



# **REGULATORY FRAMEWORK FOR COMMUNICATIONS AND MULTIMEDIA INDUSTRY IN MALAYSIA**

## **Workshop on Telecommunication Policy and Regulation for Competition**

**Bangkok, 14 July 2005**



## **AGENDA**

1. Background
  - i. Brief facts on Malaysia
  - ii. National agenda
  
2. The Malaysian Communications and Multimedia Commission
  - i. Members of the Commission
  - ii. Employees of the Commission
  - iii. Role of Commission
  - iv. Finance
  - v. Secrecy



## **AGENDA**

3. The Communications and Multimedia Act 1998
  - i. Principles of CMA 1998
  - ii. 10 National Policy Objectives
  - iii. Ministerial Powers
  - iv. Appeal Tribunal
  - v. Powers of the Commission
  - vi. Register



## **AGENDA**

3. The Communications and Multimedia Act 1998
  - vii. Resolution of Disputes
  - viii. Forums
  - ix. Economic Regulation
  - x. Technical Regulation
  - xi. Consumer Protection
  - xii. Social Regulation



## Background

- i. Brief facts
- ii. National agenda



## Brief facts on Malaysia

- Population – 25.86 million
- Households – 5.62 million
- Penetration rate:
  - Cellular phone – 56.5%
  - Internet dial-up – 12.7%
  - Fixed line – 17.2%

Note: 2004 figures



## The birth of the Commission was part of a vision



ICT-related activities would be at the core of the new engine of growth.

Among the new laws proposed, the Communications and Multimedia Act 1998 (CMA) was a key piece of legislation to facilitate the growth of convergence activities.

The Commission was formed to implement CMA.



## The National Agenda

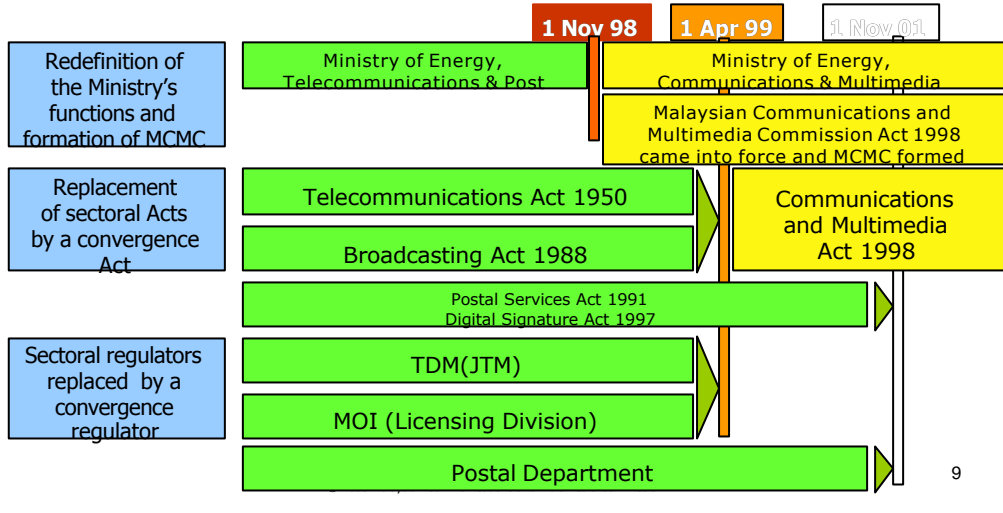
**Agenda:** ICT related activities - the core of the new engine of growth



The Communications and Multimedia Act 1998 was a key legislation to facilitate the growth of convergence activities.



## Changes to facilitate convergence



## Ministry's New Name

- On 27 March 2004 - following Malaysia's new cabinet line-up, the Ministry of Energy, Water and Communications was established replacing the Ministry of Energy, Communications and Multimedia
- The Ministry's role - to administer and manage the nation's energy, communications (infrastructure), postal services and water functions



## The Malaysian Communications and Multimedia Commission

- i. Members of the Commission
- ii. Employees of the Commission
- iii. Role of Commission
- iv. Finance
- v. Secrecy



## Legislation

- The Malaysian Communications and Multimedia Commission Act 1998
  - Establishment of the Commission
  - Came into effect on 1.11.98



## The Commission

- The Malaysian Communications and Multimedia Commission
  - Statutory body, not a company
  - Legal person, not a natural person
  - Derives all power and authority from law
  - Acts outside power and authority – *ultra vires*
  - May sue and be sued



## Members of the Commission

- Appointed by the Minister
- Consist of:
  - A Chairman
  - One member representing Government
  - Not less than two but not more than five members



## Tenure of Office

- Appointed for a term of not less than two years but not more than five years
- Members are eligible for reappointment but no member shall hold office for more than two successive terms



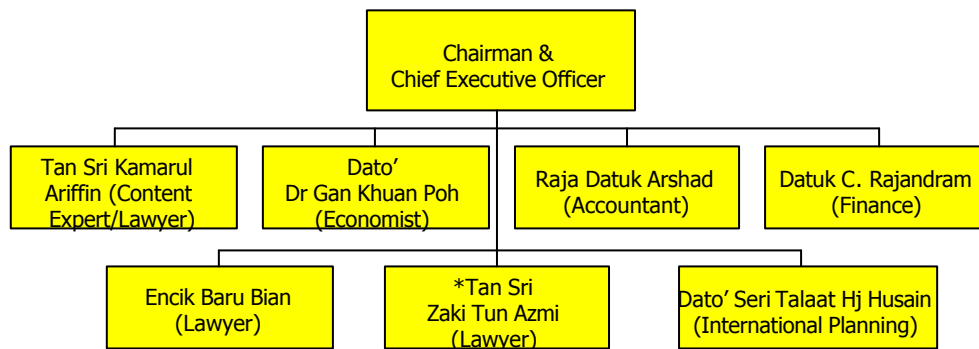
## The Commission

- 7 members
- Commission meetings - once a month
- Quorum – Chairman and two other members





## Members of the Commission



- Commission can appoint committees to carry out its work
- \*Advisor to the Commission



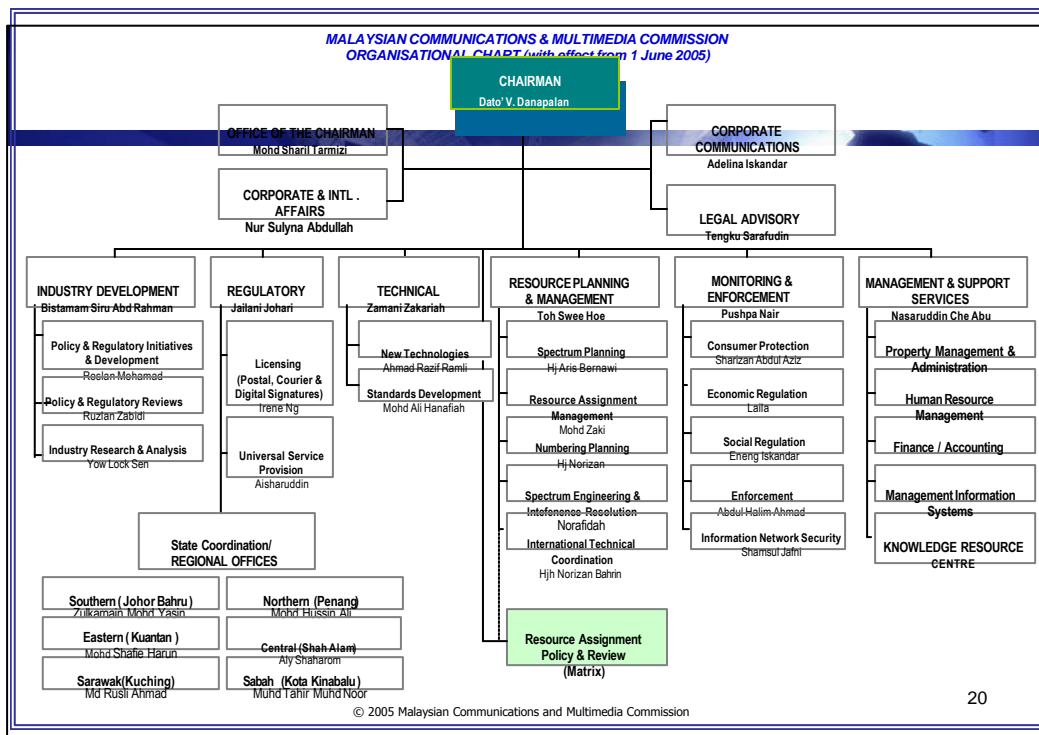
## Employees of Commission

- Chairman
  - Is the CEO – executive and full time
  - Responsible for overall administration and management functions
  - Have general control of employees



## Employees of Commission

- Employees
  - May appoint such number for carrying out Commission's functions
- Minister's approval required for:
  - Terms and conditions of service
  - Disciplinary regulations





## The Powers and Functions of the Commission

1. To *advise* the Minister on national policy objectives
2. To *implement and enforce* communications and multimedia laws
3. To *regulate* matters relating to communications and multimedia activities not related to communications and multimedia laws
4. To consider and *recommend* reforms to the communications and multimedia laws
5. To *supervise and monitor* communications and multimedia activities
6. To *encourage and promote* development of the communications and multimedia industry
7. To *encourage and promote* self regulation
8. To *promote* and maintain the integrity of licensees
9. To *render assistance* to persons engaged in communications and multimedia
10. To carry out any function as the Minister may prescribe

NOTE: Abbreviated from Section 16 of the Malaysian Communications and Multimedia Commission Act 1998 (Act 589)

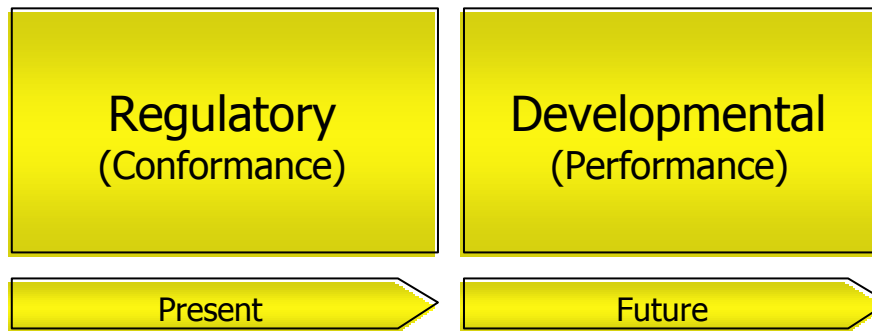


## The Commission

- Dual role – regulatory and developmental
- Independent – management and financially
- Transparent – processes are stipulated in legislation and other instruments
- Commission reports to sector Minister
- Implement C & M laws i.e. promote competition, access, universal service, consumer protection



## MCMC has a dual role in the C&M sector



The Commission play a leadership role in promoting growth to C&M industry guided by the 10 National Policy objectives.



## The MCMC Fund

- The Malaysian Communications and Multimedia Commission Fund, consist of:
  - Moneys transferred from Telecommunications Fund
  - Sums provided by Parliament
  - Licence fees, administration charges, levies
  - Income from investments
  - Sale, disposal, lease of property or mortgages
  - Moneys earned from consultancy and advisory services
  - Moneys or property payable to Commission
- Moneys in excess of the financial requirements of the MCMC may be paid into the Consolidated Fund



## Finance

- Budget to be prepared and sent to Minister by 1 September each year
- Borrowings and investments require the approval of the Minister and the concurrence of the Minister of Finance
- Contracts involving the payment or receipt of more than RM5 million require the approval of the Minister and the concurrence of the Minister of Finance



## Accountability

- Annual Accounts audited by external auditors
- Annual Report & Accounts tabled in Parliament
- Appeal Tribunal
- Annual Work Plan approved by Minister



## Obligation of secrecy

- No employee of the Commission during his employment or thereafter, shall disclose any information obtained by him in the course of his duties
- No person who has access to any information or document relating to affairs of Commission shall disclose such information or document



## Obligation of secrecy

- If contravene and convicted, offence is: fine RM10,000 or imprisonment not exceeding one month or both



# The Communications and Multimedia Act 1998



## Legal Framework for Communications and Multimedia

- The Communications and Multimedia Act 1998 (CMA)
  - Came into operation on 1 April 1999
- Subsidiary legislation under the CMA
- Instruments under the CMA
  - Directions
  - Determinations
  - Declarations



## **Fundamental principles of CMA 1998**

- National Interest
- Transparency
- Less rather than more regulation
  - Self Regulation
- Flexibility
  - Technology neutral
  - Regulatory review



## **10 National Policy Objectives**





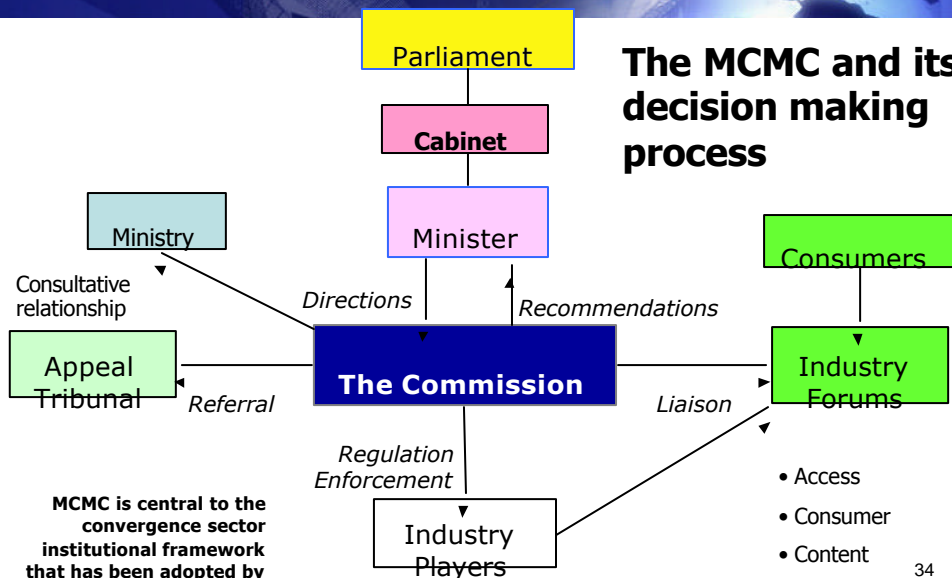
### 10 National Policy Objectives for the Communications & Multimedia sector

1. **Creating a global hub:** To establish Malaysia as a major global centre and hub for communications and multimedia information and content services;
2. **Building a civil society:** To promote a civil society where information-based services will provide the basis of continuing enhancements to quality of work and life;
3. **Nurturing local content and culture:** To grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;
4. **Ensuring long-term benefits for end-users:** To regulate for the long-term benefit of the end user;
5. **Nurturing user confidence:** To promote a high level of consumer confidence in service delivery from the industry;
6. **Promoting access and equity:** To ensure an equitable provision of affordable services over ubiquitous national infrastructure;
7. **Creating a robust applications environment:** To create a robust applications environment for end users;
8. **Facilitating efficient allocation of resources:** To facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;
9. **Developing industry capabilities:** To promote the development of capabilities and skills within Malaysia's convergence industries, and
10. **Promoting secure and safe networking:** To ensure information security and network reliability and integrity.

Source: Section 3(2) of the Communications and Multimedia Act 1998 (Act 588)

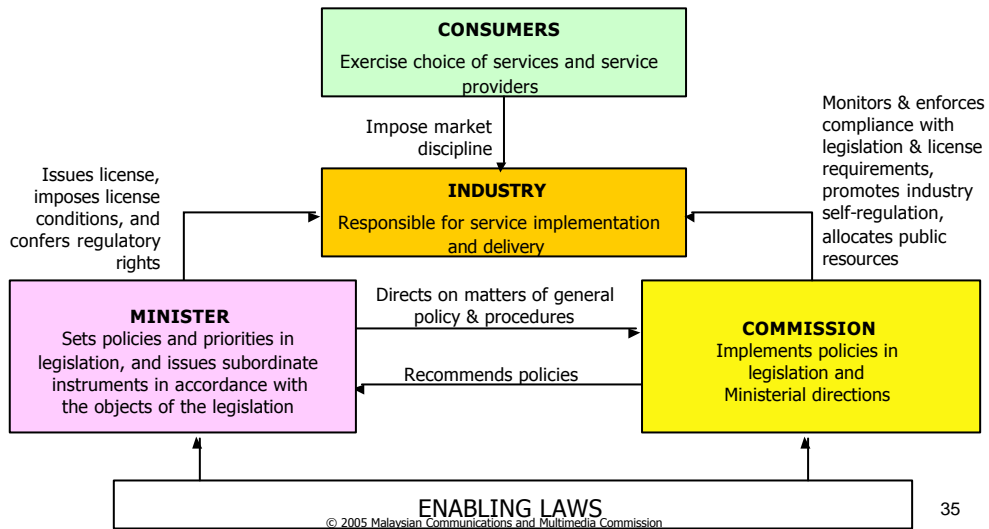


### The MCMC and its decision making process





## The Roles of the Key Players in the Industry



## Ministerial Powers



## Ministerial powers under CMA

- s.7: Ministerial directions
  - Issue direction to MCMC on exercise of MCMC functions
- s.10: Ministerial determinations
  - Without consultation with any licensee or person
  - On matters specified as being subject to determination
- s.13: Ministerial declarations
  - Power to make declarations about licence conditions and benefit



## Ministerial powers under CMA

- s.16: Power to make regulations
- s.17: Power to establish Appeal Tribunal
- s.30: Minister is the licensing authority



## Appeal Tribunal



## Appeal Tribunal

- Minister may establish Appeal Tribunal
- To meet on ad hoc basis as and when required
- Members:
  - Chairman – Judge of High Court
  - At least two other members
- Quorum – minimum 3 persons or maximum 5 persons (incl. Chairman)



## Appeal Tribunal

- Appeal Tribunal may review a decision or direction of Commission
- Any decision of Appeal Tribunal is final and binding and not subject to further appeal
- Decision to be decided on majority of votes of members
- Decision may be enforced in same manner as High Court judgement or order



## Appeal Tribunal

- Aggrieved person may appeal to an Appeal Tribunal on decisions or direction of the Commission
  - Review of merits and process only
- Judicial Review of decisions of the Minister and Commission also provided for



## Appeal Tribunal

- Appeal Tribunal Regulations being developed:
  - Procedures for the Commission
  - Powers and functions of appeal tribunal



## Powers of the Commission



## **Powers of the Commission under CMA**

- s.51: Commission directions regarding compliance or non-compliance with licence conditions, or CMA or subsidiary legislation
  - Failure to comply is an offence
- s.55: Commission determinations on matters specified as being subject to the Commission's determination



## **Powers of the Commission under CMA**

- Public Inquiry
- Power to conduct investigation
- Power to gather information
- Register
- Resolution of Disputes



# Register



# Register

- The Commission shall maintain a register:
  - in physical and electronic forms
- A person may inspect and make a copy or take extracts from the register





# Resolution of Disputes



## Principles

- Right to seek redress from the Commission
- Scope – matters under CMA or its subsidiary legislation
- Guidelines on principles and procedures



## Principles

- Parties must first attempt to resolve by negotiation
- If:
  - parties fail to reach an agreement; and
  - the CMA or subsidiary legislation expressly provides for resolution,
- then the parties may seek resolution by the Commission



## Scope

- Disputes may be resolved by the Commission on:
  - Dispute on standard access obligation
  - Dispute on interference
  - Dispute on access to post, network facilities or right of way



## Process

- Notification of disputes to the Commission
- Preliminary Inquiry
- Written submission
- Queries and Clarifications
- Decision
- Enforcement



## Preliminary inquiry

- Commission to decide:
  - Whether CMA or its subsidiary legislation expressly provided for resolution
  - An agreement will not be reached or will not be reached within reasonable time
  - Dispute is not trivial, frivolous or vexatious
  - Resolution would promote objects of the CMA



## Process

- Documents to be submitted
  - Statement of Case
  - Statement of reply
  - Counterclaim
- Require relevant individuals to attend before Commission
- Proceedings to be held in Kuala Lumpur



## Decision

- Commission decision based on written submission and evidence presented
- Commission to decide within 30 days, where practicable
- Decision to be in writing and accompanied with reasons
- Decision binding on parties
- Decision to be registered



## Enforcement

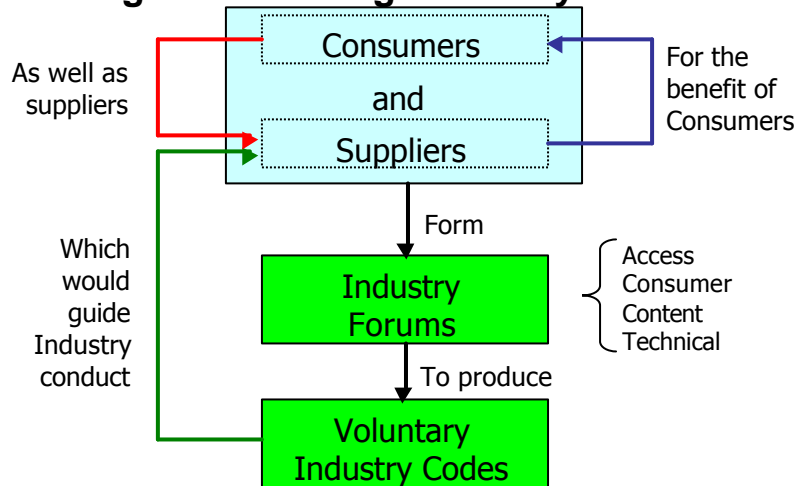
- Commission may direct a party to a dispute to abide by the decision
- Decision is may be enforced by the High Court as a High Court decision



## Forums



## Consumers and service suppliers participate in self-regulation through Industry Forums



## Industry Forums

- There are 4 industry forums under the CMA:
  - Access Forum (s.152-153)
  - Technical Standards Forum (s.184-185)
  - Consumer Forum (s.189-190)
  - Content Forum (s.212-213)



## Designation of an Industry Forum

- The Commission may designate an industry body as an industry forum if:
  - Membership of the body is open to all relevant parties;
  - The body is capable of performing as required under the CMA; and
  - The body has a written constitution



## Registration

- The designation is only effective upon registration by the Commission
- Before registration the Commission must ensure that the applicant complies with certain criteria



## **Essential Criteria of an Industry Forum**

- Membership is open to “all relevant parties”
- Capable of performing
- Written constitution



## **Development and Registration of Voluntary Industry Codes (VIC)**

- An industry forum may prepare a VIC dealing with any matter provided for in the CMA on its own initiative or upon request by the Commission





## Public Consultation

- Must have a public consultation process on VIC
- The Commission may refuse registration of the VIC if the Commission is not satisfied of the sufficiency of public consultation



## Registration of VIC

- The Commission shall register a VIC if it is consistent with-
  - the objects of CMA;
  - any relevant instrument under the CMA; and
  - any provisions of the CMA which are relevant to the particular matter or activity



## Registration of VIC

- The Commission can refuse to register but it must notify the relevant Industry Forum of its decision in writing and provide reasons for its decision



## Determination of a VIC

- The Commission may determine a VIC:
  - if a VIC is not developed; and
  - the Commission is satisfied that a VIC is unlikely to be developed by the forum within a reasonable time



## Mandatory Standard

- The Commission has a power to make a mandatory standard where it has assessed that a VIC is inadequate or if fails



## Compliance of VIC

- Compliance with VIC is voluntary unless the Commission directs a person or class of person to comply
- Failure to comply - fine not exceeding RM200,000
- Compliance with a VIC shall be a defence against prosecution, action or proceeding



# Economic Regulation

- i. Licensing
- ii. Competition
- iii. Access

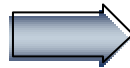
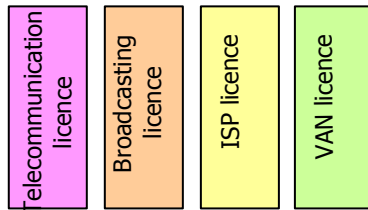


# Licensing

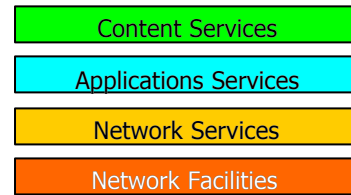


## Licensing for convergence

The old licenses that were issued were based on specific technologies, and specific services



Licenses issued under CMA 98 are technology-neutral and service-neutral

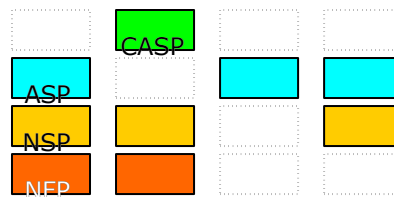
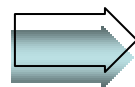
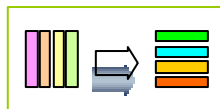


Under the old licensing framework all activities related to the provision of a particular service are vertically integrated for the provision of that service

The new licensing framework promotes vertical separation between facilities, network, applications, and content



## Service-specific licenses are no longer issued



Service specific licenses, e.g. for the provision of telecommunications or broadcasting services are no longer issued.

The activities-based licensing should cater for any future convergence services that are not on the market today.

As an example, a company wishing to provide facilities-based telecommunications services will be issued with individual NFP, NSP, and ASP licenses.

This company will not require separate or additional licensing if it wishes to provide new services employing new technologies, e.g. 3G.



## CMA Licensing Regime – Four Horizontal Markets in Three Categories

Individual	Class	Exempt
NFP	NFP	NFP
NSP	NSP	NSP
	ASP	ASP
CASP	CASP	CASP

Less regulation 

- Only activities with significant economic or social impact are individually licensed.
- The long term objective is to move to less regulation.



## Individual Licence

- Need to control market entry
- Significant service - close regulatory supervision is required
- requirement to ensure compliance with minimum technical, social or consumer standard
- conditions of operations which are specific to an operator



## Class Licence

- Facilitate market entry
- Light handed regulation
- Encourage innovation and promote healthy competition
- Requirement to ensure compliance with minimum technical, social or consumer standards



## Licence Mapping

	INDIVIDUAL	CLASS	EXEMPT
<b>NFP</b>	Earth station Fixed links and cables Radiocommunications transmitters and links Satellite control station Satellite hubs Space station Submarine cable landing centre Towers, poles, ducts and pits used in conjunction with other network facilities	Niche or limited purpose network facilities eg: •Radiocommunications transmitters for public mobile radio network service •Radiocommunications transmitters for public radio paging network service •Radiocommunications transmitters for broadband point to point/multipoint wireless internet network service	Broadcasting and production studios Incidental network facilities Private network facilities
<b>NSP</b>	Bandwidth services Broadcasting distribution services Cellular mobile services Access applications services Space services Switching services Gateway services	Niche customer access Niche connection service eg. •public mobile radio network service •radio paging network service •broadband point to point/multipoint wireless internet network service for connecting end users to Internet Access Service providers	Incidental network services LAN service Private network service



## Licence Mapping

	INDIVIDUAL	CLASS	EXEMPT
<b>CASP</b>	Satellite broadcasting Subscription broadcasting Terrestrial free to air TV Terrestrial radio broadcasting	Limited content applications service e.g. • Limited in its availability i.e. in vehicles for hire or reward, single commercial or residential building • Targeted to special interest groups and through subscription • Distance learning purposes	Internet content services
<b>ASP</b>		PSTN telephony Public cellular services IP telephony Public payphone services Public switched data service Audiotext hosting services provided on an opt-in basis Directory services Internet access services Messaging services	Electronic transaction services Interactive transaction services Networked advertising boards and cinplex Web hosting or client server

Extracted from: Communications and Multimedia (Licensing) Regulations 2000 and Communications and Multimedia (Licensing)(Exemption) Order 2000

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## Licence Fee - Individual

- Application fee – RM10,000 (non refundable)
- Approval fee – RM50,000
- Annual Fee – 0.5% of Gross Annual Turnover or RM50,000 whichever is higher
- Duration – 10 years

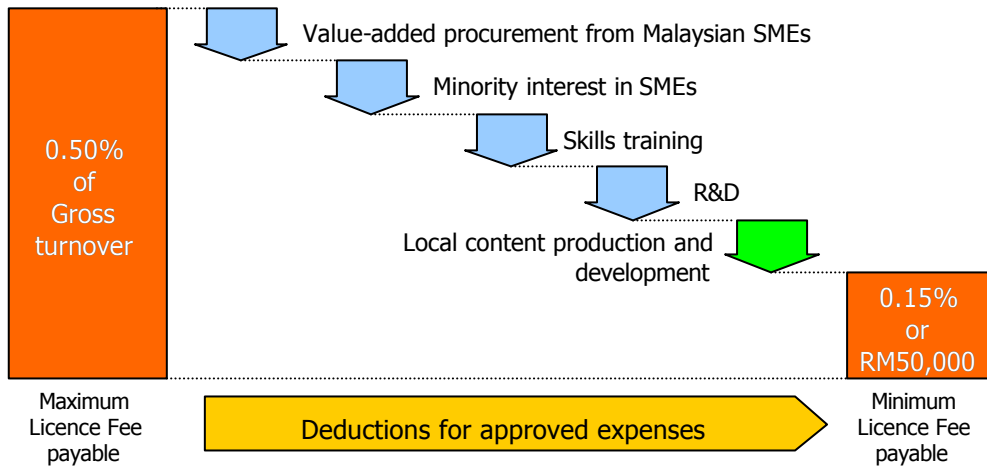
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## Calculation of annual licence fees



## Licence Fee - Class

- Registration fee – RM2,500
- Validity – 1 year



# Competition



## General competition practices

- Licensee shall not engage in any conduct which has the purpose of Substantially Lessening Competition (SLC) in a communications market
- Commission may publish guidelines which clarify the meaning of SLC
  - Guidelines on SLC published



## General competition practices

- A licensee shall not enter into any understanding, agreement or arrangement, whether legally enforceable or not, which provides for:
  - rate fixing
  - market sharing
  - boycott of a supplier of apparatus or
  - boycott of another competitor



## General competition practices

- The Commission may determine that a licensee is in a dominant position in a communications market
  - Commission Determination No. 2 of 2004
- The Commission may publish guidelines which clarify the meaning of dominant position
  - Guidelines on dominant position published



## General competition practices

- The Commission may direct a Licensee in a dominant position to cease a conduct in that which has, or may have, the effect of substantially lessening competition
- A Licensee may apply to the Commission, prior to engaging into any conduct which may be construed to have the purpose or the effect of substantially lessening competition in a communications market, for authorisation of the conduct



## General competition practices

- The Commission shall authorize the conduct if the Commission is satisfied that the authorization is in the national interest



# Access



## Standard access obligation

- Network facilities provider and network services provider shall provide access listed in access list to other:
  - network facilities provider
  - network services provider
  - applications service provider or
  - content application service provider

who makes written request for access on reasonable terms and conditions



## Standard access obligation

- The access provided shall be:
  - same or more favorable standard and quality as provided to its own, and
  - on equitable and non-discriminatory basis
- A written access agreement must be registered with Commission, if not unenforceable
- Guidelines on registration of access agreements issued



## Access list

- Facilities and services that may be included in access list
  - network facilities
  - network services
- Commission may determine a network facilities or network services be included or removed from access list



## Access forum

- Access forum – Malaysian Access Forum Berhad designated on 31 March 2003
- Access forum is to develop an access code
- Access code must contain model terms and conditions for compliance with standard access obligations



## Technical Regulation

- i. Spectrum assignment
- ii. Numbering and electronic addressing
- iii. Technical standards



# Spectrum



## Assignment of spectrum

- No person shall use spectrum unless holds:
  - spectrum assignment;
  - apparatus assignment; or
  - class assignment





## Assignment of spectrum

Spectrum Assignment	Apparatus Assignment	Class Assignment
•Authorises a person to use frequency band	•Authorises a person to use frequency band to operate a specified network facility	•Authorises a person to use frequency band for specified purpose
•Maximum term 20 years •Price component (fixed fee) and annual fee	•Maximum term 5 years but generally annual •Fixed and variable fees	•Valid until cancelled •No fee payable



## Spectrum Plan

- The Commission may develop spectrum plan
- Made available to public for a fee
- Spectrum plan to:
  - Define how spectrum to be used
  - Methodology of assignment
  - Procedures for assignment of spectrum and apparatus assignments



# Numbering and Electronic Addressing



## Numbering and Electronic Addressing (NEA)

- The Commission is vested with control, planning, administration, management and assignment of NEA
- Appointment of person to manage and maintain public number or electronic address database



## NEA Plan

- Commission shall develop NEA plan
- Made available to public for a fee
- NEA plan may set out rules on:
  - Usage of different NEA for different services
  - Assignment of NEA
  - Portability of NEA



## Technical Standards



## Technical Standards

- Standards
  - Appointment of certifying agencies
  - Certification of equipment
  - Certification of persons
- Technical standards forum - Malaysian Technical Standards Forum Berhad designated on 27 October 2004
- Technical standards forum is to develop technical code



## Consumer Protection

- i. Quality of Service
- ii. Required applications service
- iii. Resolution of consumer disputes
- iv. Rate regulation
- v. Universal service provision



## Quality of Service



## Quality of service

- Person who provides service must:
  - Deal reasonably with consumers
  - Adequately address consumer complaints
- Consumer forum - CFM established on February 2001
- Consumer code developed - sets out procedures for dealing with consumer complaints, etc.



## Required Applications Service



## Required Applications Service

- List of services determined by Minister as required applications services (“RAS”) i.e. services which are essential for consumers
  - emergency services
  - directory enquiries services
  - operator assistance services
- Power of the Commission to issue direction on operational details relating to RAS



## Consumer Disputes



## Consumer Disputes

- Commission may resolve complaints received from consumers on customer service and consumer protection
- Guidelines for consumer complaints established



## Rate Regulation



## Rate Regulation

- General rule:
  - service providers may set their rates in accordance with market rates
  - there is power for Minister to intervene for good cause or in the public interest to set the rates
- Minister may also make rules to prescribe rates
  - Rate Rules 2002
    - PSTN
    - Internet access – dial-up





# Universal Service Provision



# Universal Service Provision

Under the CMA, USP is defined as:

A **system** to promote the widespread availability and use of network services and/or applications services throughout Malaysia



## USP - Main objective

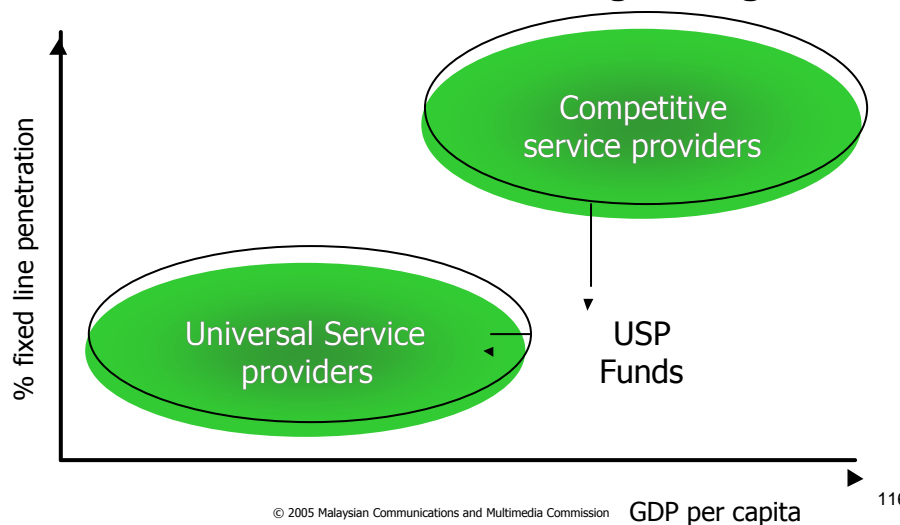
To provide basic communication services which focuses on access to:

- public payphone
- basic telephony
- internet access

in underserved areas and for underserved groups within the community



## The USP is a mechanism for reducing the digital divide





## USP Fund

- CMA provides for the establishment of a USP Fund
- USP roll out is funded by the USP Fund
- Contribution to USP Fund - Licensees (except for CASPs) whose net revenue from designated services exceeds RM2 million in a calendar year must contribute 6% of their net revenue
- Licensees who provide the service under USP are compensated fully for all costs incurred



## Social Regulation



## Social Regulation

- S. 211 : No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person.



## Content forum

- Content forum – designated on 28 March 2001
- Content code developed - regulation of all content including traditional broadcasting, telecommunications and online services



## Subsidiary legislation under CMA

- Spectrum Regulations 2000
- Licensing Regulations 2000
- Technical Standards Regulations 2000
- Compounding of Offences Regulations 2001
- USP Regulations 2002
- Rate Rules 2002
- Class Assignments 2000
- Spectrum Exemption Order 2000
- Licensing Exemption Order 2000



## MCMC's Vision for the Future

A **globally competitive, efficient** and increasingly **self-regulating** communications and multimedia industry generating **growth** to meet the **economic** and **social** needs of Malaysia.



# THANK YOU

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