9 of this Standard, a joint survey may be conducted by the Access Provider and the Access Seeker, along with surveyors, where necessary, to determine the availability of requested ducts and manholes at a particular area, provided that the scope of the survey be jointly decided, and any costs are necessarily incurred, itemised and agreed between the parties.

6.11.12 **Capacity Allocation Policy:** In addition to subsection 5.7.32 of this Standard, the Access Provider's Capacity Allocation Policy for Duct and Manhole Access

shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;
- (b) the Access Provider shall determine the available space only after considering:
 - (i) the requirements for ducts and space in manholes for the Access Provider's then existing maintenance purposes; and
 - (ii) the reservation of the ducts or sub-ducts for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and
- (c) the allocation of available space shall be:
 - (i) on a first-come, first-served basis;
 - (ii) applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and
 - (iii) to the extent possible, based on efficient allocation principles to minimise space wastage.

6.11.13 **Operational manuals:** An Access Provider shall establish operations and maintenance manuals which are made available to Access Seekers and with which Access Seekers must comply, containing reasonable processes and procedures relating to Duct and Manhole Access including but not limited to:

(a) standard operating procedures, including quality control in connection with the performance of work within ducts and manholes;

~~(a)~~(b) safety, security and occupational health and safety;

~~(b)~~(c) laying, maintenance, restoration and removal of cables;

~~(c)~~(d) entry to manholes; and

~~(d)~~(e) sealing or closing of manholes.

The Access Provider's processes and procedures for Duct and Manhole Access shall:

~~(e)~~(f) not be intentionally designed to deny or have the effect of denying or delaying the Access Seeker's access to ducts and manholes;

~~(f)~~(g) not completely or substantially prohibit an Access Seeker from physically accessing ducts and manholes unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and

~~(g)~~(h) be no more restrictive or onerous than the processes and procedures that the Access Provider imposes on its own personnel who physically access ducts and manholes.

6.11.14 Ground for refusal: In addition to the grounds for refusal in subsection 5.4.11 of this Standard, an Access Provider may refuse an Access Request to Duct and Manhole Access to the extent (and only to the extent that):

(a) the Access Provider has entered into an exclusive arrangement for access to duct and manhole infrastructure in Putrajaya with the Government of Malaysia and such arrangement has been entered into (without extension or amendment) prior to the Effective Date of this Determination. For clarification, subsection 5.4.19 of this Standard applies to any refusal under this subsection; or

~~(h)~~(b) there are reasonable grounds for the Access Provider to refuse access based on safety and security, to the extent that the duct and manhole infrastructure is being utilised for critical government services, including in connection with government agencies, the military or the police.

6.11.15 Equivalence of Inputs: An Access Provider must provide Duct and Manhole Access on an Equivalence of Inputs basis to Access Seekers, including with information that is of the same degree of reliability and currency as that which it provides itself, including but not limited to:

(a) information relating to the locations at which Duct and Manhole Access is available;

(b) information relating to the physical space available at such locations; and

(c) any other information that is reasonably required by the Access Seeker to enable the Access Seeker to place an Order for Duct and Manhole Access or otherwise access duct and manhole infrastructure.

6.11.16 Maintenance and rectification: An Access Provider shall:

(a) ensure that it maintains in reasonable working condition all ducts and manholes, subject to paragraph 6.11.16(b); and

(b) on notice by an Access Seeker, or upon otherwise becoming aware, that any duct or manhole does not comply with paragraph 6.11.16(a), perform within forty (40) Business Days such activities as required to rectify such non-compliance.

6.11.17 Indemnity:

(a) In relation to matters of, and relating to, liability between an Access Provider and Access Seeker not governed by the terms of an Access Agreement, where an Access Seeker, through its acts or omissions (whether negligent or otherwise), causes damage to Equipment used by the Access Provider in connection with the provision of Duct and Manhole Access, then, subject to paragraph 6.11.17(b), the Access Seeker must indemnify the Access Provider against such damage and any reasonable costs or expenses associated with such repair or replacement.

(b) In respect of the indemnity under paragraph 6.11.17(a):

(i) under no circumstances will an Access Seeker be liable for any indirect, consequential or special loss or damage, or loss or any other damage that does not arise naturally from the breach according to the usual order of things;

(ii) to the extent permitted by law and subject to paragraph 6.11.17(b)(iii)6.11.17(b)iii), an Access Seeker's maximum liability to the Access Provider shall be limited to the amount specified in an Access Agreement, or RM [insert], whichever is lower; and

(iii) the limitation of liability in paragraph 6.11.17(b)(ii)6.11.17(b)(ii) will not apply to any acts or omissions of the Access Seeker that cause or contribute to death or personal injury of any person.

6.12 DIGITAL TERRESTRIAL BROADCASTING MULTIPLEXING SERVICES SERVICES

6.12.1 **Application:** This subsection 6.12 applies where access to the Digital Terrestrial Broadcasting Multiplexing Services has been requested or is to be provided.

6.12.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Services is eighteen (18) months;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Services is six (6) months; and
- (c) the maximum frequency to update or to make further Forecasts regarding Digital Terrestrial Broadcasting Multiplexing Services is once every six (6) months.

6.12.3 **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for Digital Terrestrial Multiplexing Service within two (2) Business Days.

6.12.4 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for Digital Terrestrial Multiplexing Services is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.12.5 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)(i)5.7.13(a)i of this Standard, the indicative delivery timeframe for Digital Terrestrial Broadcasting Multiplexing Services is twenty (20) Business

Days. For clarification, the indicative delivery timeframe in this subsection 6.12.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

- 6.12.6 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Digital Terrestrial Broadcasting Multiplexing Services will be monthly.
- 6.12.7 **Bit rate allocation:** An Access Provider shall specify a bit rate allocation suitable for television broadcasting services, such as ~~videodigital~~, ~~audio-~~visual, audio streams and any other ancillary data supporting the basic services. The bit rate allocation will be based on current and accepted technology. An Access Seeker may request a bit rate allocation which is different to the ones specified by the Access Provider and the Access Provider must reasonably provide such bit rate unless it is technically infeasible for the Access Provider to do so.
- 6.12.8 **Encryption:** An Access Provider shall only apply conditional access to an Access Seeker's transport stream if specifically requested to do so by the Access Seeker.
- 6.12.9 **Redundancy:** An Access Provider shall provide redundancy in respect of the Digital Terrestrial Broadcasting Multiplexing Servicess to ensure availability of the Access Seeker's service at all times.
- 6.12.10 **Compression:** An Access Provider must provide access to its multiplexer in the form of SDI, SAI (including multiple PIDs) or any other standard protocol, at a bit rate specified by the Access Seeker. The Access Seeker may specify digital compression and decompression technology reasonably required by it to deliver its services and the Access Provider will comply with the Access Seeker's request to the extent possible.
- 6.12.11 **Technical standards:** An Operator must comply with the Commission Determination on the Mandatory Standard for Free to Air Transmission of Digital Terrestrial Television Service, Determination No. 1 of 2011 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.
- 6.12.12 **Reporting:** As required under paragraph 5.3.12(l) of this Standard, an Access Provider shall notify the Commission in writing of:

- (a) the standard bit rate allocation for each television broadcasting service as specified under subsection 6.12.7 of this Standard; and
- (b) each transport stream subject to conditional access and details of such conditions as applicable under subsection 6.12.8 of this Standard.

6.13 MVNO ACCESS

6.13.1 Application:

- (a) This subsection 6.13 applies where MVNO Access has been requested or is to be provided.
- (b) The Content Obligations do not apply in respect of MVNO Access, with the exception of the following:
 - (i) subsection 5.6 of this Standard (Forecasting Obligations);
 - (ii) subsection 5.7 of this Standard (Ordering and Provisioning Obligations);
 - (iii) subsection 5.11 of this Standard (Billing and Settlement Obligations);
 - (iv) subsection 5.14 of this Standard (Term, Suspension and Termination Obligations); and
 - (v) subsection 5.16 of this Standard (Legal Boilerplate Obligations).
- (c) For clarification, the Disclosure Obligations and Negotiation Obligations under this Standard apply to MVNO Access in addition to the obligations set out under paragraph 6.13.1(b) above.

6.13.2 **Forecasts:** For the purposes of subsection 5.6.6 of this Standard, an Access Provider may determine the Forecasts which it requires from an Access Seeker to provide MVNO Access including with regard to:

- (a) the network components, Facilities and/or Services to be supplied as part of MVNO Access;
- (b) the maximum periods covered by the Forecasts;
- (c) the minimum intervals or units of time used in Forecasts; and
- (d) the maximum frequency of the Forecasts or updates to the Forecasts.

6.13.3 **Limitation of Forecasts:** An Access Provider must ensure that Forecasts under subsections 5.6.6 and 6.13.2 of this Standard are no more onerous than either of:

- (a) what is necessary for the Access Provider to supply MVNO Access without adversely affecting the Access Provider's Network; and
- (b) the forecasting which the Access Provider provides to itself for network planning and provisioning equivalent services.

6.13.4 **Acknowledgement of receipt:** Subject to any shorter timeframe required under subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for MVNO Access within two (2) Business Days.

6.13.5 **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for MVNO Access is accepted or rejected within ten (10) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.13.6 **Indicative delivery timeframe:** For the purpose of paragraph [5.7.13\(a\)\(i\)](#) ~~5.7.13(a)(i)~~ of this Standard, the indicative delivery timeframe for MVNO Access is forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.13.6 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.13.7 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for MVNO Access will be monthly.

6.13.8 **Reporting:** The Access Provider must report to the Commission information and details relating to MVNO Access which may be requested by the Commission.

6.13.9 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

- (a) the Customer information is publicly available; or
- (b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the MVNO Access. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the MVNO Access as an input or more generally, to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.

6.13.10 **Support:** An Access Provider must provide an Access Seeker with any support reasonably requested by the Access Seeker to permit the Access Seeker to comply with the Commission Determination on the Mandatory Standard for the Provision of Services through a Mobile Virtual Network, Determination No. 3 of 2015 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.

6.13.11 **Modularity:** An Access Provider must provide MVNO Access on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for MVNO Access to be provided.

6.13.12 **Equivalence of Inputs:** An Access Provider must provide the MVNO Access on an Equivalence of Inputs basis to Access Seekers, including by providing access to any mobile technologies, including 5G New Radio, at the same time, and for the same duration, as the Access Provider provides such technologies to itself, and to give effect to this subsection 6.13.12, an Access Provider must:

(a) ensure its wholesale business unit is exercising independent decision-making in relation to MVNO Access and is separate from its retail arm; and

(b) implement appropriate measures to ensure such independent and separate decision-making.

6.13.13 Approval of commercial initiatives: If the terms of an Access Agreement require an Access Seeker to request the Access Provider's approval in respect of marketing, pricing, product or other retail promotions, initiatives or launches (initiatives), then:

(a) the Access Provider must approve any such request within a reasonable timeframe, and in any event within such timeframe as the Access Provider typically approves its own initiatives; and

(b) any such approval must not be unreasonably withheld or delayed.

6.13.14 Reasonable assistance: If an Access Seeker becomes subject to an event that is specified in paragraph 5.14.3(b), the Access Seeker must provide the Access Provider with all assistance reasonably requested by the Access Provider to facilitate the transition of each of the Access Seeker's Customers onto retail mobile services supplied by the Access Provider.

6.14 DOMESTIC INTER-OPERATOR ROAMING SERVICE

6.14.1 Application: This subsection 6.14 applies where access to a Domestic Inter-Operator Roaming Service has been requested or is to be provided.

6.14.2 Transition:

(a) Subject to paragraph 6.14.2(b), an Access Provider may, for a period of up to six (6) months following the date of this Determination, elect to provide Domestic Inter-Operator Roaming Service on at least a trial basis, or otherwise only to the extent the Access Provider has published on its website product offerings in respect of the Domestic Inter-Operator Roaming Service.

(b) An Access Provider must, by the date that is six (6) months from the date of this Determination or an earlier date on which the Access Provider has completed its product development activities in respect of the Domestic Inter-Operator Roaming Service, provide the Domestic Inter-Operator Roaming Service in accordance with this Determination, from which date paragraph 6.14.2(a) will have no further effect.

6.14.3 Forecasts: For the purposes of subsection 5.6.6 of this Standard, an Access Provider may determine the Forecasts which it requires from an Access Seeker to provide Domestic Inter-Operator Roaming Service including with regard to:

(a) the network components, Facilities and/or Services to be supplied as part of Domestic Inter-Operator Roaming Services;

(b) the maximum periods covered by the Forecasts;

(c) the minimum intervals or units of time used in Forecasts; and

(d) the maximum frequency of the Forecasts or updates to the Forecasts.

6.14.4 Limitation of Forecasts: An Access Provider must ensure that Forecasts under subsections 5.6.6 and 6.14.3 of this Standard are no more onerous than either of:

(a) what is necessary for the Access Provider to supply MVNO Access without adversely affecting the Access Provider's Network; and

(b) the forecasting which the Access Provider provides to itself for network planning and provisioning equivalent services.

6.14.5 Acknowledgement of receipt: For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a Domestic Inter-Operator Roaming Service within one (1) Business Day.

6.14.6 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a Domestic Inter-Operator Roaming Service is accepted or rejected within ten (10) Business Days after:

(a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or

(b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.14.7 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)(i) of this Standard, the indicative delivery timeframe for Domestic Inter-Operator Roaming Services is forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.14.7 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.14.8 Billing Cycle: For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for Domestic Inter-Operator Roaming Services will be monthly.

6.14.9 Service fulfilment timeline: An Access Provider shall comply with the following service fulfilment timelines for Domestic Inter-Operator Roaming Services:

<u>Parameters</u>	<u>Timelines</u>
<u>New links with new infrastructure</u>	<u>4 months</u>
<u>New links with existing infrastructure</u>	<u>2 months</u>

<u>Parameters</u>	<u>Timelines</u>
<u>Changes of capacity to existing facilities and services</u>	<u>30 days</u>
<u>Activation / Deactivation (up to 10 Tracking Area Codes)</u>	<u>3 Business Days</u>
<u>Activation / Deactivation (more than 10 Tracking Area Codes)</u>	<u>7 Business Days</u>

6.14.10 Reporting: The Access Provider must report to the Commission information and details relating to Domestic Inter-Operator Roaming Services which may be requested by the Commission.

6.14.11 Prohibited use of Customer information: The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

(a) the Customer information is publicly available; or

(b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the MVNO Access. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the MVNO Access as an input or more generally, to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider's retail services.

6.14.12 Modularity: An Access Provider must provide MVNO Access on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for MVNO Access to be provided.

6.14.13 Equivalence of Inputs: An Access Provider must provide Domestic Inter-Operator Roaming Services on an Equivalence of Inputs basis to Access Seekers, including by providing access to any mobile technologies, including

5G New Radio, at the same time, and for so long as, the Access Provider provides such technologies to itself.

6.15 5G SERVICES

6.15.1 Application: This subsection 6.15 applies where access to a 5G Service has been requested or is to be provided.

6.15.2 Forecasts: For the purposes of subsection 5.6.6 of this Standard, an Access Provider may determine the Forecasts which it requires from an Access Seeker to provide 5G Services including with regard to:

(a) the network components, Facilities and/or Services to be supplied as part of 5G Services;

(b) service capacity requirements (including anticipated highest hourly average reading, number of **concurrent** end users, and data usage per end user) across each Polygon in the next 12 months;

(c) the maximum periods covered by the Forecasts;

(d) the minimum intervals or units of time used in Forecasts; and

(e) the maximum frequency of the Forecasts or updates to the Forecasts.

6.15.3 Limitation of Forecasts: An Access Provider must ensure that Forecasts under subsections 5.6.6 and 6.15.3 of this Standard are no more onerous than either of:

(a) what is necessary for the Access Provider to supply MVNO Access without adversely affecting the Access Provider's Network; and

(b) the forecasting which the Access Provider provides to itself for network planning and provisioning equivalent services.

6.15.4 Acknowledgement of receipt: For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for a 5G Service within one (1) Business Day.

6.15.5 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for a 5G Service is accepted or rejected within ten (10) Business Days after:

~~(b)(a)~~ issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or

~~(e)(b)~~ providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.15.6 **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)(i) of this Standard, the indicative delivery timeframe for 5G Services is forty (40) Business Days. For clarification, the indicative delivery timeframe in this subsection 6.15.6 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.15.7 **Billing Cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for 5G Services will be monthly.

6.15.8 **Public information:**

(a) The Operations Manual and associated documents which set out the operational engagement processes, procedures, roles and responsibilities between the Access Provider and the Access Seeker must be published on the Access Provider's publicly accessible website.

(b) The Access Seeker acknowledges that the Operations Manual and associated documents will contain additional detail and processes regarding (but not limited to):

(i) the roles and responsibilities of the Access Provider, the Access Seeker and other Access Seekers;

(ii) planning, including processes around the provision of network information, interconnection of equipment, ordering services, reservation of co-location space, service provisioning and service handover;

(iii) operational support and maintenance processes;

- (iv) service monitoring and network traffic management;
- (v) modes of communications;
- (vi) billing and CSP Portal access and operation procedures;
- (vii) reporting and document sharing;
- (viii) operational governance;
- (ix) fault management, KPIs and Service Level monitoring and reporting;
- (x) contact details and escalation matrix; and
- (xi) other details and processes that the Access Provider considers appropriate from time to time.

(c) Each party acknowledges and agrees that they must comply with their respective obligations set out in the Operations Manual.

(d) The Access Seeker acknowledges that the Operations Manual will set out minimum requirements for Customer devices to work with the 5G Service. The Access Seeker further acknowledges and agrees that the 5G Service provided by the Access Provider may not work with any Customer device that does not meet the requirements set out in the Operations Manual.

6.15.9 Reporting: An Access Provider must report to the Commission information and details relating to 5G Services which may be requested by the Commission.

6.15.10 Deployment schedule

(a) An indicative plan for the various phases in the Access Provider's 5G RAN must be published on the Access Provider's website. The indicative plan may have regard to the information shared under paragraph [6.15.11\(c\)\(ii\)](#).

(b) Any information relating to the deployment schedule published on the Access Provider's website or otherwise provided to the Access Seeker

is indicative only and subject to change based on a number of factors including consolidated Access Seeker prioritisation inputs and estimated population coverage targets mandated by the Commission.

(c) An Access Provider must promptly, and in any event within twenty (20) Business Days, provide or otherwise make available to Access Seekers an updated deployment schedule in accordance with paragraph 6.15.10(a) upon becoming aware of any fact, matter or circumstance which results, or is likely to result, in a material change to any information included in the most recent such plan.

(d) The Access Provider will use reasonable endeavours to consider and consolidate the Access Seeker's input and feedback within 30 days of the Access Seeker providing the Access Seeker Feedback to prepare and provide the Access Seeker with:

(i) an indicative list of all Polygons that the Access Provider intends to roll out in the following calendar year; and

(ii) the indicative scheduled deployment timeframe for each Polygon.

(e) Notwithstanding anything in this subsection 6.15.10, the parties acknowledge and agree that:

(i) the Access Provider will define the rollout and configuration of the Access Provider's 5G RAN and 5G Services (including with respect to prioritisation and capacity); and

(ii) any information provided by the Access Provider to the Access Seeker relating to the deployment of the Access Provider's 5G RAN is subject to change.

6.15.11 Planning Committee:

(a) The parties must, as soon as reasonably practicable following execution of the Access Agreement, establish a committee comprised of representatives from the Access Provider, the Access Seeker and other Access Seekers (**Planning Committee**).

(b) The Planning Committee must meet at Quarterly intervals (or such other frequency agreed between the parties) to collaborate, jointly discuss and exchange information for the purposes of the continuous development and enhancement of the 5G Services.

(c) At meetings of the Planning Committee:

(i) the Access Provider will share relevant information in relation to the Services and the Access Provider's 5G RAN, including:

A. network quality and capability status;

B. status of network coverage;

C. network quality improvement plans; and

D. changes in network capability plans; and

(ii) the Access Seeker will share relevant information reasonably requested by the Access Provider, which may include:

A. forecast capacity requirements;

B. network quality improvement requests; and

C. requests for changes in network capability.

6.15.12 Coverage plots and go-live:

(a) An Access Provider must, on request by an Access Seeker, provide or otherwise make available to the Access Seeker, in Polygon form, coverage plots depicting the coverage and capacity of 5G Services across Malaysia.

(b) An Access Provider must not impose any requirement on an Access Seeker to make the Access Seeker's services available on a national basis or across any other particular geographical scope, for example in respect of a minimum number of Polygons. For clarification, an Access Seeker may, in its sole discretion, elect the areas and sites across which it wishes to supply products and services which use 5G Services as an input.

(c) Unless otherwise agreed between an Access Provider and an Access Seeker, the Billing Cycle for 5G Services commences on the go-live date of each relevant Polygon.

6.15.13 Information disclosure: In addition to subsection 5.3.7 of this Standard, the Access Provider will disclose any details of the 5G Services offered by the Access Provider not included in the RAO, including details of network coverage maps including locations of active Polygons, locations of cell sites carrying traffic and POI locations at which physical or virtual co-location is available to Access Seekers.

6.15.14 Prohibited use of Customer information: The Access Provider is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:

(a) the Customer information is publicly available; or

(b) the Customer information has been received or developed by the Access Provider from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with the Access Provider's supply of the 5G Services. This includes any use or intended use by the Access Provider to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the 5G Services as an input or more generally.

6.15.15 Support: An Access Provider must provide an Access Seeker with any support reasonably requested by the Access Seeker to permit the Access Seeker to comply with any instruments developed by the Commission, including such modification or variation as may be determined by the Commission from time to time.

6.15.16 Modularity: An Access Provider must provide 5G Services on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities or Services that are not required for 5G Services to be provided.

6.15.17 Equivalence of Inputs. An Access Provider must provide 5G Services on an Equivalence of Inputs basis to Access Seekers, including the product, speed

tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself and/or other Access Seekers.

6.15.18 Approval of commercial initiatives: If the terms of an Access Agreement require an Access Seeker to request the Access Provider's approval in respect of marketing, pricing, product or other retail promotions, initiatives or launches (initiatives), then:

- (a) the Access Provider must approve any such request within a reasonable timeframe, and in any event within such timeframe as the Access Provider typically approves its own initiatives; and
- (b) any such approval must not be unreasonably withheld or delayed.

6.15.19 Continuous improvements: An Access Provider must use reasonable endeavours to implement continuous improvements in the provision of 5G Services, including by:

- (a) improving the performance and the efficiency of 5G Services during the term of an Access Agreement; and
- (b) introducing new products and services to the extent the Access Provider considers that such products and services can feasibly be added to its 5G RAN.

6.15.20 Product Committee:

- (a) An Access Provider must invite Access Seekers who have entered into an Access Agreement for 5G Services to participate in a committee with other Access Seekers run and facilitated by the Access Provider on a half-yearly basis (or such other frequency mutually agreed between the Access Provider and the Access Seeker) during the term of an Access Agreement to share and discuss new product updates, and potential future releases of new or amended 5G Services (**Product Committee**).
- (b) Discussions held during, and any information provided in connection with, the Product Committee meetings are considered to be the Confidential Information of the party providing that information.

(c) Notwithstanding anything in this subsection 6.15.20, an Access Provider retains, at all times, sole and absolute discretion regarding the timeline for rolling out any changes to the Services.

6.15.21 Change to the technical details of a Service:

(a) If at any time during the term of the Access Agreement, the Access Provider wishes to amend the technical details of an existing 5G Service, the Access Provider must issue the Access Seeker with a notice outlining:

(i) the proposed amendments to the technical details;

(ii) when the proposed amendments are proposed to be introduced;

(iii) any proposed amendments to the pricing for the relevant 5G Service; and

(iv) inviting the Access Seeker to provide any written feedback and to take part in consultations run by the Access Provider,

(the notice being a **Change to Service Notice**).

(b) Following the Change to Service Notice being issued, the Access Provider agrees to run a consultation period with the Access Seeker and the other Access Seekers in accordance with the process set out in the Operations Manual.

(c) During the consultation period described in paragraph 6.15.21(b), the Access Seeker may submit a written response to the Access Provider addressing the Change to Service Notice.

(d) The Access Provider agrees to consider any written feedback provided by the Access Seeker in accordance with paragraph 6.15.21(c) in good faith.

(e) The Access Seeker acknowledges and agrees that prior to making any changes to the technical details of a Service effective, the Access Provider may first test those changes on a trial basis.

6.15.22 Introduction of a new Service:

(a) If at any time during the term of the Access Agreement, the Access Provider wishes to add a new 5G Service, the Access Provider must issue the Access Seeker with a notice outlining:

(i) the proposed new 5G Service;

(ii) the technical details of the proposed new 5G Service;

(iii) where the proposed new 5G Service will be rolled out and when;

(iv) the proposed pricing for the proposed new 5G Service; and

(v) inviting the Access Seeker to provide any written feedback and to take part in consultations run by the Access Provider,

(the notice being a **New Service Notice**).

(b) The Access Provider must discuss the introduction of a new 5G Service at the Product Committee before providing a New Service Notice.

(c) Following the New Service Notice being issued, the Access Provider agrees to run a consultation period with the Access Seeker and the other Access Seekers in accordance with the process set out in the Operations Manual.

(d) During the consultation period described in paragraph [6.15.22\(b\)](#), the Access Seeker may submit a written response to the Access Provider addressing the New Service Notice.

(e) The Access Provider agrees to consider any written feedback provided by the Access Seeker in accordance with paragraph [6.15.22\(d\)](#) in good faith.

(f) The Access Seeker acknowledges and agrees that prior to making a new Service available, the Access Provider may first make the proposed new Service available on a trial basis.

6.15.23 Removal of a Service:

(a) Prior to removing a 5G Service, the Access Provider must issue the Access Seeker and the Commission with written notice outlining:

(i) the 5G Service that is proposed to be removed;

(ii) when the 5G Service is proposed to be removed (such period to be no less than 6 months); and

(iii) the reason for the removal of the 5G Service;

(the notice being a **Removal of Service Notice**).

(b) Within 30 days of receiving the Removal of Service Notice, the Access Seeker may issue the 5G Service with a notice requesting either:

(i) the ongoing continuation of the 5G Service the subject of the Removal of Service Notice, in which case the Access Seeker must include in the notice:

A. an explanation as to why the 5G Service should continue; and

B. an outline of the impact that discontinuing the 5G Service would have on the Access Seeker; or

(ii) that the removal of the 5G Service the subject of the Removal of Service Notice is delayed for an additional period of time, in which case the Access Seeker must include in the notice:

A. the additional time requested by the Access Seeker prior to the removal of the relevant 5G Service; and

B. an explanation as to why the removal of the 5G Service should be delayed,

(such notice being the **Removal of Service Notice Reply**).

(c) If the Access Seeker does not issue a Removal of Service Notice Reply in accordance with paragraph [6.15.23\(b\)](#) the Access Provider may proceed to remove the relevant Service with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).

- (d) If the Access Seeker issues a Removal of Service Notice Reply in accordance with paragraph 6.15.23(b), the appropriate representative of each party must promptly meet to discuss in good faith the Removal of Service Notice Reply. As a part of these discussions, the Access Provider may invite any other Access Seekers who issued a similar notice to the Removal of Service Notice Reply to take part in the discussions.
- (e) At any time following the issuing of a Removal of Service Notice, the Access Provider may (at its absolute discretion):

 - (i) amend the terms of the Removal of Service Notice (in which case the Access Provider must provide the Access Seeker with an additional 30 days' notice of any such amendments); or
 - (ii) rescind the Removal of Service Notice, provided any such rescission occurs no less than thirty (30) days prior to the proposed date for the removal of the relevant 5G Service in the Removal of Service Notice.
- (f) If, following the meeting of the parties in accordance with section 6.15.23(d), the Access Seeker continues to have concerns regarding the Removal of Service Notice, the Access Seeker may escalate the issue to the Commission in accordance with the Dispute Resolution Procedures.

6.15.24 Changes to the 5G Services required by Law: Notwithstanding anything to the contrary in this section 6.15, the Access Provider may change the 5G Services (including by adding or removing a 5G Service) at any time and by providing only with as much notice as is practicable in the circumstances where the change is:

- (a) necessary to comply with any applicable law or reasonably necessary or otherwise desirable to comply with or respond to a regulatory event;
- (b) in response to a direction or determination made by the Minister relating to the subject matter of this subsection 6.15;
- (c) if the Commission issues a direction or determination relating to the subject matter of this subsection 6.15;

(d) if the Act is amended in relation to the subject matter of this subsection 6.15; or

(e) if a condition of the Access Provider's licence is amended or deleted or a new condition is imposed in relation to the subject matter of this subsection 6.15.

6.15.25 **Quality of Service:** An Access Provider shall comply with any applicable mandatory standard on QoS for 5G Services from the date that such mandatory standard on QoS in relation to 5G Services comes into effect, and until such date the Access Provider shall provide access to 5G Services for Access Seekers in accordance with service levels set out in the relevant RAO.

6.15.26 **Amount of Rebate:** The amount of any rebate specified in the relevant RAO for failure to meet the relevant service levels set out in that RAO shall apply until any applicable mandatory standard on QoS for 5G Services comes into effect. From the date that such mandatory standard on QoS in relation to 5G Services comes into effect, the amount of any rebate shall, at a minimum, reflect any diminution in value (including any rebates paid by the Access Seeker to end users) in the 5G Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the mandatory standard on QoS.

6.16 IP TRANSIT SERVICE

6.16.1 Application: This subsection 6.16 applies where access to the IP Transit Service has been requested or is to be provided.

6.16.2 Forecasts: For the purposes of subsection 5.6.6 of this Standard, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding the IP Transit Service is three (3) years;
- (b) the minimum intervals or units of time to be used in Forecasts regarding the IP Transit Service is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding the IP Transit Service is once a year.

6.16.3 Acknowledgement of receipt: For the purposes of subsection 5.7.5 of this Standard, an Access Provider shall acknowledge receipt of each Order for an IP Transit Service within two (2) Business Days.

6.16.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of this Standard, an Access Provider must notify an Access Seeker that an Order for an IP Transit Service is accepted or rejected within fifteen (15) Business Days after:

- (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of this Standard, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of this Standard.

6.16.5 Indicative delivery timeframe: For the purposes of paragraph 5.7.13(a)(i) of this Standard, the indicative delivery timeframe for the IP Transit Service is:

- (a) twenty (20) Business Days if the IP Transit Service is requested at an existing POI between the Access Provider and the Access Seeker; or

(b) four (4) months if the IP Transit Service is requested at a new POI between the Access Provider and the Access Seeker.

For clarification, the activation timeframe in this subsection 6.3.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of this Standard.

6.16.6 **Billing cycle:** For the purposes of subsection 5.11.3 of this Standard, between the Operators, the Billing Cycle for IP Transit Service will be quarterly.

SECTION 7: STANDARD ADMINISTRATION AND COMPLIANCE

7.1 ENFORCEMENT OF THIS STANDARD

7.1.1 **Legislative background:** The Act governs:

- (a) the manner in which the Commission may develop and apply this Standard; and
- (b) the operation of this Standard.

7.1.2 **Mandatory compliance:** Compliance with this Standard is mandatory.

7.1.3 **Compliance directions from the Commission:** For the purposes of section 51 of the Act, the Commission may direct persons or a class of persons to comply with the Act. A person who is subject to this Standard under subsection 3.2.1 is required to comply with this Standard under subsection 105(3) of the Act. Under section 51, the Commission may direct a person specified in subsection 3.2.1 to comply with subsection 105(3) of the Act.

7.1.4 **Content Obligations, Service Specific Obligations and Commission directions:** In respect of the Content Obligations contained in subsection 5.5 to 5.16 of this Standard and the Service Specific Obligations contained in section 6 of this Standard, the Commission may make a direction with the effect of:

- (a) requiring persons to incorporate a particular content into their RAO or an Access Agreement;
- (b) requiring persons to comply with the obligation, irrespective of whether it is contained in their RAO, or any Access Agreement, or not; or
- (c) both paragraphs 7.1.4(a) and 7.1.4(b) above.

7.1.5 **Failure to comply with direction:** Failure to comply with a direction of the Commission which requires compliance with this Standard, exposes the person receiving the direction to a penalty under section 109 of the Act.

7.1.6 **Effect of compliance:** Pursuant to section 108 of the Act, compliance with this Standard shall be a defence against any prosecution, action or proceeding

of any nature, whether in a court or otherwise, taken against a person who is subject to this Standard with respect to a matter dealt with by this Standard.

7.2 IMPLEMENTATION OF THIS STANDARD

7.2.1 Negotiating benchmark: The persons identified in subsection 3.2.1 of this Standard must comply with this Standard when preparing any RAO and when entering into any Access Agreement.

7.2.2 Undertakings: The persons identified in subsection 3.2.1 of this Standard must comply with this Standard when lodging an undertaking with the Commission under section 110 of the Act.

7.2.3 Dispute Resolution Procedures: The persons identified in subsection 3.2.1 of this Standard may rely upon this Standard when making submissions during dispute resolution under the Dispute Resolution Procedures or under section 151 of the Act.

7.2.4 Existing Access Agreements: Parties to existing Access Agreements executed prior to the Effective Date must review such Access Agreements to ensure compliance with this Standard. Such Access Agreements should be amended according to the requirements of this Standard no later than nine (9) months after the Effective Date or by any other date as stipulated by the Commission. If the parties are unable to effect such amendments, the parties shall first attempt to resolve the dispute in accordance with the Dispute Resolution Procedures. If the parties to the disputes cannot or otherwise fail to reach an agreement, either party may notify a dispute in accordance with Chapter 7 of Part V of the Act.

7.2.5 Timeline for implementation: Each Access Provider shall prepare, maintain and/or modify a RAO in relation to Facilities and/or Services specified in the Access List Determination no later than six (6) months after the Effective Date or by any other date as stipulated by the Commission.

7.3 COMPLIANCE REVIEW

7.3.1 General compliance review: Assessment by the Commission for compliance with this Standard may occur at any time:

- (a) by formally requesting information from persons identified in subsection 3.2.1 of this Standard (for example, under Chapter 5 of Part V of the Act); or
- (b) by auditing persons identified in subsection 3.2.1 of this Standard for compliance from time to time (for example, under Chapter 4 of Part V of the Act).

7.3.2 **Specific compliance:** The Commission may check for compliance with this Standard in the following circumstances, without limitation:

- (a) at the time the Commission is reviewing a RAO, the Commission may check the RAO for compliance with this Standard;
- (b) at the time the Commission is considering an Access Agreement for registration, the Commission may check the Access Agreement for compliance with this Standard;
- (c) upon the notification of a dispute, the Commission may check for compliance with this Standard in such a way that may allow the Commission to resolve the dispute in accordance with this Standard; and
- (d) the Commission may check an undertaking for compliance with this Standard when assessing an undertaking lodged by persons identified in subsection 3.2.1 of this Standard.

7.4 TRANSITIONAL MEASURES

7.4.1 **Notice procedures for removal or replacement:** If the Commission removes, varies or replaces Facilities and/or Services in the access list under section 146 or section 147 of the Act, and an Access Provider wishes to terminate or change the terms of the supply of that Facility and/or Service, the Access Provider may only do so in a manner that is consistent with the supply of that Facility and/or Service to itself, and must provide notice of its intention to terminate or vary, to all Access Seekers to whom it is supplying that Facility and/or Service.

7.4.2 **Notice period:** The notice period referred to in subsection 7.4.1 of this Standard must be no shorter than:

- (a) the period of time between the time of giving the notice and the time at which the Access Provider is proposing to no longer provide the Facilities and/or Services to itself; or
- (b) twelve (12) months.

7.4.3 **Contents of notice of variation or replacement:** The notice to be provided by the Access Provider under subsection 7.4.1 of this Standard when the Commission varies, removes or replaces the Facilities and/or Services in the access list, must state:

- (a) when the variation or replacement will come into effect;
- (b) how the variation or replacement is likely to affect the Access Seeker; and
- (c) any alternative Facilities and/or Services that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions on which such alternative arrangements are made available.

7.5 REVIEW OF THIS STANDARD

7.5.1 **Purpose:** The purpose of this subsection of this Standard is to outline some of the circumstances under which this Standard may be reviewed by the Commission. It is not an exhaustive list of the Commission's powers of review.

7.5.2 **General review:** The Commission will review this Standard:

- (a) as and when the Minister so directs under section 7 of the Act; or
- (b) as and when the Commission considers it necessary in order to pursue or preserve the goals of this Standard and the Act.

7.5.3 **Specific review:** The Commission may review the operation of this Standard on the occurrence of one or more of the following events:

- (a) where the Minister exercises his or her power to modify, vary or revoke directions (under section 8, Chapter 1 of Part II of the Act) determinations (under section 11, Chapter 2 of Part II of the Act) and declarations (under section 14, Chapter 3 of Part II of the Act);

- (b) where the Commission exercises its power to modify, vary or revoke a direction (under section 52 of the Act) or determination (under section 56 of the Act);
- (c) where the Commission exercises its power (under section 101 of the Act) to revoke a voluntary industry code, on the basis that it is satisfied that the voluntary industry code is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (d) where the Commission exercises its power to add or remove Facilities and/or Services to or from the Access List (under section 146 of the Act);
- (e) where the Commission exercises its power (under section 106 of the Act) to determine the modification, variation or revocation of a mandatory standard on the basis that it is satisfied that the mandatory standard is no longer consistent with the objects of the Act, any relevant instrument made under the Act, or any relevant provisions of the Act;
- (f) where an industry forum submits a new voluntary industry code to replace an existing one for that industry (under section 102 of the Act);
- (g) where any event occurs which may alter the general principles of access (for example, this may occur in the course of dispute resolution, if it becomes apparent that a matter in this Standard should be revised or when a new issue arises);
- (h) where an exogenous development occurs which warrants a review by the Commission of this Standard (for example, this may occur due to technological change); or
- (i) when the Act is or has been revised, resulting in amendments being made to the Act that affects the subject matter of this Standard or requirements relating to mandatory standards in general.

7.5.4 Request for review: Any person may request the Commission to modify any provision of this Standard by submitting a notice to the Commission specifying:

- (a) the provisions of this Standard that it seeks to have removed, modified or added;

- (b) a clear statement of the reasons why the person believes that such action is justified; and
- (c) alternative approaches that, if adopted, would achieve the Commission's stated goals in a more efficient and effective manner.

7.5.5 Assessment of request for review: In assessing a request under subsection 7.5.4 of this Standard, the Commission will take account of all relevant factors, including:

- (a) whether a review is justified on the basis submitted by the person;
- (b) the period of time since the last review of this Standard;
- (c) the objects of the Act; and
- (d) any other factor(s) that the Commission considers relevant.

7.5.6 Review process: In accordance with the Act, a review of this Standard by the Commission will involve the following key stages:

- (a) **Public notice:** The Commission will issue a public notice to announce that a review of this Standard is to take place. This notice will detail the scope of the review, the matters to be considered in the review and the time-line for the review (including the period in which public comment will be accepted by the Commission).
- (b) **Public comment:** After a public notice of the review has been issued, the Commission shall (for a specified period) accept public comment and submissions regarding the review of this Standard.
- (c) **Internal review:** Upon the completion of a period of public comment, the Commission will commence an internal review of this Standard. This will include assessing the public or external comment received during the review process and will aim to publish a list of issues.
- (d) **Finalisation:** Once the internal review is completed, the Commission may finalise the proposed changes to this Standard.

7.5.7 **Outcome of a review:** Following a review, the Commission may or may not choose to modify, vary or revoke this Standard in accordance with sections 55, 56 and 106 of the Act.

ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

1. Definitions

1.1 In the Dispute Resolution Procedures set out in this Annexure A:

- (a) **“Billing Dispute”** means the dispute of an Invoice issued by one party to the other party, which is made in good faith;
- (b) **“Billing Dispute Notice”** means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with subsection 7.4 of this Annexure;
- (c) **“Billing Dispute Notification Period”** means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 7.2 of this Annexure;
- (d) **“Billing Representative”** means a representative of the party appointed in accordance with the billing procedures set out in subsection 7.15 of this Annexure;
- (e) **“Billing System”** means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
- (f) **“Dispute”** has the meaning given to it in subsection 2.1 of this Annexure;
- (g) **“Notice”** means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in subsection 5.1 of this Annexure; and
- (h) **“Technical Expert”** has the meaning given to it in subsection 6.3 of this Annexure.

2. Introduction

2.1 Subject to ~~subsection~~ paragraph 2.2(c) of this Annexure, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies (**“Dispute”**).

2.2 The following dispute resolution mechanisms are discussed in this section:

- (a) inter-party working groups;
- (b) interconnect steering group; and
- (c) subject to specific resolution of disputes, being:
 - i. technical disputes (which must follow the procedure set out in section 6 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure);
 - ii. Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 7 of this Annexure; or
 - iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

2.3 A Dispute shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the Dispute cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

- (a) the Parties will not reach agreement, or will not reach agreement in a reasonable time;
- (b) the notification of the Dispute is not trivial, frivolous or vexatious; and
- (c) the resolution of the Dispute would promote the objects in the Act.

An Access Provider shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.

2.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

3. General

- 3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.
- 3.2 Both Parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to subsection 3.5 of this Annexure, the Parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.
- 3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of this Standard.
- 3.6 A party must not use information obtained under subsection 3.4 of this Annexure or described in subsection 3.5 above for any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute

is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.

- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

4. **Inter-party working group**

- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.

- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. –The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.

- 4.3 The Access Provider shall provide for:

- (a) subject areas to be dealt with by each working group;
- (b) equal representation by the Access Seeker and the Access Provider;
- (c) chairmanship and administrative functions of the working group to be shared equally; and
- (d) formal notification procedures to the working group.

- 4.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.

- 4.5 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Annexure, or after any agreed time extension has expired, either party may give ten (10) Business Days' written notice ("Notice") to the other party stating its intention to escalate the

issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice, then either party may:

(a) notify the other party (“Receiving Party”) that it wishes to refer the issue to the Interconnect Steering Group (“ISG”); or

(b) notify the Receiving Party that it wishes to refer the issue to:

(i) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Annexure); or

(ii) to the Commission for final arbitration.

5. Interconnect steering group

~~5.1 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Annexure, or after any agreed time extension has expired, either party may give ten (10) Business Days’ written notice (“Notice”) to the other party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice, then either party may notify the other party (“Receiving Party”) that it wishes to refer the issue to the Interconnect Steering Group (“ISG”).~~

5.21 In the event that a Dispute is referred to an ISG under subsection 5.14.5 above, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each party.

5.32 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of the Notice under subsection 5.1 of this Annexure. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either Party may refer the Dispute:

(a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Annexure); or

(b) to the Commission for arbitration.

5.433 If the ISG has not resolved the Dispute within twenty (20) Business Days after it first meets to review that Dispute under subsection 5.3-2 above, either party may refer the Dispute:

- (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Annexure); or
- (b) to the Commission for final arbitration.

6. Use of a Technical Expert

6.1 A Dispute will only be referred to a Technical Expert if the provisions of sections 4 and 5 of this Annexure have been complied with.

6.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.

6.3 The person to whom a technical dispute may be referred under this section 6:

- (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
- (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
- (c) need not be a Malaysian citizen or resident; and
- (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,

(“**Technical Expert**”).

6.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

6.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:

- (a) the Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
 - (b) each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.
- 6.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 6.7 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 6.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 6.9 The Technical Expert will not have the power to appoint any other experts.
- 6.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 6.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 6.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

7. **Billing Dispute resolution**

- 7.1 As outlined in the billing provisions of this Standard at subsection 5.11, a party ("**Invoicing Party**") shall provide to the other party ("**Invoiced Party**") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.

7.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:

- (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice;
- (b) in the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; or
- (c) in case of any other Facilities and/or Services, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with subsection 7.4 of this Annexure.

7.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the Dispute;
- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
- (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.

7.4 A Billing Dispute Notice given under this section 7 must specify:

- (a) the reasons for which the Invoice is disputed;
- (b) the amount in dispute;

- (c) details required to identify the relevant Invoice and charges in dispute including:
 - (i) the account number;
 - (ii) the Invoice reference number;
 - (iii) the Invoice date;
 - (iv) the Invoice amount; and
 - (v) billing verification information; and
- (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.

7.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of this Standard. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of this Standard on the amount payable.

7.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.11.15 of this Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.

7.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 7.

7.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.

- 7.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 7.10 Once the negotiation period under subsection 7.8 of this Annexure (including any extension agreed) and any suspension period under subsection 7.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Annexure (“**Billing Dispute Escalation Procedure**”).
- 7.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party’s Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honoured.
- 7.12 Once any Billing Dispute has been resolved to the parties’ satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 7.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 7.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint

investigation, the parties must agree on the terms of the joint investigation, including:

- (a) the scope of the joint investigation;
- (b) how the joint investigation will be conducted; and
- (c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test calls to the other party's Network.

- 7.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 7.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 7.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

Revocation

7. The Commission Determination on the Mandatory Standard on Access, Determination No. ~~2-3~~ of ~~2005-2016~~ as varied by the ~~Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009~~, shall be revoked with effect from ~~1 January 2017~~[XX].

Transitional and Savings

8. The Commission Determination on the Mandatory Standard on Access, Determination No. ~~2-3~~ of ~~2005-2016~~ as varied by the ~~Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009~~, shall remain in force for the purpose of and application to Access Agreements registered with the Commission before ~~1 January 2017~~[XX].

Made: ~~December 2016~~[XX]

DATO' SRI HALIM SHAFIETAN SRI MOHAMAD
SALIM FATEH DIN

Chairman

Malaysian Communications and Multimedia Commission