

Mini-étude de cas 2003 sur la Malaisie

**Le forum d'accès de la
Malaisie, une initiative
favorisant l'autorégulation et
le consensus**



Union internationale des télécommunications

Cette mini-étude de cas a été réalisée par Robert Bruce et Rory Macmillan, Debevoise & Plimpton, Londres, R.U. Les points de vue exprimés dans ce document sont ceux des auteurs et ne reflètent pas nécessairement ceux de l'UIT, de ses membres ou du Gouvernement de la Malaisie.

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Cette étude fait partie d'une série de cinq études sur le règlement des différends dans le domaine de l'interconnexion menées par l'UIT. Pour plus d'informations, consulter le site web <http://www.itu.int/ITU-D/treg>.

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I. Introduction

Située en Asie du Sud-Est, la Malaisie compte quelque 24 millions d'habitants et son PIB atteint approximativement RM 360 000 milliards (USD 1,00 = RM 3,8). Le nombre d'abonnés des services téléphoniques mobiles est d'environ 10 millions, ce qui représente en gros un taux de pénétration de 40%. La pénétration du service fixe - environ 19% - est inférieure avec un total de 4,6 millions de lignes. Il y a cinq opérateurs du service fixe et huit opérateurs mobiles (de nombreux observateurs s'attendent à une concentration du marché), les leaders du marché étant Maxis pour le service mobile et Telekom Malaysia Berhad dans le domaine du service fixe.

En 1998, à la suite d'un examen approfondi de la situation effectué par le Gouvernement malais, un nouveau cadre juridique de grande portée, centré sur la convergence des secteurs des télécommunications, des médias et de l'information a été mis en place en Malaisie par l'adoption de la loi de 1998 sur les communications et le multimédia. En vertu d'une seconde loi, a été créée la nouvelle Commission des communications et du multimédia de la Malaisie qui est entrée en fonction en novembre 1998 dès la nomination d'un Président et de deux autres membres. Les nouvelles lois sont fondées sur les principes de la clarté et de la transparence et un niveau de réglementation qui s'inscrit plutôt à la baisse.

Le régime réglementaire se distingue par l'accent mis sur la transparence, la neutralité technologique, l'autorégulation, le service universel et une approche favorable à la concurrence. En vertu du principe de neutralité technologique, la Commission des communications et du multimédia délivre des licences pour quatre marchés clés: ressources de réseau, services de réseau, services d'application et fournisseurs de contenus.

Le nouveau régime institué par la loi de 1998 crée un système d'accès, par opposition à un système d'interconnexion¹. Le système d'accès entend garantir que tous les fournisseurs de ressources de réseau, de services de réseau et d'applications peuvent accéder aux installations et services nécessaires à des conditions raisonnables afin d'empêcher tout blocage de la fourniture de services en aval. L'Article 6 de la loi définit l'accès comme étant l'accès aux ressources et/ou services d'un réseau qualifiés d'essentiels par la commission dans sa "liste d'accès". Cette liste d'accès est un inventaire de ressources et/ou services jugés essentiels par la commission pour la fourniture de services de réseau et de services d'application. Les ressources et/ou services inscrits sur la liste d'accès sont soumis aux "obligations générales en matière d'accès".

Le concept d'autorégulation du secteur a également joué un rôle important dans la formulation de la loi sur les communications et le multimédia et de celle portant création de la Commission des communications et du multimédia. Dans un même ordre d'idée a été désigné en mars 2003 le Forum d'accès malais Berhad en tant que forum du secteur des communications chargé, en vertu de la loi, de toutes les questions intéressant l'accès². Le Forum représente une initiative novatrice pour l'élaboration d'un mécanisme favorisant le consensus et l'autorégulation

¹ A titre comparatif, l'Union européenne (UE) définit comme suit le concept d'*interconnexion*: "la liaison physique et logique des réseaux de communication publics utilisés par la même entreprise ou une entreprise différente, afin de permettre aux utilisateurs d'une entreprise de communiquer avec les utilisateurs de la même entreprise ou d'une autre, ou bien d'accéder aux services fournis par une autre entreprise. Les services peuvent être fournis par les parties concernées ou par d'autres parties qui ont accès au réseau". Pour l'UE, le concept d'*accès* signifie "la mise à la disposition d'une autre entreprise, dans des conditions bien définies et de manière exclusive ou non exclusive, de ressources et/ou de services en vue de la fourniture de services de communication électroniques."

² Voir <http://www.mafb.com.my/>.

dont les incidences ne seront pas sans intérêt pour d'autres pays. Tout en étant indépendant de la commission (comme expliqué plus loin) le Forum d'accès est reconnu dans la législation comme un acteur important dans le processus d'élaboration du "code d'accès", bien que ce code doive satisfaire certains critères d'ordre législatif. Le code d'accès est un code volontaire du secteur comportant des dispositions et conditions types applicables à la fourniture de l'accès aux ressources et/ou services figurant dans la liste d'accès par un "fournisseur d'accès" à un "demandeur d'accès".

Le Forum d'accès peut recommander à la commission des ressources et services pour inscription sur la liste d'accès, ainsi qu'un code d'accès, et la commission est invitée à donner suite aux propositions en question. En d'autres termes, si l'autorégulation implique des engagements considérables de la part des acteurs du secteur privé, elle reste de différentes manières assujetties à des normes ou à la surveillance de la part du régulateur.

Le Forum d'accès, un organe consultatif doté d'un statut indépendant de la Commission des communications et du multimédia, n'est pas sans précédent. En effet, par des aspects importants, il se rapproche du Télécommunications Access Forum de l'Australie, un organisme autorégulateur qui encourage le consensus et le règlement extrajudiciaire des litiges en Australie. Bien que le Forum malais soit indépendant de la commission, c'est elle qui est en dernière instance l'organe compétent pour la politique d'interconnexion et les questions réglementaires. Néanmoins, le soin et l'attention dont la nouvelle entité fait l'objet semble indiquer que le Forum d'accès méritera une évaluation des plus attentive de la part des régulateurs de nombreux marchés émergents. La présente mini étude de cas examine quelques-unes des principales caractéristiques du Forum d'accès.

II. Le Forum d'accès malais et ses objectifs

Le Forum d'accès malais Berhad a été fondé le 17 avril 2001 avec le statut de société en commandite par garantie et siège social à Kuala Lumpur. Les premiers membres signataires de l'acte constitutif et des statuts ont été les opérateurs titulaires du service fixe Telekom Malaysia Berhad et Maxis Broadband Sdn Bhd, une filiale du plus important opérateur de service mobile de Malaisie. A fin août 2003, le Forum d'accès comptait huit membres appartenant à divers secteurs de la branche.

En vertu de la loi sur les communications et le multimédia, le Forum d'accès a pour fonctions essentielles:

- de soumettre des recommandations à la Commission des communications et du multimédia concernant l'inclusion ou la suppression de ressources et/ou services de la liste d'accès; et
- d'élaborer le code d'accès et de le recommander à la commission.

Les objectifs clés du Forum d'accès, conformément aux statuts, sont définis comme suit:

- élaborer, formuler et recommander à la commission, pour décision, la liste d'accès et les codes d'accès et réviser, modifier et mettre à jour de temps à autre la liste d'accès et les codes d'accès et soumettre à la commission les demandes de ratification de la liste d'accès et des codes d'accès;
- encourager (de son propre chef ou par des intermédiaires) la recherche et effectuer des études sur des questions relatives à l'accès et à l'interconnexion qui se posent dans le secteur des communications et du multimédia;
- établir et maintenir des structures administratives souples et transparentes pour traiter les questions nationales et internationales en matière d'interconnexion et d'accès;
- faciliter le développement et la croissance du secteur des communications et du multimédia en Malaisie en encourageant le secteur à s'autoréguler et en assurant une

coordination efficace avec les organismes gouvernementaux et non gouvernementaux chargés des questions d'accès et d'interconnexion; et

- dans l'exercice de ses activités, soutenir les objectifs de la politique nationale tels que définis dans la loi sur les communications et le multimédia.

III. L'organisation de l'accès aux termes de la loi sur les communications et le multimédia de 1998

(a) Liste d'accès

En mars 2001, en conformité de l'Article 55 de la loi, la Commission des communications et du multimédia a publié un rapport relatif à la résolution sur la liste d'accès résumant les services et ressources de réseau inclus dans la liste et motivant ses choix. Les Sections 4 et 5 du rapport énumèrent les services et ressources de réseau concernés en partant du système d'interconnexion et d'accès existant. Les ressources et services figurant sur la liste en vigueur font l'objet de l'Annexe 1 à la présente étude. La commission a opté pour une approche par étapes prenant appui sur les politiques passées et actuelles. Elle décidera ultérieurement, sur la base d'une étude coûts/bénéfices, si des motifs économiques justifient une éventuelle extension de la liste d'accès à d'autres ressources ou services de réseau. A la suite de la publication du rapport susmentionné, la résolution sur la liste d'accès a été publiée par la commission et elle est entrée en vigueur le 1er avril 2001.

(b) Code d'accès/norme obligatoire en matière d'accès

Aux termes de la loi, la commission peut définir une norme obligatoire en matière d'accès pour autant que le Ministre le lui demande. Une demande de ce type est parvenue à la commission. Par conséquent, celle-ci a ouvert en avril 2003 une procédure de consultation publique au sujet du projet de norme obligatoire en matière d'accès (la norme). En juillet 2003, la commission a rendu public un rapport sur la consultation publique en vertu de l'Article 65 de la loi sur les communications et le multimédia de 1998 relative à la norme obligatoire en matière d'accès³. Par la suite, en août 2003, la commission a publié sa résolution sur la norme obligatoire en matière d'accès (Résolution N° 2 du 14 août 2003)⁴. La norme est censée constituer une mesure intérimaire en attendant l'élaboration du code d'accès par le Forum d'accès et sa ratification par la commission. Ces éléments figurent dans la norme qui mentionne certaines des conditions dans lesquelles la norme peut être révisée par la commission. En particulier, une révision peut se justifier dès lors "que le forum d'un secteur de la branche soumet un nouveau code volontaire en remplacement d'un code existant du secteur en question". (Norme 6.5.3 f)).

(c) Litiges en matière d'accès

L'Annexe A de la norme contient la description de la procédure de règlement des litiges laquelle, conformément à l'usage en Malaisie qui est analysé dans la présente mini étude de cas, met l'accent sur la responsabilité des opérateurs et prestataires de services qui doivent notamment assumer les coûts de l'arbitrage. En fait, aux fins de décourager tout recours abusif à la procédure, l'arbitre peut décider de ne pas entrer en matière sur un litige s'il juge le différend insignifiant, frivole ou vexatoire; il peut même condamner aux dépens une partie ayant introduit une telle affaire (norme, Annexe A, sections 2.7 et 2.8).

Les procédures encouragent d'ailleurs les parties à négocier dans le cadre de groupes de travail constitués entre les parties au conflit avant de recourir à la procédure (norme, Annexe A,

³ Disponible sur le site web de la MCMC:
<http://www.mcmc.gov.my/mcmc/Admin/FactsAndFigures/PublicEnquiryReport/PI-MS-access.pdf>

⁴ Disponible sur le site web de la MCMC:
<http://www.mcmc.gov.my/mcmc/Admin/Instruments/CommissionDeterminationPDF/MS-Access.pdf>

section 3). Les procédures imposent une démarche ascendante: un différend ne pouvant pas être réglé au niveau du groupe de travail est déféré à un groupe pilote intermédiaire composé d'un nombre égal de représentants de chacune des parties au conflit (norme, Annexe A, section 4) Ce n'est qu'après cette phase que les parties pourront soumettre l'affaire à un expert technique qui n'a pas besoin d'être citoyen malais, choisi par les parties (ou à défaut par la commission), ou directement à la Commission des communications et du multimédia en vue d'un "arbitrage définitif" (norme, Annexe A, section 5) La procédure exclut tout recours aux tribunaux aussi longtemps que les procédures de règlement des différends ne sont pas achevées (norme, Annexe A, section 2.1). Les litiges en matière de facturation sont traités séparément.

IV. Aspects clés du Forum d'accès de la Malaisie

Le Forum d'accès fournit des indications utiles sur les éléments clés qui constituent un organe consultatif centré sur un secteur économique. Ci-après sont résumés quelques-uns des éléments clés contenus dans l'acte constitutif et les statuts du Forum d'accès qui font l'objet des Annexes 2 et 3 de la présente étude de cas.

(a) Aperçu général

En tant que société sans capital actions, l'organisation du Forum d'accès est centrée sur ses membres qui représentent quatre catégories de détenteurs de licences ou d'entités exemptées de licence, conformément aux dispositions de la loi sur les communications et le multimédia, à savoir 1) fournisseurs de ressources de réseau; 2) fournisseurs de services de réseau; 3) fournisseurs de services d'application; 4) fournisseurs de services de contenu.

Les membres du Forum d'accès élisent un conseil d'administration représentatif des différentes catégories de membres, ainsi qu'un Président. Le Président, qui peut être l'un des membres mais ne peut pas être l'un des administrateurs⁵, doit posséder une expérience professionnelle pertinente. Cependant, il ne peut pas voter au conseil d'administration et sa voix n'est pas prépondérante. Le conseil d'administration peut nommer un directeur général chargé d'établir un programme de travail pour le Forum d'accès et de conduire ses activités.

(b) Commissions

Les activités du Forum d'accès sont surtout menées par ses trois commissions permanentes que sont la commission des ressources de réseau et des services de réseau, la commission des services d'application, et la commission des services de contenu. Une seule commission est chargée des ressources et services de réseau, mais le conseil d'administration pourra décider ultérieurement d'en faire deux commissions séparées. Le conseil d'administration ou les commissions du Forum d'accès peuvent créer des groupes de travail pour traiter les questions afférentes à des projets particuliers.

(c) Principes et pratiques de gouvernance

L'organisation du Forum d'accès est soigneusement étudiée de manière à ce qu'il puisse fonctionner selon les principes du consensus et de l'unanimité. Ses textes fondateurs forment une matrice intéressante pour une codification officielle desdits principes. Certes, une connaissance détaillée de ces dispositions nécessiterait une analyse dépassant le cadre de ce bref survol des documents en question, mais quelques éléments clés peuvent être mis en évidence.

⁵ Au moment de la rédaction du présent rapport, le Directeur du conseil d'administration a été nommé par l'opérateur titulaire Telekom Malaysia.

Par exemple, l'Article 101 des statuts qui figurent à l'Annexe 2 prévoit que dès que l'une des commissions du Forum d'accès aboutit à un consensus sur une question quelconque relative à la liste d'accès ou au code d'accès, l'affaire sera obligatoirement soumise aux autres commissions du forum. Ce n'est qu'une fois que toutes les commissions du Forum d'accès seront parvenues à un consensus que l'affaire sera transmise au Conseil d'administration. L'Article 105 donne la définition suivante du terme consensus pour les besoins de l'Article 101:

"Il y a consensus lorsque toutes les personnes participant à l'étude d'un sujet sont parvenues à un accord substantiel (c'est-à-dire dans une proportion supérieure à 67%) après que toutes les opinions et objections auront été considérées et que des efforts concertés auront été déployés pour trouver une solution. Dans certaines conditions, le consensus est atteint dès que la minorité renonce à faire valoir ses objections et qu'aucun défenseur d'un intérêt important ne maintient son opposition."

Dès qu'une affaire est soumise au Conseil d'administration, les intérêts de ceux qui défendent des points de vue divergents sont protégés par d'autres mécanismes. Toute affaire en rapport avec l'approbation et l'évaluation de la liste d'accès est considérée comme une question extraordinaire au sens de l'Article 88 des statuts. En l'occurrence, le vote unanime de tous les administrateurs est requis. Le vote est jugé unanime lorsque plus de 90% des administrateurs présents votent en faveur de la question. Dès qu'une question extraordinaire a été approuvée, les avis des administrateurs dissidents sont transmis à la Commission des communications et du multimédia.

S'agissant des membres, les statuts accordent une voix à chacun d'eux et stipulent qu'aucune résolution ne peut être approuvée si elle ne recueille pas le vote favorable de plus de 85% des membres présents et habilités à voter. Pour ce qui concerne les "affaires réservées", notamment toute modification des statuts relative au droit de vote des membres ou du conseil d'administration, le vote favorable de plus de 90% des membres est requis.

(d) Questions de fonctionnement

Il va sans dire que l'efficacité du Forum dépendra en grande partie du temps que ses membres lui consacreront ainsi que des efforts déployés par le directeur général, le secrétaire et les autres membres du personnel. Le directeur général peut mandater des experts et des collaborateurs extérieurs. Toutefois, l'ampleur du budget et des autres ressources du Forum d'accès dépend des contributions payées par les membres. Ces dernières se composent d'un droit d'entrée initial et d'une cotisation annuelle dont le barème figure au Tableau 1 de l'Annexe 3. Aux termes des statuts, les cotisations sont déterminées en fonction des revenus annuels des membres.

(e) Relations avec la Commission des communications et du multimédia

Bien que désigné en qualité de Forum d'accès par la commission, le forum constitue une entité juridiquement autonome de la commission. Il n'est pas au sens juridique un comité ou une division de la commission. Mais en sa qualité de Forum d'accès, il est habilité en vertu de la loi sur les communications et le multimédia à soumettre à la commission pour considération des recommandations intéressant la liste d'accès et le code d'accès.

V. Questions concernant les futures activités du MAF

Le Forum d'accès se trouve au stade initial d'un développement qui doit l'amener à devenir, dans le cadre du régime réglementaire malais, un organisme autorégulateur, capable de trouver des consensus. L'expérience en cours est de nature à influencer sur les projets d'autres pays tout aussi désireux de créer des institutions de ce type. Certains domaines dans lesquels les arrangements malais sont susceptibles d'évoluer ou de questions à résoudre à un stade ultérieur sont mis en évidence ci-après.

(a) Etablir un consensus

Voué au principe du consensus, le Forum d'accès risque de se trouver confronté à des difficultés inhérentes à ses structures et procédures qui peuvent donner prise à des comportements pouvant entraver le progrès. Bien que la fondation du forum résulte d'un acte volontaire de ses membres et que ceux-ci participent sur une base volontaire à ses activités, le rôle du forum comme acteur constructif du développement du système d'accès et d'interconnexion et de la mise en œuvre de ses principes dépend pour l'essentiel d'une attitude coopérative de ses membres. Même si cette attitude est suffisamment présente dans la culture d'entreprise, il reste à voir dans quelle mesure le processus consensuel fonctionnera dans la pratique dès l'instant où les modes de fixation des taxes d'interconnexion risquent d'affecter les opérations financières des opérateurs.

(b) Relations avec les organisations de consommateurs

Les structures du Forum d'accès ne prévoient pas de représentation officielle des organisations de consommateurs. Toutefois, il existe dans le secteur réglementé par la Commission des communications et du multimédia un forum des consommateurs doté d'un statut identique à celui du Forum d'accès. Les représentants du forum des consommateurs seront associés aux activités courantes du Forum d'accès. Mais il va sans dire qu'en dernière instance, il appartiendra à la commission de répondre aux éventuelles préoccupations des consommateurs en rapport avec les activités du Forum d'accès.

(c) Relations avec les autorités chargées de la concurrence

Pour le moment, il n'existe aucun organisme compétent pour les questions de concurrence en Malaisie et la Commission des communications et du multimédia est le seul régulateur sectoriel s'occupant des questions de concurrence en vertu des dispositions spécifiques de la loi sur les communications et le multimédia. Néanmoins, des efforts visant à créer une autorité de réglementation de la concurrence sont actuellement déployés. Il se pourrait que des fonctionnaires malais chargés de surveiller la politique de la concurrence ne voient pas d'un bon œil les arrangements formels pris par des concurrents ayant constitué un groupe à cet effet. Des objections de ce type pourraient toutefois être apaisées par la garantie donnée par le Forum d'accès que toutes ses activités se dérouleront ouvertement et dans la transparence.

(d) Relations actuelles avec la Commission des communications et du multimédia

Etant donné que le Forum d'accès est indépendant de la Commission des communications et du multimédia, cette dernière, en sa qualité d'organe réglementaire, a pour mission de traiter toutes les questions afférentes à la réglementation et à la politique d'interconnexion. Ceci étant dit, il est à noter que la commission a adopté une approche plus ouverte dans ses relations avec cet organe engagé en faveur du consensus par rapport à certains autres organismes réglementaires qui ont également proposé des mécanismes consensuels privés. La commission ne semble pas considérer que l'existence du Forum d'accès implique une délégation de pouvoirs ou qu'il constitue un comité consultatif ou un prolongement de ses propres structures. La Présidente de la commission a fait remarquer lors d'un récent entretien qu'elle ne voyait actuellement aucune nécessité d'assister aux réunions du Forum d'accès ou d'exercer une surveillance sur ses réunions et qu'elle ne jugeait pas nécessaire de soumettre l'organisme en tant que tel à la tutelle directe de la commission. Toutefois, dans ses rapports, la commission fait référence au Forum d'accès et à ses activités et elle en tient compte dans son travail d'établissement du cadre réglementaire national pour les questions d'accès.

Par conséquent, il sera intéressant de suivre l'interaction entre la Commission des communications et du multimédia et le Forum d'accès. La marge de manœuvre dont disposera le Forum pour prendre des initiatives réglementaires significatives dépendra des avancées déjà réalisées par la commission. Ainsi, la publication récente de la norme obligatoire en matière d'accès, considérée par la commission comme un mécanisme intérimaire, aura sans doute une incidence notable sur l'élaboration du code d'accès par le Forum.

(e) Resources

Il sera à la fois intéressant et instructif d'observer la manière dont le Forum d'accès développera ses propres ressources et capacités. Par exemple, il pourrait se trouver confronté à des différends survenus entre membres individuels ou catégories de membres en raison de propositions relatives aux conditions d'accès. Aux termes de ses statuts, le Forum n'est pas compétent pour agir dans les cas de rupture sérieuse du consensus. Certes, il doit être possible de parvenir à un accord ou à un consensus par des voies non officielles, avec ou sans intervention de la Commission des communications et du multimédia, mais le Forum d'accès devra peut-être s'interroger sur la nécessité de créer ses propres mécanismes de médiation ou de règlement extrajudiciaire des différends.

ANNEXE 1

Network Facilities and Network Services in the Access List (for which licensees are subject to Standard Access Obligations)⁶

The network facilities or network services to be included in the Access List and the rationale for their inclusion are as follows:

(a) Fixed Network Origination Service and Mobile Network Origination Service.

This offering is targeted as the markets for 1800 number, 1300 number and other similar services which require any-to-any connectivity.

(b) Equal Access (Fixed Network) Service

The offering is aimed at markets for domestic long distance and international fixed calls. The MCMC generally accepts that the local loop exhibits strong natural monopoly characteristics.

(c) Fixed Network Termination Service and Mobile Network Termination Service

Fixed network termination services ensure that end users who choose to be directly connected to a given network (fixed or mobile) will continue to enjoy any-to-any connectivity with end users connected to other fixed networks. Similarly, mobile network termination services provide similar assurances that users connected to fixed or mobile networks will be able to have any-to-any connectivity with end-users connected to other mobile networks.

(d) Private circuit completion service

End-to-end private circuits are important for the development of further downstream communications services such as Internet access, private networks and other multimedia applications. Local loop and junction networks are difficult to reproduce on a widespread basis for leased lines because of the high sunk costs involved. The provision of private completion services can be expected to facilitate competition in the market for end-to-end private circuits by enabling competing operators to provide end-to-end private circuits to end users between locations where services are provided by different operators.

(e) Domestic Transmission Service

Although there may be parts of the transmission network which can be, and has been, duplicated, in other parts of the network it is still unfeasible for there to be duplication. The relevant markets for such services include markets for end-to-end local permanent circuits, narrowband digital end-to-end transmission, broadband digital end-to-end transmission, e-business, and dial-up domestic long distance calls.

(f) Interconnect Link Service (Physical Co-location, Virtual Co-location and In-span Interconnection)

Co-location enables potential cost reductions and quality improvements in the provision of interconnection services, including fixed network termination and origination, mobile network termination and origination, equal access and private circuit completion.

⁶ See the MCMC website at <http://www.mcmc.gov.my/mcmc/registers/cma/comdeter/pdf/acelist.pdf>.

(g) Internet Access Origination Service

The Commission has decided to include an Internet Access Call Origination Service in the Access List. If included in the Access List, this service would require a network service provider to originate calls made by end users directly connected to the network of that service provider in order to access the services of Internet access providers. There are only a limited number of Internet access service providers in Malaysia at present. The Commission considers that an origination service for Internet access is unlikely to be provided to Internet access service providers on a competitive basis because the local access network (over which the origination service for Internet access would be provided) exhibits strong bottleneck characteristics. It is not economical for the local access network to be duplicated. Given the Commission's findings that the local access network is not economical to duplicate, it is unlikely that mandating access to an origination service for Internet access would have an adverse effect on optimal investment incentives in the local access network. Furthermore, the Commission expects that the access price would be set at a level which takes into account a reasonable commercial return on investments in the local access network.

(h) Other Services

Apart from the Internet Access Call Origination Service, the MCMC has not formed a view on whether Malaysia's national policy objectives would be promoted or supported if the Access List is expanded to include other services and facilities. The MCMC believes that further consultation through the MAF is required before the Commission is in a position to form a view on the inclusion of other facilities and services. Amongst others, it anticipates holding further consultation on the following matters as regards their inclusion on the Access List:

- (i) payphone conveyance service;
- (ii) DSL services; and
- (iii) unbundled local loop service.

ANNEXE 2

COMPANIES ACT, 1965

COMPANY LIMITED BY GUARANTEE AND
NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

OF

MALAYSIAN ACCESS FORUM BHD.

1. The name of the company is Malaysian Access Forum Bhd.
2. The registered office of the Company will be situated in Malaysia.
3. Interpretation:
 - 3.1 In this Memorandum of Association the following definitions apply unless the context otherwise requires:-

“**access**” means access to a network facility or network service listed under Chapter 3 of Part VI of the CMA.

“**access codes**” means a voluntary industry code prepared under section 153 of the CMA.

“**access list**” means the list of facilities or services established under Chapter 3 of Part VI of the CMA.

“**Act**” means the Companies Act, 1965 as amended from time to time and any re-enactment thereof.

“**Articles**” means the Articles of Association of the Company.

“**Board**” means the Board of Directors for the time being of the Company.

“**CMA**” means the Communications and Multimedia Act 1998.

“**Commission**” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

“**Company**” means the company limited by guarantee and called the Malaysian Access Forum Bhd.

“**Industry codes**” means the rules, guidelines and model terms and conditions relating to standard access obligations or arrangements between licensees or potential licensees under the CMA that are either seeking access or providing access to the necessary facilities and services governing particular aspects of the communications and multimedia industry.

“**Member**” means the members of the Company who shall consist of those persons admitted under Article 3 and whose names are entered on the Register of Members.

“**Memorandum**” means the Memorandum of Association of the Company.

“**Register of Members**” means the register of Members to be kept pursuant to the Act.

“**Voluntary industry code**” means a voluntary industry code prepared under Chapter 9 of Part V of the CMA.

3.2 In this Memorandum of Association unless the context otherwise requires:-

- (a) Words or expressions defined in the Act have the same meaning in this Memorandum.
- (b) References to statutes include statutes replacing them.
- (c) Words importing the singular include the plural and vice versa.
- (d) Words importing a gender include all genders.
- (e) Words importing persons include corporations.

4. The objects for which the Company is established are:-

- (a) To develop, formulate and recommend the access list to the Commission for determination and the access codes for the Malaysian communications and multimedia industry, including revising, modifying and updating the access list and access codes from time to time and to seek the registration of access codes and access list with the Commission; to promote the dissemination of relevant information on the access list and access code to the public and the education thereof; to collate statistics of complaints made by Members pertaining to breaches of the access code; to monitor code compliance and administer sanctions for breaches of the access code by members, and to promote (either by itself or by others) research and to conduct such research as may be necessary into matters which affect or arise out of, the issues involving access and interconnection for the communications and multimedia industry; and to do all such lawful things incidental to the development and attainment of the matter thereof;
- (b) To establish and maintain flexible and transparent organisational structure to address national and international issues relating to access codes, access list and any other relevant matter for the Malaysian communications and multimedia industry and to promote and represent the interest of the Members of the Company by all means and methods consistent with the laws and constitution of Malaysia; and to do all such lawful things incidental to the development and attainment of the matter thereof; and
- (c) To facilitate the development and growth of the Malaysian communications and multimedia industry by inter alia promoting industry self-regulation and liaising with governmental and non-governmental bodies in relation to access and interconnection issues; and to support the national policy objectives as set out in the CMA in relation to the communications and multimedia industry in carrying out the objects stipulated under this Clause; and to do all such lawful things incidental to the development and attainment of the matter thereof.

Amended
on 1/10/2002

5. The Company has all the following powers to carry out and promote the objects of the Company:-

- (a) To purchase, take on lease or otherwise acquire and maintain for the purposes of the Company and to hold any estates, land, buildings, easements or other interests in movable or

immovable property which may be deemed necessary or convenient for any of the purposes of the Company PROVIDED that the Company shall not acquire, charge, mortgage or dispose of any land without the consent of the Minister charged with the responsibility for companies.

- (b) To sell, dispose of, or transfer any property and undertaking of the Company or any part thereof, for any consideration which the Company may see fit to accept.
- (c) To engage, appoint and pay such professional advisers and consultants to advise and address any issues relating to access codes, access list, voluntary industry codes or such other matters relating to the Malaysian communications and multimedia industry.
- (d) To engage, appoint and pay such officers, clerks, agents, servants or persons to perform such duties or services for the proper administration and management of the Company and to remove and suspend the same.
- (e) To pay all costs, charges and expenses incurred or sustained in or about the promotion and establishment, and administration and management of the Company and to remunerate any person or persons for services rendered thereof in cash or in any other manner allowed by law.
- (f) To draw, accept and make, and to endorse, discount and negotiate, bills of exchange, promissory note, and other negotiable instruments.
- (g) To borrow and raise money in such manner as the Company may think fit.
- (h) To do all or any of the matters hereby authorised in any part of Malaysia either alone or in conjunction with, or as trustees or agents, for any company association or person, and by or through trustees or agents.
- (i) To apply for and hold any patent rights, copyrights, trade marks, licence, other intellectual property rights as to any name, logo, corporate identifier or representations and the like, conferring any exclusive or non-exclusive or limited right to use, which may seem capable of being used for any of the purposes of the Company,
- (j) To deposit the money of the Company not immediately required into such savings and fixed deposit accounts with financial institutions, and banks as the Board may from time to time determine.
- (k) To obtain, collect and receive monies and funds by way of contribution, donation, affiliation fees, subscription, legacies, grant and any other lawful method, and accept and receive gifts of property of any description (whether subject to any special trust or not).
- (l) To take all necessary steps as may from time to time be deemed expedient for the purpose of procuring contributions to the Company in any form including but not limited to donations and annual subscriptions.
- (m) To take such action as may be necessary to enforce the Articles and any rules and regulation against any Member.
- (n) To carry out all or any of the objects of the Company and to do all or any of the above things in any part of the world and either as principal, agent, contractor or trustee, or otherwise, and by or through trustees or agents or otherwise and either alone or in conjunction with others.

Amended
on 1/10/2002

- (o) Generally to do all such lawful things as are incidental to the attainment of the objects and the exercise of powers of the Company:

PROVIDED that:

- (i) the provisions of the Third Schedule of the Act shall not apply to the Company and the foregoing provisions of this Paragraph shall be read and construed without any reference to the provisions of that Schedule; unless expressly included in this Memorandum and Articles of Association with the approval in writing of the Minister charged with the responsibility for companies; and
 - (ii) the Company shall not support with its funds any political organisation or society or endeavour to impose on or procure to be observed by its Members or others any regulations, restrictions or conditions which, if any were included in the objects of the Company would make it a Trade Union within the meaning of the Trade Union Ordinance.
6. There shall be a Board of Directors for the management of the affairs of the Company.
7. The income and property of the Company whencesoever derived shall be applied solely toward the promotion of the objects of the Company as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the Members of the Company PROVIDED that nothing herein shall prevent the payment, in good faith, of:-
- (a) remuneration to any officer or servant of the Company, in return for any professional services rendered to the Company;
 - (b) interest at the current bank rate on any loan advanced by the Members of the Company to promote the object thereof;
 - (c) reasonable and proper rent for premises demised or let by any Member of the Company,
- but so that no member of the Board shall be appointed to any salaried office of the Company paid by fees and that no remuneration or the benefit in money's worth shall be given by the Company to any member of the Board except repayment of out-of-pocket expenses of the members of the Board as aforesaid.
8. Where an addition, alteration or amendment is made to the Memorandum or Articles of Association for the time being in force, the Company shall notify the Commission of the addition, alteration or amendment as the case may be.
9. A special resolution of the Members of the Company altering or amending the Articles of Association will not have effect unless (in addition to the requirements prescribed by the Act and the Articles of Association), the following requirements are complied with:-
- (a) in the case of Articles 35, 36, 37, 86, 87 and 88, there is the unanimous vote of all the Members representing all four categories of Members who are present and entitled to vote. For the purposes of this Clause 9(a), a unanimous vote is achieved where there is an affirmative vote of more than ninety percent (90%) of the total number of votes of the Members present and entitled to vote at the meeting; and
 - (b) in the case of all other Articles

Amended
on 1/10/2002

there is an affirmative vote of more than eighty five percent (85%) of the total number of votes of the Members.

10. The liability of the Members is limited.

11. In the event that:-

(a) the Commission does not designate the Company to be an access forum in accordance with sections 94 and 152 of the CMA by 31st December 2003 (“expiry date”); or

Amended
on 31/07/2002

(b) the Company’s designation as an access forum pursuant to sections 94 and 152 of the CMA is subsequently withdrawn by the Commission effective from the date of registration or a later date specified (“withdrawal date”) and the Company is not reinstated as an access forum within six (6) months after the withdrawal date (“termination date”),

Amended
on 15/10/2001

the Company shall be wound up within one hundred and twenty (120) days from the expiry date or the termination date, as the case may be.

12. If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property or assets whatsoever, the Members may decide that the same be paid to or distributed:-

Replaced
on 15/10/2001

(a) among the Members of the Company in accordance with the proportion of the initial subscription fee and annual membership fee paid by each Member in the calendar year in which the company is wound up or dissolved;

Replaced
on 15/10/2000

(b) to some other institution or institutions or organisations having objects similar to the objects of the Company and having been approved by the Director-General of Inland Revenue, Malaysia at or before the time of dissolution; or

Replaced
on 15/10/2001

(c) to such other persons or in such other manner as the Members may decide.

Replaced
on 15/10/2001

13. Every Member of the Company undertakes to contribute to the assets of the Company in the event the Company being wound up during the time that he is a Member or within one year after he ceased to be a Member for payment of debts and liabilities of the Company contracted before he and for the adjustment, of rights of the contributories amongst themselves such amount as may be required not exceeding Ringgit Malaysia One Hundred (RM 100.00) Only.

14. True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Company and subjects to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Company for the time being, shall be open for the inspection of the Members. Once at least in every calendar year the accounts of the Company shall be examined and the correctness of the balance sheet ascertained by one or more qualified auditor or auditors.

We, the several persons whose names, addresses and descriptions are subscribed, are desirous of being formed into association in pursuance of this Memorandum of Association.

Name, address and description of subscribers

Signature of subscribers

TELEKOM MALAYSIA BERHAD
(COMPANY NO.: 128740-P)
TINGKAT 2,
IBUPEJABAT TELEKOM MALAYSIA
JALAN PANTAI BAHARU
50672 KUALA LUMPUR

Nama : DATO' DR. ABDUL RAHIM
BIN HAJI DAUD
Designation: DIRECTOR

Name : WANG CHENG YONG
Designation: COMPANY SECRETARY

MAXIS BROADBAND SDN. BHD.
(COMPANY NO.: 234053 -D)
LEVEL 18, MENARA MAXIS
KUALA LUMPUR CITY CENTRE
OFF JALAN AMPANG
50450 KUALA LUMPUR

Name : TAN POH CHING
Designation: DIRECTOR

Name : AMDAN MAT DIN
Designation: COMPANY SECRETARY

Dated this 16th day of March 2001

Witness to the above signatures:

Name : DARREN KOR YIT MENG
NRIC : 730827 -14 -5289
Address: Zul Rafique & Partners
Suite 17.01, 17th Floor,
Menara Pan Global,
8 Lorong P. Ramlee,
50250 Kuala Lumpur

Lodged by : Zul Rafique & Partners
Address : Suite 17.01, 17th Floor, Menara Pan Global, 8 Lorong P. Ramlee, 50250 Kuala Lumpur
Tel. No. : 03-2388228

ANNEXE 3

COMPANIES ACT, 1965

COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

OF

MALAYSIAN ACCESS FORUM BHD.

INTERPRETATION

1.1 In these Articles of Association the following definitions apply unless the context otherwise requires:-

“**access**” means access to a network facility or network service listed under Chapter 3 of Part VI of the CMA.

“**access code**” means a voluntary industry code prepared under section 153 of the CMA.

“**Access Forum Committee**” means a committee comprising of Members of the Company established pursuant to **Article 98**.

“**access list**” means the list of facilities or services established under Chapter 3 of Part VI of the CMA.

“**Act**” means the Companies Act, 1965 as amended from time to time and any re-enactment thereof.

“**Annual Revenue**” means the gross annual revenue of the applicant or Member whose business is related to and derived within the communications and multimedia industry based on the last audited accounts of the applicant or Members, whereby the financial year of the last audited accounts shall not be more than two (2) years prior to the current calendar year. For clarification, if the current calendar year is 2003, then the latest audited accounts shall be for financial year 2001 or 2002, whichever is later.

Amended
on 17/02/2003

“**Applications Service**” means a service provided by means of, but not solely by means of one or more Network Services.

“**Applications Service Provider**” means a person who provides an Applications Service.

“**Articles**” means the Articles of Association of the Company.

“**Associated Company**” means in relation to a Member (“**First Company**”),

- (a) a company which holds or controls directly or indirectly twenty percent (20%), or more of the voting rights attaching to the issued shared capital of the First Company; or
- (b) a company where twenty percent (20%) or more of the voting rights attaching to the issued capital of which are held or controlled by:

- (i) the First Company; or
- (ii) another company (not being owned or controlled by the Government or any of its agencies) which also holds or controls directly or indirectly twenty percent (20%) or more of the voting rights attaching to the issued share capital of the First Company.

“**Board**” means the Board of Directors for the time being of the Company.

“**Business Day**” means a day on which banks are open for general banking business in Kuala Lumpur, other than Saturday or Sunday or a public holiday.

“**Chairman**” means a person appointed by the Members as the chairman of the Board pursuant to **Article 57**.

“**Chief Executive Officer**” means a person appointed by the Board pursuant to **Articles 92**.

Amended
on 17/04/2002

“**CMA**” means the Communications and Multimedia Act 1998.

“**Commission**” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

“**Company**” means the company limited by guarantee and called Malaysian Access Forum Bhd.

“**Content Applications Service**” means an Applications Service which provides content.

“**Content Applications Service Provider**” means a person who provides a Content Applications Service.

“**Corporate Member**” means a Member which is a corporation.

“**Director**” means the director for the time being of the Company appointed pursuant to **Article 48**.

“**Executive**” means employees appointed by and responsible to the Board, whether directly or through the Chief Executive Officer. The Chief Executive Officer will be deemed part of the Executive.

“**Members**” means the members of the Company who shall consist of those persons admitted under **Article 3** and whose names are entered on the Register of Members.

“**Memorandum**” means the Memorandum of Association of the Company.

“**Minister**” means the Minister of Energy, Communications and Multimedia.

“**Network Facilities**” means 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.

“**Network Facilities Provider**” means a person who is an owner of any Network Facilities.

“**Network Services**” means a service for carrying communications by means of guided and/or unguided electromagnetic radiation.

“**Network Services Provider**” means a person who provides Network Services.

“**Office**” means the registered office for the time being of the Company.

“**Operations Manual**” means the manual prepared or caused to be prepared by the Board relating to:-

- (a) the procedure for establishment of the Access Forum Committee and the Working Committees;
- (b) the operations practices and processes required for the undertaking and allocation of work by the Company, the Access Forum Committee, the Executive, the Working Committees and the Board; and
- (c) such other matters as the Board deems relevant from time to time and set out in the Operations Manual.

“**Register of Members**” means the register of members to be kept pursuant to the Act.

“**Representative**” means an employee of a Corporate Member who is nominated and authorised to act as the representative of the Corporate Member.

“**Seal**” means the common seal of the Company.

“**Secretary**” means any person or persons appointed to perform the duties of a secretary of the Company and shall include an assistant or deputy secretary.

“**Voluntary industry codes**” means a voluntary industry code prepared under Chapter 9 of Part V of the CMA.

“**Working Committee**” means the committee comprising of Members and individuals appointed by the Board or the Access Forum Committee, as the case may be, as provided in **Article 94**.

“**Working Plan**” means the plan promulgated by the Board in accordance with **Article 71**.

1.2 In these Articles of Association unless where the context otherwise requires:-

- (a) Words or expressions defined in the Act have the same meaning in these Articles.
- (b) References to statutes include statutes replacing them.
- (c) Words importing the singular include the plural and vice versa.
- (d) Words importing a gender include all genders.
- (e) Words importing persons include corporations.

1.3 The Company is established for the purposes set out in the Memorandum of Association.

MEMBERS

2. The subscribers to the Memorandum of Association and other individuals or corporations as the Board may admit to membership in accordance with these Articles are eligible as Members. The number of Members to which the Company proposes to be registered is not more than one thousand five hundred (1,500), however, the Company may from time to time register an increase or reduction in the number of members.
 3. The Board will admit to the membership of the Company any person which meets the following eligibility criteria:-
 - (a) (i) the applicant is a licensed or being exempted from being licensed as a:-
 - (A) Network Facilities Provider;
 - (B) Network Services Provider;
 - (C) Applications Service Provider; and/or
 - (D) Content Applications Service Provider,(whether class or individual licensee) under the CMA; or
 - (ii) the applicant being the owner or provider of facilities and/or services under a licence issued under the Telecommunications Act 1950 or the Broadcasting Acts 1988 (“**old licence**”) which has been registered with the Commission but:-
 - (aa) has not been issued a licence under the CMA in substitution of the old licence; or
 - (bb) does not intend to seek a licence under the CMA and intends to operate under the old licence; and
 - (b) the applicant has indicated the category of membership to which it wishes to be admitted as a Member; and
 - (c) the applicant has provided the Company with a properly completed application form prescribed by the Board, from time to time, together with the information pertaining to the applicant, the applicant’s group of companies and any company which is deemed to be associated with a director of the applicant by virtue of section 122A of the Act, and such other particulars, information and undertakings as the Board may determine from time to time; and
 - (d) the applicant has paid the initial subscription fee; and
 - (e) the applicant has not previously been refused or terminated membership from the Company unless waived by the Board.
4. (a) The initial subscription fee and/or annual membership fee payable by the applicant is determined by reference to the Annual Revenue of the person concerned which is more particularly described in the **Schedule** . The annual membership fee is payable annually in advance during the month of January in each year by each Member provided that the Board may permit a Member who joins after the month of January in any year to pay a proportionate part of the annual subscription.

Amended
on 17/04/2002

Amended
on 17/04/2002

- (b) In the event of the cessation a membership of any member (“**Ex-Member**”) for any reason whatsoever, any subscriptions, levies, charges or other sums previously paid by the Ex-Member to the Company shall not be refundable to the Ex-Member notwithstanding that the sums were paid in advance.
5. There shall be four categories of membership based on the four types of facilities or services which are required to be licensed or exempted from being licensed (whether individual or class licence) under the CMA, as follows:-
- (i) Network Facilities Provider;
 - (ii) Network Services Provider;
 - (iii) Applications Service Provider; and/or
 - (iv) Content Applications Service Provider.
6. On receipt of a properly completed membership application form, the Board may assign in a manner consistent with the licensing structure of the CMA, each applicant to the relevant category(ies) of membership depending on the type of facilities and services provided or to be provided or on the type of licence (whether individual or class licence) issued or registered by the applicant under the CMA. Where a Member has been admitted to membership of the Company pursuant to **Article 3**, the Member shall, for the purposes of voting and participation in the Company in accordance with these Articles, be assigned into the relevant category(ies) of membership determined by the Board subject to **Article 16**. For the avoidance of doubt, such assignment by the Board shall not be construed as attempting to designate a Member into a particular category of licence for the purpose of the CMA.
7. Each Member may be assigned to more than one category of membership subject to **Article 16**.
8. If the classification of a category of membership is made by the Board:-
- (a) prior to the issuance or registration of a licence under the CMA and upon the issuance or registration of such a licence, it is discovered that the classification is not in accordance with the licence issued pursuant to the CMA; or
 - (b) the classification is erroneous for any reason,
- then the Board will forthwith reclassify the Members accordingly.
9. If an application for membership is accepted, the Secretary must send to the applicant written notice of its acceptance and enter the eligible applicant in the Register of Members as a Member.
10. Admission to membership of any person who makes an application to the Company shall be at the sole discretion of the Board and the Board may reject any application for membership without assigning any reason thereof.
11. The Member shall notify the Company immediately:-
- (a) where it has applied for a licence under the CMA, upon granting of the said licence or modification thereof by the Commission; or

Replaced
on 17/04/2002

- (b) if any of its licence or any part thereof granted or registered under the CMA is terminated or expired and it is not immediately granted another licence of that type; or Amended on 17/04/2002
- (c) where the exemption granted for the provision of its facilities or services under the CMA is no longer applicable and the Member is required to obtain a licence for the same. Amended on 17/04/2002

CESSATION OF MEMBERSHIP

12. A Member may resign from membership at any time by giving notice in writing to the Secretary.
13. A Member shall cease to be a member of the Company and its name shall be removed from the Register of Members in any one of the following events:-
- (a) when notice in writing is given to the Secretary to resign from membership; or
- (b) if he or she is bankrupt or makes any arrangement or compromise with his creditors generally or it is dissolved or wound up or ceases to carry on activity for more than six (6) months; or
- (c) if its licence granted or registered under the CMA is terminated or expired and it is not immediately granted another licence of that type; or Amended on 17/04/2002
- (d) where any exemption granted to a Member for the provision of facilities or services under the CMA is no longer applicable and the Member is not granted a licence for the same (where a licence is required); or Inserted on 17/04/2002
- (e) where a Member has merged with another entity, in the circumstances set out in **Article 17**. Amended on 17/04/2002
14. Any Member whose annual membership fee remains unpaid shall not be entitled to vote at the meetings. However, such Member is still entitled to voice its concerns and have the right to be heard at the meetings.
15. In the event the annual membership fee remains unpaid for four (4) calendar months from the date the membership fee is due, the Board may terminate such membership.
16. For the purposes of participation and voting, the Secretary may, unless otherwise determined by the Board, deregister a Member from a category of membership if: Amended on 17/04/2002
- (a) the licence of a Member in respect of that category of membership is revoked and it is not immediately granted another licence of that type; or
- (b) the exemption granted to a Member for the provision of facilities or services under the CMA is no longer applicable and the Member is not granted a licence for the same (where a licence is required); or Inserted on 17/04/2002
- (c) upon notification by a Member that the licences obtained were not of the kind envisaged by or applied for by the Member; or Amended on 17/04/2002
- (d) upon discovery by the Company that the classification of category was erroneous for any reason whatsoever.

17. Where one or more Members have merged with another Member (collectively or individually known as the ‘**Pre-existing Member**’) wherein the merged entity comprises of one of the Pre-existing Members (whether by the same name or with a new name) obtains or maintains a licence pursuant to the CMA (‘**Merged Entity**’) then where the Merged Entity is not an existing member, the Merged Entity shall apply and if thought fit by the Board, become a member at the date determined by the Board (‘**said Date**’) and the Pre-existing Members shall automatically cease their membership as at the said Date. Where the initial subscription fees and/or the annual membership fees required to be paid by the Merged Entity is higher than that paid by the Pre-existing Member, the Merged Entity shall pay the difference. However, where the initial subscription fees and/or annual membership fees paid by the Pre-existing Member is higher than that required to be paid by the Merged Entity, the Pre-existing Member shall not be entitled to any refund of the difference.

GENERAL MEETINGS

18. The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year, and not more than fifteen (15) months shall elapse between the date of one annual general meeting and that of the next, but so long as the Company holds its first annual general meeting within eighteen (18) months of its incorporation, it need not hold it in the year of its incorporation or in the following year.
19. All general meetings other than annual general meetings shall be called extraordinary general meetings.
20. The Secretary must whenever required by:-
- (a) the Act;
 - (b) the Board; or
 - (c) on requisition made in writing by Members holding at the date of deposit of the requisition not less than one-tenth (10%) of the total voting rights of all Members having at that date a right to vote at general meetings,

convene an extraordinary general meeting to be held not less than twenty one (21) days after the date of the requisition at such time and place as the Board may determine. Any requisition made by Members must state the object of the meeting proposed.

NOTICE OF GENERAL MEETING

21. An annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty-one (21) day’s notice in writing at least, and a meeting of the Company other than an annual general meeting or a meeting for the passing of a special resolution shall be called by fourteen (14) day’s notice. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the date and the hour of meeting, and in case of special business, the general nature of that business and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are under the Articles of the Company, entitled to receive such notices from the Company:

Provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in these Articles, be deemed to have been duly called if it is so agreed-

- (a) in the case of a meeting called as the annual general meeting, by all the Members entitled to attend and vote thereat; and
 - (b) in the case of any other meeting, by a majority in the number of Members having a right to attend and vote at the meeting, being majority together representing not less than ninety-five per cent of the total voting rights at that meeting of all Members.
22. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
23. A notice convening a meeting to consider a special or ordinary resolution shall specify the intention to propose the resolution as a special or ordinary resolution as the case may be.

REPRESENTATIONS AT GENERAL MEETINGS

24. Each Member is entitled to exercise its vote at general meetings by its Representative or by proxy. A Corporate Member must appoint a Representative and such appointment must be in writing addressed to the Secretary containing the name, address, status and specimen signature of the Representative. Any such appointment may be terminated by the Corporate Member by notice, in writing, addressed to the Secretary and the Corporate Member is entitled at the same time to appoint another person in place of the individual whose appointment was terminated.

PROCEEDINGS AT GENERAL MEETINGS

25. All business that is transacted at an extraordinary general meeting, and at an annual general meeting shall be regarded as special, with the exception of the consideration of the accounts, balance sheet, and the report of the members of the Board and auditors, the election of members of the Board in the place of those retiring and the appointment of, and fixing of the remuneration of, the auditors.
26. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as hereinafter provided, a majority of Members present in person or by proxy or by Representative, holding not less than fifty percent (50%) of the total voting rights of all Members having at the date of the meeting a right to vote thereat, shall be a quorum.
27. If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon requisition of Members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, a majority of Members present in person or by proxy or by Representative, holding not less than forty percent (40 %) of the total voting rights of all Members having at the date of the meeting a right to vote thereat, shall be a quorum.
28. The Chairman of the Board is the chair of every general meeting of the Company, or if he is not present within fifteen (15) minutes after the time appointed for the holding of the meeting,

or if the chairman has notified the Secretary in writing that he will not be present, then the Members present may appoint one of the members of the Board to be the Chairman of the meeting.

29. The Chairman may, with the consent of the majority of the Members present at any meeting at which a quorum is present (and if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give notice of adjournment or of the business to be transacted at an adjourned meeting.
30. At any general meeting, a resolution put to the vote of the meeting shall be decided on poll.
31. Subject to the provisions of the Act a resolution in writing signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings shall be as valid and effective as if the same has been passed at a general meeting of the Company duly convened and held.

VOTES OF MEMBERS

32. Each Member shall be entitled to one (1) vote only in any general meeting notwithstanding that the Member may be assigned to one or more categories of membership by the Board. Amended
on 17/04/2002
33. A Member may vote in person, by Representative or by proxy.
34. No Member shall be entitled to vote at any general meeting if there are any monies due and payable by the Member to the Company.
35. Any resolution of Members shall not be taken to be carried unless the majority comprises the following:-
 - (a) subject to **Article 35(b)**, in the case of any resolution, including special resolutions, of Members, there is an affirmative vote of more than eighty five percent (85%) of the total number of votes of the Members present and entitled to vote ; or
 - (b) in the case of Reserved Matters, the unanimous vote of all the Members representing all four categories of Members who are present and entitled to vote. Amended
on 17/04/2002
For the purposes of this **Article 35(b)**, a unanimous vote is achieved where there is an affirmative vote of more than ninety percent (90%) of the total number of votes of the Members present and entitled to vote at the meeting.
36. For purposes of clarification, the following matters require a resolution of Members in meeting:-
 - (a) the promulgation, adoption and variation to an Operations Manual;
 - (b) any increase to the fees in the **Schedule** ;
 - (c) the sale, transfer, lease, assignment or disposal of any substantial portion of the assets of the Company, save where the said transaction is covered under the approved annual budget;

- (d) the entering into of any agreement for the management of the Company or the incurring of any management charges;
 - (e) the making of any composition or arrangement with creditors;
 - (f) changing the Company's auditors;
 - (g) the changing of any accounting principles or conventions of the Company, otherwise than as required by law or in order to comply with any applicable statement of standard accounting practice;
 - (h) any capital expenditure to be incurred which is:
 - (i) not incurred in the Company's ordinary course of business save where the said transaction or series of transactions is covered under the approved annual budget.; or
 - (ii) not budgeted for in any financial year of the Company and which is equal to or more than Ringgit Malaysia Two Hundred Thousand (RM 200,000),
 - (i) change in the Company's name;
 - (j) alteration or amendments to the Memorandum and/or the Articles subject to **Article 37**;
 - (k) to approve the assignment of office by a Director;
 - (l) winding up of the Company;
 - (m) to approve the exercise of certain powers by the liquidators in a member's voluntary winding up;
 - (n) to empower the liquidator, in a members' voluntary winding up, to transfer or sell assets for shares in another corporation;
 - (o) to remove any Director before the expiration of his period of office and appoint another person in his stead.
37. The following matters are classified as Reserved Matters:-
- (a) the alteration amendments or modification of **Articles 35, 36, 86, 87, 88** or this **Article 37**.
 - (b) increasing or reducing the quorum and number of Directors to be appointed to the Board.
38. The instrument appointing a proxy must be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a body corporate, either under seal or under hand of the officer or attorney duly authorised. A proxy need not be a Member of the Company PROVIDED that the proxy is an advocate or solicitor, an approved company auditor or a person approved by the Registrar of Companies.
39. Any corporation which is a Member of the Company may by resolution of the directors of that corporation or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled

Amended
on 17/04/2002

to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.

40. An instrument appointing a proxy shall be in the following form or as near thereto as circumstances admits:-

I..... of
..... being
* the Representative of / a Member of the abovenamed Company, hereby appoint
.....of or
failing him, of
..... as my proxy to vote for
me on my behalf at the * annual/extraordinary general meeting of the said Company to be
held on the.....day of.....20..... , and at any adjournment thereof.

Signed thisday of.....20.....

.....
(Signature of appointor)

* Delete whichever is not desired

41. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
42. The instrument appointing a proxy must be deposited at the Office or such other place as is specified for that purpose in the notice convening the meeting not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default of the above, the instrument of proxy is invalid.
43. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation of aforesaid shall have been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.
44. A Member, Representative or proxy who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may not vote. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.
45. All resolutions passed by the Members are binding notwithstanding that there has been a reclassification of category of membership for a Member after the date of the resolution or it is discovered that a person is not entitled to be a Member or is not entitled to vote by virtue of **Article 16** unless mala fides is proven. The burden of proof that a person was entitled to be a Member or entitled to vote, rest with such Member or person.

BOARD OF DIRECTORS

46. The Board is vested with the management of the Company and will consist of ten (10) Directors and the Chairman. Amended
on 01/10/2002

APPOINTMENT OF DIRECTORS

47. The first Directors of the Company shall be:-
- (a) Mohd. Zakri Bin Hasan;
 - (b) Dato' Jamaludin Bin Ibrahim;
 - (c) Flora Jesily A/P S J Rajadurai;
 - (d) Mek Yam Bte Jusoh; and
 - (e) Badrul Hassan Bin Mohamed Kassim.
48. Appointment of Directors other than the Chairman shall be by nomination and election by the Members. Subject to **Article 52**, the Board may determine the number of Directors eligible for election or re-election in any year, consistent with the following:-
- (a) the Chairman is to be elected pursuant to **Article 57**;
 - (b) there shall be two (2) Directors appointed by Members from the Network Facilities Provider category of membership; Amended
on 17/04/2002
 - (c) there shall be two (2) Directors appointed by Members from the Network Service Provider category of membership; Amended
on 17/04/2002
 - (d) there shall be two (2) Directors appointed by Members from the Applications Service Provider category of membership; Amended
on 17/04/2002
 - (e) there shall be two (2) Directors appointed by Members from the Content Applications Service Provider category of membership; and Amended
on 17/04/2002
 - (f) there shall be two (2) Directors appointed by the Members from any category of membership. Amended
on 17/04/2002
49. The Members will vote by category of membership to determine the Directors to be appointed by the requisite category of membership, in accordance with the procedures determined by the Board which shall be consistent with the requirements of the Act. The nomination of the Directors shall be as follows:-
- (a) (i) subject to paragraph (f):- Amended
on 17/04/2002
 - (A) only Members from a particular category of membership shall be entitled to vote to determine the Directors to be appointed from that category of membership; and Amended
on 17/04/2002

- (B) where a Member is in one or more category of membership, that Member shall have one (1) vote in each category of membership.; and Inserted on 17/04/2002
- (ii) with respect to the open category in paragraph (f), any Member and its Associate Companies may nominate its representative for only one (1) directorship position notwithstanding such Member and its Associate Companies may already have a directorship position under paragraphs (b), (c), (d) and (e). For the purposes of the open category, each Member shall only have one vote irrespective of the number of membership categories the Member is in. Amended on 17/04/2002
- (b) the two (2) positions available for Directors appointed by Members from the Network Facilities Provider category of membership will be reserved to be filled by the largest and second largest Network Facilities Provider, respectively, determined by reference to the Annual Revenue of the Network Facilities Providers concerned during the preceding financial year; Amended on 17/04/2002
- (c) (i) the first position available for a Director appointed by Member from the Network Service Provider category of membership will be reserved to be filled by the largest Network Services Provider determined by reference to the Annual Revenue of the Network Services Providers concerned during the preceding financial year; and
- (ii) the second position available for a Director appointed by Members from the Network Services Provider category of membership will be reserved to be filled by the second largest Network Services Provider determined by reference to the Annual Revenue of the Network Services Provider concerned during the preceding financial year provided that its Associated Company or itself are not allocated any other directorship in the category of memberships specified in paragraphs (b), (c), (d) and (e). Amended on 17/04/2002
- (d) the two (2) directorship positions available for Directors appointed by Members from the Applications Service Provider category of membership will be reserved to be filled by the largest and second largest Applications Service Provider, respectively, determined by reference to the Annual Revenue of the Applications Service Provider concerned during the preceding financial year provided that their respective Associated Company or themselves are not allocated any other directorship in the category of memberships specified in paragraphs (b), (c), (d) and (e); Amended on 17/04/2002
- (e) the two (2) directorship positions available for Directors appointed by Members from the Content Applications Service Provider category of membership will be reserved to be filled by the largest and second largest Content Applications Service Provider, respectively, determined by reference to the Annual Revenue of the Content Applications Service Provider concerned during the preceding financial year provided that their respective Associated Company or themselves are not allocated any other directorship in the category of memberships specified in paragraphs (b), (c), (d) and (e); Inserted on 17/04/2002
- (f) two (2) Directorship positions shall be available to any Members and its Associated Company in any category of membership (“**open category**”) notwithstanding that the Member and its Associated Company have a directorship position in the category of membership specified in paragraphs (b), (c), (d) and (e) . Any Member wishing to nominate its representative shall state the name of its representative and the category of membership in which its representative would be representing. The two (2) Inserted on 17/04/2002

Directorship position shall be nominated by way of ballot and all Members are entitled to vote irrespective of which category they belong to. The nominees with the highest and second highest votes will be allocated the Directorship positions.

50. Any Director appointed by nomination by a Member may only be removed or replaced by the Member who nominated that person and must resign if so requested by the Member. Amended on 17/04/2002
51. No person nominated by a Member is eligible for election to the Board unless the nominating Member has paid all annual membership fees outstanding and/or any other outstanding charges levied by the Board.
52. At the first general meeting, the first Director shall retire and the new Director appointed will hold office for a two (2) year term, expiring at the general meeting immediately subsequently to the end of the two (2) year term.
53. A retiring Director shall be eligible for re-election.
54. Each Director must act in the best interests of the Company as a whole and with due regard to the furtherance of the Company's objectives. Each Director must also act in accordance with any non-excludable duty or obligation owed by the Director to the Company or the Members of the Company under general law, the Act or other provisions of these Articles, provided that notwithstanding any fiduciary duty, principle of general law or provision of the Act to the contrary, any Director may make a decision in the interests of the Members appointing him.
55. The Directors shall be entitled to be reimbursed for all travelling or such reasonable expenses as may be incurred in attending and returning from meetings of Directors or of any committee of the Directors or general meetings or otherwise howsoever in or about the business of the Company in the course of the performance of their duties as Directors.
56. The acts of a Director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification whether by virtue of **Article 49 or 51** or the Act.

CHAIRMAN

57. The first Chairman shall be Dato' Dr. Ir. Hj. Mohamad Khir Bin Harun, and will hold office until the first general meeting wherein the first Chairman shall retire. At the first general meeting, the Members shall, in accordance with **Article 35(a)**, appoint a person to be the Chairman of the Board. The Chairman appointed will hold office for a one (1) year term, expiring at the general meeting immediately subsequent to the end of the one (1) year term.
58. A person nominated as Chairman may be a Member but shall not be a Director on the Board. The nominee must also have relevant experience in the industry. The Chairman will be entitled to receive a stipend in such amount as the Board may determine and receive reimbursement of all travelling or such reasonable expenses as may be incurred in attending and returning from meetings of Directors or of any committee of the Directors or general meetings or otherwise howsoever in or about the business of the Company in the course of performance of his duty as Chairman.
59. The Chairman shall not be eligible to vote and shall not have a casting vote in the event of an equality of votes.

CESSATION OF DIRECTORSHIP

60. The office of a Director shall be vacated if the Director:-
- (a) is removed from his position by the Member that appointed him; or
 - (b) becomes bankrupt or makes any arrangement or compromise with his creditors generally; or
 - (c) becomes prohibited or disqualified from being a Director under any provisions of the Act; or
 - (d) becomes of unsound mind; or
 - (e) ceases to be a Director by virtue of these Articles; or
 - (f) the Member which appointed the Director under **Article 49** ceases to be a Member; or
 - (g) is absent from more than three (3) consecutive meetings of the Board without permission of the Board; or
 - (h) resigns his office by notice in writing to the Company.
61. If any Member entitled to nominate a Director ceases for any reason to be entitled to nominate a Director, the Director nominated by that Member will cease to be a Director of the Company and the position of that former Director will become a casual vacancy to be filled in accordance with **Article 62**.
62. Any Director may at any time resign office by giving to the Secretary a notice in writing of his resignation. Subject to **Articles 49 and 50**, the Board shall have the power at any time and from time to time, to appoint any representative from the Members to the Board, to fill a casual vacancy or as an addition to existing Directors, provided that:-
- (a) the person so appointed is a representative of a members; Amended on 01/10/2002
 - (b) the person so nominated is a person who would otherwise be eligible to be nominated as a Director; and Amended on 17/04/2002
 - (c) that the total number of Directors shall not at any time exceed the number fixed in accordance with the Articles. Inserted on 17/04/2002
- Any Director so appointed shall hold office only until the next annual general meeting, and shall then be eligible for re-election. Amended on 17/04/2002
63. Nothing in **Article 62** will affect the right of a Member entitled to appoint a Director pursuant to the provisions in **Articles 49 and 50** to replace the Director, including by filling a casual vacancy caused by the resignation of the Director. The Director appointed to fill a casual vacancy must retire at the time that the Director whom he is replacing would have retired in accordance with these Articles, and shall be eligible for re-election. Amended on 17/04/2002
64. Subject to **Articles 49 and 50**, the Company may, at a general meeting by special resolution, remove any Director before the expiration of his period of office, and may by special resolution appoint another person in his stead.

MINUTES OF MEETINGS

65. The Board shall cause minutes to be made in the books provided of:-
- (a) all appointment of Directors and officers;
 - (b) the names of the Directors at each meeting of the Board and of any committee of the Board; and
 - (c) all resolutions and proceedings at all meetings of the Company and of the Board and of any committee of the Board and every Director present, whether in person or by means of video conferencing/telephone conference call at any meeting of the Board or committee of the Board shall sign his name in a book to be kept for that purpose.

Such minutes must be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

POWERS AND DUTIES OF THE BOARD

66. The business of the Company is managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Act or these Articles, required to be exercised by the Company in a general meeting.
67. The Board shall meet at least once every quarter.
68. The Board must act in the best interests of the Company as a whole and with due regard to the furtherance of the Company's objectives.
69. The Board has ultimate responsibility for the policy of the Company but in formulating the policy, it shall operate in line with the national policy objectives of the Malaysian communications and multimedia industry.
70. The Board shall prepare or caused to be prepared and updated from time to time an Operations Manual which shall set out, inter alia, the method of establishing the Access Forum Committee, Working Committees and shall describe the transparency of process with which the Company, the Access Forum Committee, the Board, the Executive and the Working Committees are to conduct their deliberations and operations.
71. The Board, upon considering advice from the Chief Executive Officer shall, subject to **Articles 86, 87** and **88** adopt and promulgate a Working Plan which shall be implemented by the Executive, the Access Forum Committee and the Working Committees, or where appropriate, outsourced for implementation by suitably qualified contractors.
72. The Board shall ensure that to the greatest extent possible the Access Forum Committee and the Working Committees are representative of all Members interested in the subject matter of the proposed tasks or other issues the subject of their deliberations and recommendations.
73. The Board shall ensure that professional competency is maintained and that due process is observed.

Amended
on 17/04/2002

74. The Board shall be accountable for the functions of the Company including administration of the Executive, the provision of reports to general meetings and fulfilment of all corporate governance responsibilities.
75. The Board shall be responsible for recommending the access list and access code which has been approved by the Board, to the Commission. The Board shall be given the authority to monitor access code compliance and administer sanctions, as it deems fit, for breaches of the access code in accordance with rules and procedures set out in the access code. Amended
on 01/10/2002
76. The Board shall establish resourcing arrangement for the activities of the Company and shall constitute itself as the body responsible for the raising and allocation of funds to finance the Company's activities.
77. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.
78. All cheques, promissory notes, drafts, bills of exchange and other negotiable instrument and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such other manner as the Board shall from time to time by resolution determine.

PROCEEDINGS OF THE BOARD

79. The Board may meet together for the despatch of business, adjourn, and otherwise regulate their meetings, as they think fit. A member of the Board is deemed to be present at any meeting if he/she is there by virtue of a video conference/telephone conference call even if such person is not physically present at such meeting.
80. The Secretary must, where requisition is made by three (3) Directors, convene a meeting of the Board to be held not less than fourteen (14) days after the date of requisition. Amended
on 1/10/2002
81. The meeting of the Board shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all the Directors entitled to attend and vote thereat.
82. A Director, in consultation with the Member nominating that Director, shall by notice to the Company, appoint an alternate Director to exercise the powers of the nominating Director, if the nominating Director is unable to attend a meeting of the Board. The appointment will take effect upon receipt of that notice by the Company and continue to operate until:-
- (a) receipt of any further notice given by the nominating Director revoking the nomination;
 - (b) the office of the nominating Director becoming vacant pursuant to **Article 60** or **61**;
or
 - (c) the Director otherwise ceasing to be a Director of the Company.
83. No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time when the meeting proceeds to business. A quorum will comprise of seven (7) Directors. Amended
on 17/04/2002

84. If within half and hour from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Chairman of the meeting may determine and if at the adjourned meeting a quorum is not present within half and hour from the time appointed for the meeting, five (5) Directors shall be a quorum. It shall not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
85. On a show of hands or a poll every Director shall have one vote.
86. Any resolution of the Board will not be taken to be carried, whether on a show of hands or a poll, unless the requisite majority comprises the following:-
- (a) in the case of an ordinary resolution of Directors, there is an affirmative vote of more than fifty percent (50%) of the Directors (including alternate Directors acting as Directors) present at the meeting; or
 - (b) in the case of Special Matters, there is an affirmative vote of more than seventy five (75%) of the Directors (including alternate Directors acting as Directors) present at the meeting. However:-
 - (i) where there is an affirmative vote of more than fifty percent (50%) but not more than seventy-five percent (75%) of the Directors (including alternate Directors acting as Directors) present at the meeting, the Special Matters shall be voted again at the next meeting, which shall be within thirty (30) days from the first meeting; and
 - (ii) at the second meeting, where there is an affirmative vote of more than fifty percent (50%) but not more than seventy-five percent (75%) of the Directors (including alternate Directors acting as Directors) present at the meeting, the Special Matters shall be forwarded to the Commission as issues debated on and considered by the Board along with differing views of the Board on the said Special Matter.
 - (c) in the case of Extraordinary Matters, the unanimous votes of the Directors (including alternate Directors acting as Directors) present at the meeting. For the purposes of this **Article 86(c)**, unanimous votes are achieved where there is an affirmative vote of more than ninety percent (90%) of the Directors (including alternate Directors acting as Directors) present at the meeting. Once the Extraordinary Matters are approved, the views of the dissenting Director(s) on the Extraordinary Matters would be also forwarded to the Commission.
87. Special Matters shall be matters pertaining to:-
- (a) promulgation, adoption and variation to any rules of conduct for the Members;
 - (b) the promulgation, adoption, variation and approval of the access codes to be submitted to the Commission for registration;
 - (c) the promulgation, adoption and variation to an Operations Manual;
 - (d) the promulgation, adoption and variation of a Working Plan;
 - (e) establishment of the Company's annual budget;

Amended
on 01/10/20

Inserted
on 01/10/20

- (f) splitting of the Network Facilities and Network Service Access Forum Committee into two distinct Access Forum Committee; and
 - (g) a downward revision of the fees in the **Schedule**.
88. Extraordinary Matters shall be matters pertaining to approval and evaluation of the access list promulgated by an Access Forum Committees and approved by all the other Access Forum Committees.
89. The Board may, at its absolute discretion and subject to such conditions as it deems fit, invite one (1) additional representative from the Applications Service Provider and one (1) additional representative from the Content Applications Service Provider category of membership to attend a meeting of the Board and to be heard but such representative shall not be entitled to vote. Amended
on 17/04/2002
90. In the event of any vacancy or vacancies in the office of a Director or offices of the Directors, the remaining Directors may act but if the number of the remaining Directors is not sufficient to constitute a quorum at the meeting of the Board, they may only act for the purposes of convening a general meeting of the Company.
91. A resolution in writing, signed by all the Directors of the Board for the time being entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at the meeting of the Board duly convened and held.

CHIEF EXECUTIVE OFFICER

92. The Board may appoint a person as the Chief Executive Officer who shall be entitled to attend meetings of the Board and to be heard but will not be entitled to vote. Appointment or removal of the Chief Executive Officer must be confirmed in writing by the Board. Amended
on 17/04/2002
93. The Chief Executive Officer will be accountable to the Board for, inter alia:
- (a) the delivery of the Working Plan in a timely fashion in accordance with the guidelines promulgated by the Board;
 - (b) development of the Operations Manual for approval and endorsement by the Board;
 - (c) performance of the administrative functions of the Company, including without limitation, the development of a web-site and other Internet database applications to facilitate interaction between Members and participation in the Working Committee;
 - (d) provision of logistical support to Working Committees and general meeting and the facilitation of the same;
 - (e) implementation of consultation processes and liaison mechanisms between the Board, Members and Working Committees;
 - (f) monitoring of the progress of Working Committees;
 - (g) liaison with the Commission and if required, the Minister;
 - (h) preparation of reports and submissions to:-

- (i) the Board and the Members; and
 - (ii) the Commission; and
 - (iii) if required, the Minister.
- (i) attendance at Board meetings;
 - (j) the delivery of such public statements as are duly authorised by the Board; and
 - (k) performance of the Company in relation to the budget and business plan agreed by the Board.

ESTABLISHMENT OF WORKING COMMITTEES

- 94. The Board or the Access Forum Committee may at any time appoint Working Committees from among the Members, either corporate or individual, or non-member individuals co-opted by the Board, and the constitution of such Working Committees must be approved or endorsed by the Board or the Access Forum Committee, as the case may be. Working Committees must to the greatest extent possible be representative of parties interested in the subject matter of the proposed body of work to be undertaken.
- 95. Working Committees will be established on a project by project basis and must operate in accordance with the Operations Manual or principles determined by the Board and the Articles.
- 96. The Working Committees shall maintain a relationship with the Board or the Access Forum Committee, as the case may be, and liaise with them on a regular basis.
- 97. Where the Access Forum Committee or the Board establishes a Working Committee to undertake specific tasks, any work prepared by the Working Committee must be submitted to the Access Forum Committee or the Board for consideration and approval unless otherwise directed by the Access Forum Committee or the Board.

THE ACCESS FORUM COMMITTEE

- 98. There shall be three Access Forum Committees comprising of Network Facilities and Network Service Access Forum Committee (“NFNSC”), Applications Service Access Forum Committee (“ASC”) and Content Applications Service Access Forum Committee (“CASC”). Each of the respective Access Forum Committee shall comprise of Members from the relevant categories of membership representing the Network Facilities Provider, Network Service Provider, Applications Service Provider and Content Applications Service Provider. The NFNSC shall be regarded as an Access Forum Committee. However, the NFNSC may be split into two distinct Access Forum Committees at such future date as may be agreed by the Board as a Special Matter.
- 99. Each Access Forum Committee may, from time to time, invite representatives from governmental or non-governmental bodies (including the Commission), associations or individuals, who in the Access Forum Committee’s opinion, will facilitate the development and growth of the Malaysian communications and multimedia industry, to attend any meeting of the Access Forum Committee. Such invited persons shall be entitled to be heard at the meetings but shall not be entitled to vote thereat.

100. Each Access Forum Committee shall, respectively, meet as and when required to:-
- (a) (i) determine the Network Facilities, Network Services and other facilities and/or services which facilitate the provision of Network Services or Applications Services, including Content Applications Services, to be included from time to time in the access list or to have the same amended or updated from time to time; or
 - (ii) prepare or caused to be prepared and updated from time to time such other matters that are incidental to item (a)(i) above; or
 - (b) (i) promulgate, develop or vary the access codes, from time to time, which provide model terms and conditions for compliance with the standard access obligations and national policy objectives for the Malaysian communications and multimedia industry or to have the same amended or updated from time to time; or
 - (ii) prepare or caused to be prepared and updated from time to time such other matters that are incidental to item (b)(i) above; or
 - (c) any other matters, as the case may be, which has been determined and prepared by the other Access Forum Committees.

101. Where the members of the NFNSC, ASC or CASC, which are present and voting, have respectively reached a Consensus (as hereinafter defined) on any of the matters referred to in Article 100(a) and (b), the NFNSC, ASC or CASC, as the case may be, shall put forward those matters to the other Access Forum Committees, respectively, either by itself or through the Secretary for their deliberation and consideration. Where the NFNSC, ASC and CASC have all reached a Consensus on those matters, such matters shall be forwarded to the Board as recommendations.

Amended
on 01/10/2002

102. -Deleted-

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Deleted
on 01/10/2002

103. -Deleted-

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104. The Board may, at its discretion, call for a meeting between the NFNSC, ASC and CASC to discuss industry wide access issues.

105. For the purposes of **Articles 101:-**

- (a) “**Consensus**” is established when those participating in the consideration of the subject at hand have reached substantial agreement and it requires that all views and objections be considered, and that a concerted effort be made toward their resolution. Under some circumstances, Consensus is achieved when the minority no longer wishes to articulate its objection and no major interest maintains a negative stand; and
- (b) “**substantial agreement**” means more than sixty seven percent (67%) but not necessarily unanimity.

106. The Secretary must, where a requisition in writing is made by Representatives of Members or members from the Access Forum Committee holding at the date of deposit of the requisition not less than one-tenth (10%) of the total voting rights of all members from the Access Forum Committee having, at that date, a right to vote at meetings, convene a meeting to be held not less than twenty-one (21) days after the date of the requisition at such time and place as the

Board may determine. Any requisition made by members from the Access Forum Committee must state the object of the meeting proposed.

107. The notice requirements in **Article 21** shall be applicable where relevant.
108. No business may be transacted at any meeting convened by an Access Forum Committee unless a quorum of Representatives of members from the Access Forum Committee is present at the time the meeting proceeds to business. A quorum will comprise of Representatives of members from the Access Forum Committee present in person, by proxy or by Representative, holding not less than fifty percent (50%) of the total voting rights of all members from the Access Forum Committee having at the date of the meeting a right to vote.
109. For the purposes of clarification, the Members who have been admitted pursuant to **Article 3(a)(ii)** herein will vote in the relevant category of membership they would have been assigned to under the licensing structure of the CMA as if it/he/she had been licensed under the CMA. Where a Member is in one or more Access Forum Committees, that Member shall have one (1) vote in each of the respective Access Forum Committees. Amended
on 17/04/2002
110. No decision in respect of any business referred in **Article 100**, may be taken to be carried out unless Consensus is achieved in accordance with **Articles 101**. Amended
on 1/10/2002
111. Notwithstanding anything to the contrary, a matter referred to in **Article 100** may only be recommended to the Board if prior Consensus is obtained in accordance with **Article 101**. Amended
on 01/10/2002
112. All decisions made by the members in the Access Forum Committee are binding notwithstanding that there has been a reclassification of category of membership for a Member after the date of a decision has been made or if is discovered that a person is not entitled to be a Member or is not entitled to vote by virtue of **Article 16** unless mala fides is proven. The burden of proof that a person was entitled to vote rest with such member or person.

SECRETARY

113. The Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them. The first Secretary shall be Lee May Ling (MAICSA 7012790).
114. The Secretary will not be an ex-officio member of the Board but if a Director, will be entitled to exercise Directors' powers. A provision of the Act or these Articles requiring or authorising a thing to be done by or to a member of the Board and the Secretary shall not be satisfied by its being done by or to the same person acting both as a member of the Board and as, or in place of, the Secretary.

SEAL

115. The Board shall provide for the safe custody of the seal, which shall only be used by the authority of the Board or a committee of the Board authorised by the Board in that behalf, and every instrument to which the seal shall be affixed shall be signed by a members of the Board and shall be countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for the purpose.

ACCOUNTS

116. The Board shall cause proper books of accounts to be kept with respect to:-
- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
 - (b) all sales and purchases of goods by the Company; and
 - (c) the assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of accounts as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transaction.

117. The books of accounts shall be kept at the registered office of the Company or, subject to section 167(3) of the Act, at such other place or places as the Board think fit and shall always be open to the inspection of the member of the Board.
118. The Board shall from time to time determine to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of the members not being members of the Board.
119. The Board shall from time to time in accordance with the requirement of the Act cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets and any reports as are referred to in the Act.
120. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in general meeting, together with a copy of the auditor's report, shall be sent to every member of, and every holder of debentures of the Company not less than twenty one (21) days before the date of the meeting

AUDIT

121. Auditors shall be appointed and their duties regulated in accordance with sections 174 and 175 of the Act.

NOTICES

122. Notices of every general meeting shall be given in any manner hereinafter authorised to:-
- (a) every member except those Members who have not supplied to the Company an address within Malaysia for the giving of notices to them; and
 - (b) the auditors for the time being of the Company.

No other person shall be entitled to receive notices of general meetings.

123. Notice may be given by:-

- (a) delivery to the address of the party notified by prepaid post, in which case notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice in the ordinary course of post.
- (b) facsimile transmission to the facsimile number of the party notified, in which case notice shall be deemed to have been received when the party notified receives the facsimile if received on a Business Day, or otherwise at 9.00 am on the first Business Day after receipt, provided always that:-
 - (i) a transmission report is produced by the facsimile machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the party notified or if the party notified confirms by telephone that they have received the facsimile transmission in its entirety; and
 - (ii) a conforming copy of the facsimile is sent to the party notified by prepaid post on the same day the facsimile transmission is transmitted if transmitted on a Business Day or, otherwise, on the next Business Day; or
- (c) e-mail to the e-mail address of the party notified in which case it is deemed to have been received when the party notified receives the email if received on a Business Day, or otherwise at 9.00 am on the first Business Day after receipt, provided always that:-
 - (i) a transmission report is produced by the machine from which the e-mail was sent which indicates that the e-mail was sent in its entirety to the party notified or if the party notified confirms by telephone that they have received the e-mail in its entirety; and
 - (ii) a conforming copy of the e-mail is sent to the party notified by prepaid post on the same day the e-mail is transmitted if transmitted on a Business Day or, otherwise, on the next Business Day.

INDEMNITY

124. Subject to the provision of and so far as may be permitted by the Act, every member of the Board, auditor or other officer of the Company shall be entitled to be indemnified by the Company against all costs, charges, losses, expenses, liabilities incurred by him in the execution and discharge of his duties or in relation thereto including any liability incurred by him in defending any proceedings civil or criminal which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the corporation save in the case of negligence and breach of fiduciary duty and in which judgement is given in his favour (or the proceedings are otherwise disposed of without any findings or admissions of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the court.

PROHIBITED ACTIVITIES

125. Notwithstanding any resolution being approved by Members at general meeting, the Company shall not engage in the following activities:-
- (a) apply for listing and quotation of the Company in any stock exchange; and

- (b) acquire or form any subsidiary corporation or acquire or invest in another corporation or business.

ALTERATION OF ARTICLES

- 126. These Articles may only be varied or amended in accordance with the Act and the provisions of the Memorandum and the Articles.

SCHEDULE 1

INITIAL SUBSCRIPTION FEES AND ANNUAL MEMBERSHIP FEES

Amended
on 17/04/2002

Annual Revenue of the Members (RM)	Initial Subscription Fee (RM)	Annual Membership Fee (RM)
Above 2.5 Billion	3,000	100,000
Above 1 Billion to 2.5 Billion	3,000	75,000
Above 500 Million to 1 Billion	3,000	50,000
Above 200 Million to 500 Million	3,000	25,000
Above 20 Million to 200 Million	3,000	7,000
20 Million and below	3,000	1,500

In the event a grant is provided by the Commission to the Company, the fees prescribed in this Schedule may be revised, in an equitable manner, in accordance with **Articles 35 and 36** or **Articles 86 and 87**.

We, the several persons whose names, addresses are subscribed hereunder being subscribed hereby agree with the foregoing Articles of Association.

Name, address and description of subscribers

TELEKOM MALAYSIA BERHAD
(COMPANY NO.: 128740-P)
TINGKAT 2,
IBUPEJABAT TELEKOM MALAYSIA
JALAN PANTAI BAHARU
50672 KUALA LUMPUR

Nama : DATO' DR. ABDUL RAHIM
BIN HAJI DAUD
Designation: DIRECTOR

Name : WANG CHENG YONG
Designation: COMPANY SECRETARY

MAXIS BROADBAND SDN. BHD.
(COMPANY NO.: 234053 -D)
LEVEL 18, MENARA MAXIS
KUALA LUMPUR CITY CENTRE
OFF JALAN AMPANG
50450 KUALA LUMPUR

Name : TAN POH CHING
Designation: DIRECTOR

Name : AMDAN MAT DIN
Designation: COMPANY SECRETARY

Dated this 16th day of March 2001

Witness to the above signatures:

Name : DARREN KOR YIT MENG
NRIC : 730827 -14 -5289
Address: Zul Rafique & Partners
Suite 17.01, 17th Floor,
Menara Pan Global,
8 Lorong P. Ramlee,
50250 Kuala Lumpur

Lodged by: Zul Rafique & Partners
Address : Suite 17.01, 17th Floor, Menara Pan Global, 8 Lorong P. Ramlee, 50250 Kuala Lumpur
Tel. No. : 03-2388228