

ASIA PACIFIC CARRIERS' COALITION

(Incorporated in the Republic of Singapore)

REVIEW OF ACCESS PRICING

**RESPONSE TO THE
MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION'S
PUBLIC INQUIRY PAPER**

**BY THE
ASIA PACIFIC CARRIERS' COALITION**

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[Public Version]

Table of Contents

A. INTRODUCTION	2
B. GENERAL COMMENTS ON REGULATORY APPROACH.....	3
C. GENERAL OBSERVATIONS ON FIXED SERVICES PRICES IN MALAYSIA	7
D. CONCLUSION.....	9
Appendix A.....	10
Responses to Specific MCMC Questions.....	10

A. INTRODUCTION

1. The Asia Pacific Carriers Coalition (“**APCC**”) is an industry association of global and regional telecommunications carriers operating in the Asia Pacific region, formed to work with governments, national regulatory authorities and users in advocating open market policies and best practice regulatory frameworks in order to promote competition and efficient investment in telecommunications markets.
2. On 6 October 2017, the Malaysian Communications and Multimedia Commission (“**MCMC**”) issued a Public Inquiry Paper on the Review of Access Pricing (“**PI Paper**”). The APCC thanks the MCMC for the opportunity to provide its comments on to the important issues raised in the PI Paper.
3. The PI Paper is a commendably thorough consultative document, which reflects considerable work by the MCMC by way of its informal consultations with stakeholders, analysis of network and cost data from international and local sources, as well as further meetings with licensees on the proposed cost models.
4. The APCC is pleased to offer this written submission for MCMC’s consideration. In this submission, the APCC provides:
 - General comments on the importance of market competition in the telecommunications industry, and on price regulation principles and methodologies, as well as the regulation of physical access;
 - General observations on Fixed Services prices in Malaysia; and
 - Specific comments in response to some of the questions raised by the MCMC in the PI Paper. In particular, the APCC has focused on providing its feedback to the MCMC’s preliminary conclusions on the regulated prices to be set for fixed services, given the nature of its members’ business activities in Malaysia.
5. All capitalised terms and/or industry-specific terminology used in this paper shall, unless expressly distinguished, have similar meaning(s) to their corresponding references in the PI Paper.
6. The APCC does not assert confidentiality in respect of any part of this submission.

B. GENERAL COMMENTS ON REGULATORY APPROACH

1. Importance of Market Competition

- 1.1 The APCC fully supports the MCMC's objective to regulate the communications and multimedia industry for the long-term benefit of the end user under subsection 3(2) of the Communications and Multimedia Act 1998 ("**CMA**").
- 1.2 The APCC strongly believes that effective and rigorous competition in the telecommunications industry is crucial towards the path of an efficient market which provides more choices at lower prices for the benefit of the end consumer. This is more likely to take place where there are minimal restrictions to market entry.
- 1.3 In this regard, the APCC respectfully submits that the MCMC's existing foreign equity restrictions for Network Facilities Providers ("**NFP**") and Network Service Provider ("**NSP**") licenses impose artificial barriers to entry and unnecessarily limit the extent of competition in these market segments.
- 1.4 To illustrate the above, the Organisation for Economic Co-operation and Development ("**OECD**") recently conducted an investment policy review on the Philippines¹ and proposed that it would be timely for the country to reconsider its restrictions on foreign investments given that such restrictions are now considered outdated and facilitate "rent-seeking" by local oligopolists. The report also analysed the relationship between liberalising foreign equity restrictions and the positive effects it would have on enhancing competition regulations. To this end, the OECD recommended to progressively liberalise investments with a view towards achieving a free and open investment environment.
- 1.5 The APCC notes that the MCMC began allowing 100 percent foreign equity participation for Applications Service Providers ("**ASP**") licensees in April 2012. To achieve a fully competitive market which serves the objectives of section 3(2) of the CMA, the APCC respectfully requests the MCMC to consider the prospects of removing the foreign equity restrictions in the remaining licence categories to work towards a fully liberalised telecommunications industry.
- 1.6 The APCC is of the view that the removal of foreign equity restrictions across all market segments will engender a more vibrant and competitive telecommunications industry in Malaysia, therefore lessening the need for ex-ante price regulation over time.
- 1.7 In the meantime, while certain segments of the market face limited competition, the APCC generally agrees with the MCMC's proposal to impose ex-ante price regulation, based on the three criteria identified by the MCMC, as a proxy for market competition, to ensure that the other players in the market have access to bottleneck facilities at fair and reasonable prices.

2. Price Regulation Principles

- 2.1 For market segments where ex-ante price regulation is warranted, the APCC supports the principles and criteria employed by the MCMC in terms of setting maximum regulated prices which is largely based on appropriate cost recovery and the promotion of economic efficiency in investments. The APCC believes that this approach, in principle, would strike the fine balance between protecting the financial interests of the incumbent access providers and maintaining their

¹ OECD (2016), OECD Investment Policy Reviews: Philippines 2016, OECD Investment Policy Reviews, OECD Publishing, Paris. Available at: <http://dx.doi.org/10.1787/9789264254510-en>

incentives to invest while ensuring reasonable access prices to essential facilities for downstream market players. This will serve to reduce prices and increase options at the retail level for the long-term benefit of end users.

- 2.2 The APCC also further supports the notion that costs should also be “reasonably efficiently” incurred. However, the APCC stresses that the MCMC should, in addition to undertaking benchmark studies with comparable jurisdictions, review and adjust such standards derived to take into account of regional bias, especially in terms of the monopolistic landscape of the fixed services sector. One manner in which this can be done is, per the MCMC’s proposal, to benchmark the collection of data on the costs received from the incumbent access providers against efficient markets.
- 2.3 With digital disruption and the pace at which technology and services are evolving, regulatory and policy frameworks globally need to be technology-neutral and flexible to embrace the trends of digitisation. An example of a key technology trend that is leading to digital transformation is the migration to a cloud-based software-defined networking (“**SDN**”) architecture. SDN and network functions virtualisation services are increasingly being adopted by businesses globally. These are network agnostic software solutions, which can be deployed using multiple access technologies, via Ethernet, MPLS, the Internet, 4G, 5G or future technologies, as well as a combination of various access technologies. The availability of cost efficient access solutions would be absolutely essential for the growth of these emerging services in Malaysia.
- 2.4 Accordingly, the APCC submits that there is a need to ensure that MCMC’s approach is not prescriptive but based on market conditions which encourages technological innovation. It is critical that the MCMC’s current review of access pricing helps to foster technological innovation and deployment of diverse and emerging technologies.

3. Cost Methodology For Fixed Services

- 3.1 The APCC submits that costing methodologies serve a critical function in ensuring that the regulated prices set by MCMC are just and reasonable. This, in turn, would create a competitive market. Given that technologies and markets continue to advance, costing tools utilised by the MCMC needs to be periodically reviewed and, where necessary, updated to reflect current needs.
- 3.2 With regards to fixed services, the APCC notes that the MCMC has proposed a shift from the step-by-step methodology adopted in 2012 to a BU LRIC+ methodology, in particular, with asset price adjustments to reflect the presence of fully-depreciated assets. The APCC generally supports the migration to a BU LRIC+ methodology on the condition that the costs of network are adjusted by the value of the fully depreciated assets.
- 3.3 The APCC observes that the use of a BU LRIC+ methodology is generally adopted by other national regulatory authorities as well. Examples include the European Commission’s endorsement of the BU LRIC methodology in Italy by AGCOM². In Luxemburg, the European Commission welcomes Luxemburg’s regulatory authority’s choice in setting price-caps for copper-based access services

² Digital Agenda: Commission endorses general model of Italian regulator to calculate wholesale access prices; asks it to recalculate maintenance and commercial costs, 21 October 2010. Available at: http://europa.eu/rapid/press-release_IP-10-1361_en.htm

on the basis of a BU LRIC+ model based on the modern equivalent asset of a hypothetical efficient operator³.

- 3.4 For the purposes of this PI Paper, the APCC noted that the MCMC's fixed network model had been subject to model calibration and reconciliation. The APCC recognises that the model was based on the incumbent's data, which cannot be shared with other operators due to the confidentiality requirements. As such, the APCC is unable to comment on the specifics of the values used for the cost modelling.
- 3.5 Given the principles of cost-based pricing, the APCC is of the view that the wholesale prices of fixed services should generally be expected to fall over time, given the decreasing costs of transmission equipment and the increasing traffic in core network. The APCC notes that this trend has not been borne out in the MCMC's proposed prices for certain fixed services.

4. Regulation of Physical Access

- 4.1 The APCC commends the MCMC for taking a step in the right direction to regulate infrastructure sharing and physical access by imposing price regulation on duct and manhole access, as well as mobile tower services.
- 4.2 The APCC would like to take this opportunity to highlight an industry practice which merits the MCMC's further review and intervention. This involves some Building Management Offices ("**BMO**") imposing high and discriminatory charges on certain telecommunication operators for access to their space and facilities in order to deploy telecommunication infrastructure. Operators would not be able to have access to potential customer buildings unless BMO charges are paid. The APCC submits that the current practice is undesirable as it increases the total cost of access and such charges are forced to be passed down to the end-consumers. The discriminatory treatment by BMOs also lead to an unequal playing field as some operators are required to pay higher BMO charges which do not appear objectively justified.
- 4.3 The APCC urges the MCMC to investigate the above practice to ensure efficient, transparent and non-discriminatory access to essential facilities.
- 4.4 The APCC notes that there is an active obligation under Part X of the CMA, specifically under section 228 of the CMA 1998, for a network facilities provider to provide non-discriminatory access to any post, network facilities or right-of-way. As such, the APCC submits that the MCMC should include access to telecommunication rooms and main distribution frameworks of high-rise buildings in the Access List.
- 4.5 The APCC notes the MCMC's concerns in the Public Inquiry Report on the Access List in 2015 where it stated that main distribution frameworks and in-building wiring are conventionally on the customer-side of the network boundary and as such cannot be subject to regulation under the CMA. However, the APCC respectfully submits that taking such an approach runs counter to the objectives which the MCMC is bound by to achieve as per the CMA, which is to regulate in the interest of the LTBE. As provided in same Public Inquiry Report, numerous major providers had voiced their concerns regarding in-building access. Indeed, the market with regards to the provision

³ Commission Decision concerning Case LU/2015/1769: Wholesale local access provided at a fixed location in Luxembourg dated 29 July 2016. Available at: <https://circabc.europa.eu/webdav/CircaBC/CONNECT/e-cctf/Library/01%20-%20Commission%20Decisions/Commission%20Decisions%202015/LU-2015-1769-1770%20ADOPTED%20EN.pdf>

of in-building access is a bottleneck facility, and one which further satisfies the Three Criteria Test (as defined in Appendix A), and therefore urgently warrants the MCMC's intervention.

- 4.6 By way of example, the Singapore Info-communications Media Development Authority ("**IMDA**") currently regulates via the Code of Practice for Info-communication Facilities in Buildings ("**COPIF**") the space and facilities that the developer or owner of a land or building shall provide at his expense to enable the deployment and operation of installation, plant or systems to be used for telecommunications, as well as the duties that shall be observed by the developer or owner of the land or building in relation to such space and facilities provided within. The Hong Kong Office of the Communications Authority ("**OFCA**") similarly regulates and intervenes in the provision of in-building access by means of the Code of Practice for the Provision of Access Facilities in Buildings for the Supply of Telecommunications and Broadcasting Services, the Code of Practice for the Installation and Maintenance of In-Building Telecommunications Systems and In-building Access by Telecommunications Network Operators, as well as information notes to building owners and building management offices.

C. GENERAL OBSERVATIONS ON FIXED SERVICES PRICES IN MALAYSIA

1. The APCC is fully supportive of the MCMC's proposal to impose ex-ante price regulation on fixed services in Malaysia. As the MCMC has correctly identified, many fixed services in Malaysia satisfy the Three Criteria Test (as defined in Appendix A) with respect to the need for intervention and access pricing regulation.
2. As noted earlier, the APCC has in this response, focused on providing its feedback to the MCMC's preliminary conclusions on the regulated prices to be set for fixed services, given the nature of its members' business activities in Malaysia.
3. Indeed, as global and regional telecommunications carriers operating in the Asia Pacific region, the APCC members' have observed that the prices for fixed services in Malaysia are generally relatively high when benchmarked against similar services in the rest of the region.
4. The above observation is borne out in the APCC Access Benchmarking report which was last conducted in 2013⁴. The report assesses local access prices charged by domestic operators to international carriers across 14 economies in the region. In that report, it was found that Malaysia (together with Indonesia and Vietnam) were the most expensive jurisdictions with respect to leased lines. For Ethernet access, Malaysia remained one of the most expensive jurisdictions, although prices were observed to have fallen by a large margin from the last study conducted in 2009. On a country-pair comparison, Malaysia was found to be consistently more expensive than Indonesia, against which it tends to be benchmarked.
5. Although the APCC Access Benchmarking report has not been updated since then, it remains the APCC members' general observation on the ground that current Malaysian access prices are still at a higher level compared to most other jurisdictions (such as Singapore, Hong Kong, Japan and Australia), despite having several notable domestic operators in the market. This is primarily due to the infrastructure-related costs that are still maintained at a fairly high level, which are then passed on to the end access prices.
6. An area of particular concern that the APCC has observed is that domestic backhaul is typically bundled together with the international segments in Malaysia since cable landing station access is regulated, which then results in much higher overall access costs. This is commented further in our specific comments on Table 33 in Appendix A. By way of comparison, the Singapore regulator has sought to increase competition for access to backhaul and cable landing stations by allowing operators who have deployed infrastructure to the submarine cable landing station: (a) to provide backhaul service for any third party's capacity on any submarine cable system that lands at that submarine cable landing station (2004); and (b) to provide transit service to enable a third party to transit traffic between submarine cable systems landed in Singapore (2004), irrespective of whether the operator owns capacity in the submarine cable system which it seeks to provide backhaul and transit services (2011).
7. Therefore, the APCC generally welcomes the MCMC's proposal to regulate the fixed services in the Access List. Curiously, there were several fixed services in the Access List for which the MCMC proposed not to regulate prices, without providing any justification for the same. The APCC respectfully submits that the prices for these services should be regulated, and invites the MCMC to consider our detailed submissions on this under Appendix A.

⁴ Access Price Benchmarking, A Study Produced for the APCC by TRPC Pte Ltd dated February 2013. Available at: http://www.asiapacificcarriers.org/sp/user/attach/2013-05-17_Access%20Price%20Benchmarking%20Report%202013.pdf

8. The APCC submits that the implementation of the requisite price regulations is critical to supporting the success of Malaysia's ongoing efforts to, amongst others, create a regional e-commerce hub and a Digital Free Trade Zone to empower SMEs via e-commerce and logistics. It would also be integral to facilitating the implementation of smart city initiatives in Malaysia, such as the Smart City Iskandar Malaysia project which was endorsed by the Prime Minister of Malaysia. This will also assist private initiatives which aim to integrate the Internet of Things into building an ecosystem that will support smart city solutions.

D. CONCLUSION

1. In conclusion, the APCC reiterates its position that effective and rigorous competition in the telecommunications industry is crucial towards the path of an efficient market which provides more choices at lower prices for the benefit of the end consumer. In the absence of effective competition in certain market segments, the APCC generally agrees with the MCMC's proposal to impose ex-ante price regulation as a proxy for market competition, to ensure that the other players in the market have access to bottleneck facilities at fair and reasonable prices.
2. The APCC submits that open and transparent access to last mile connectivity is an essential resource in the telecommunications market. Any unnecessary restrictions in any form, especially the imposition of excessive charges limits an operator's ability to provide services at an affordable rate.
3. To this end, the APCC supports the MCMC's review of access pricing and welcomes the proposed reforms set out in the PI paper, subject to the APCC's comments in relation to the specific areas, as set out in the Appendix A to this submission.
4. In the interests of accessibility, the APCC has endeavored to keep this submission brief. The APCC will be pleased to provide more detailed comments or to engage further with the MCMC on the issues raised in this submission.

Respectfully submitted by:

ASIA PACIFIC CARRIERS' COALITION

Appendix A

Responses to Specific MCMC Questions

Ref.	MCMC Question	APCC Response
Qn 1	Do you think that the criteria for ex-ante determination of access prices presented remain appropriate?	<p>Yes. The APCC agrees that the three criteria identified in the PI Paper (“Three Criteria Test”) remains appropriate for the purposes of this review.</p> <p>The Three Criteria Test identified in the PI Paper remains as the test and standard applied by the European Commission in its latest Commission Recommendation on relevant product and service markets within the electronic communications sector (susceptible to ex-ante regulation according to Directive 2002/21/EC), as set out in the Explanatory Note⁵. The Three Criteria Test was identified in 2007 and remains unchanged in 2014 as European stakeholders agreed that the Three Criteria Test continues to serve its purpose of identifying markets susceptible to ex ante regulation⁶.</p> <p>It is also noted that the United Kingdom’s telecommunications regulator, OFCOM has also utilised the Three Criteria Test in accessing the suitability of implementing ex-ante regulations during its review conducted in 2015⁷.</p> <p>The inclusion of “non-transitory and high barriers to entry” is necessary as a criterion because the facilities and/or services identified in the Commission Determination on Access List (No. 2 of 2015) are generally services which have potential to set high prices due to the monopolies that are inherent in areas with high barriers of entry. This is especially true in the provision of core network facilities where a state-sanctioned monopoly has been appointed as the incumbent access provider for these facilities. In such instances, there is a crucial requirement for regulatory intervention in the form of ex-ante price regulation in order to promote the objective set out in section 3(2) of the CMA to regulate for the long-term benefit of the end user (“LTBE”).</p> <p>We also agree with the inclusion of “where there is no trend towards effective competition” as a criterion for accessing ex-ante regulation suitability. This is particularly important in Malaysia’s current telecommunications regulatory landscape where effective competition is significantly hindered due to the restriction on foreign investments via the imposition of foreign equity restrictions on the licenses for regulated activities. This is especially true in the provision of network facilities and network services in Malaysia, which impose high foreign equity restrictions as a condition for acquiring licenses to provide these activities.</p>

⁵ Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services dated 9 October 2014 Available at:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.295.01.0079.01.ENG

⁶ *Ibid.* p. 6

⁷ Business Connectivity Market Review – Review of competition in the provision of leased lines conducted by OFCOM dated 15 March 2015. Available at:

https://www.ofcom.org.uk/data/assets/pdf_file/0027/47754/Business-connectivity-market-review-2015-consultation.pdf

Ref.	MCMC Question	APCC Response
		Therefore, APCC submits that the Three Criteria Test satisfies all the objectives of the CMA and is appropriate for the purposes of achieving the MCMC's goal for ex-ante regulation.
Qn 2	Do you think that the approach to pricing which has been adopted is appropriate? Are there any other criteria that should be considered?	<p>Yes. The APCC agrees with the approach undertaken by the MCMC. The APCC agrees with the establishment of a price ceiling via regulated price controls, and that ex-post remedies alone will not be effective as they will not address the issue of incumbent access providers prolonging commercial negotiations via deadlock regarding pricing.</p> <p>Importantly, the APCC submits that it agrees and supports the MCMC's proposal in balancing the principles of appropriate cost recovery and the need to promote economic efficiency in investments as criteria for determining maximum regulated prices for Access List facilities and/or services.</p>
Qn 3	Do you have any comments on the appropriateness of setting regulated prices for the period up to and including 2020?	<p>The APCC submits that it supports the MCMC's proposal of having a three-year period for regulated prices as this is in line with best practices and consistent with the last review's proposed period. In particular, a three-year period provides business certainty and is in line with business planning cycles.</p> <p>The APCC submits that a three-year period would allow for any technological changes to have an actual effect before the next review is conducted to take into account of such changes.</p> <p>However, given the fast moving nature of the industry, the APCC is of the view that the MCMC should expressly maintain the option to intervene before the end of the three-year timeframe, if the situation urgently calls for it.</p>
Qn 13	Do you have any comments on the WACC values proposed for the Fixed Network Services?	<p>The APCC supports the use of WACC as a method of factoring the cost of raising capital into the equation when calculating the regulated prices of access facilities and or services. The APCC notes that the use of WACC is widely accepted by many national regulatory authorities globally. It is the standard approach adopted by the United Kingdom's OFCOM⁸ and the European Commission has also issued various guidelines with regards to the use of WACC⁹.</p> <p>The APCC submits that the WACC value to be applied should be the figure of 8.08%, which is the method of calculation which considers the government funding as a purse subsidy with zero return. The APCC's rationale for such an insistence is based on the fact that following from Telekom Malaysia's PPP, there is no specified rate of return specified after the first few years.</p>

⁸ Cost of Capital – Annual Update Report prepared by the UK Regulators Network dated 31 May 2017. Available at: http://www.ukrn.org.uk/wp-content/uploads/2017/05/20170503-UKRN-Annual-WACC-Comparison-Report_FINAL.pdf

⁹ Review of approaches to estimate a reasonable rate of return for investments in telecoms networks in regulatory proceedings and options for EU harmonization prepared by the Brattle Group for the European Commission dated 14 July 2014. Available at: <https://publications.europa.eu/en/publication-detail/-/publication/a4b55e0c-4a4f-11e6-9c64-01aa75ed71a1/language-en>

Ref.	MCMC Question	APCC Response																		
		<p>The APCC also observes that a WACC value of 8.08% will be more consistent and within range of the WACC value estimated by other national regulatory authorities. A range of comparable values are set out below¹⁰:</p> <table border="1"> <thead> <tr> <th>Country</th> <th>Regulator's Decision</th> <th>WACC Value*</th> </tr> </thead> <tbody> <tr> <td>Italy</td> <td>AGOM (2015)</td> <td>9.18%</td> </tr> <tr> <td>United Kingdom</td> <td>OFCOM (2014)</td> <td>8.60%</td> </tr> <tr> <td>Spain</td> <td>CNMC (2014)</td> <td>9.00% / 9.09% / 9.60%</td> </tr> <tr> <td>Germany</td> <td>BnetzA (2015)</td> <td>6.44%</td> </tr> <tr> <td>France</td> <td>ARCEP (2013)</td> <td>9.5%</td> </tr> </tbody> </table> <p><i>*These values are pre-tax nominals.</i></p> <p>If the figure of 8.08% cannot be accepted, the APCC proposes that a just and equitable route is to require the disclosure of the rate of return and have the rate of return factored into the calculation of WACC for fixed services.</p>	Country	Regulator's Decision	WACC Value*	Italy	AGOM (2015)	9.18%	United Kingdom	OFCOM (2014)	8.60%	Spain	CNMC (2014)	9.00% / 9.09% / 9.60%	Germany	BnetzA (2015)	6.44%	France	ARCEP (2013)	9.5%
Country	Regulator's Decision	WACC Value*																		
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Germany	BnetzA (2015)	6.44%																		
France	ARCEP (2013)	9.5%																		
Qn 17	Do you have any comments on the range of WACC values proposed?	Please see our response to Question 13 above.																		
PART D	FIXED SERVICES																			
Qn 18	Do you have any comments on the approach adopted for the fixed model?	<p>The APCC submits that it recognises that a number of countries, namely countries in the EU, have adopted the BU LRIC+ model for fixed services.</p> <p>The APCC generally supports the migration to a BU LRIC+ methodology on the condition that the costs of network are adjusted by the value of the fully depreciated assets.</p>																		

¹⁰ Review of approaches to estimate a reasonable rate of return for investments in telecoms networks in regulatory proceedings and options for EU harmonization – A study prepared for the European Commission DG for Communications Networks, Content & Technology by the Brattle Group, published on 14 July 2016. Available at: <https://publications.europa.eu/en/publication-detail/-/publication/da1cbe44-4a4e-11e6-9c64-01aa75ed71a1/language-en>

Ref.	MCMC Question	APCC Response
Table 26	Interconnect Link Service	<p>The APCC agrees with the decision to regulate the prices of Interconnect Link Services as such transmission service faces high barriers to entry and remains a key input to all telecommunications services.</p> <p>However, the APCC disagrees with the proposed regulated prices in Table 26. From the PI Paper, the APCC notes that there is a significant increase brought about in the provision of Interconnect Link Services as proposed by the MCMC and also a different categorisation of prices.</p> <p>The previous Commission Determination on Mandatory Standard on Access Pricing issued in 2012¹¹ provided that the regulated price in 2015 would be RM332.24/km/year for each link employing a fibre cable, whereas Table 26 shows the monthly rental for Interconnect Link Service Costs as RM1,207/km/month and RM19,757 per installation for 2018, which works out to RM34,241/km/year (including installation costs).</p> <p>The APCC submits that the change in regulated prices for this service from RM332.24/km/year to RM34,241/km/year is almost a ten-fold increase and is highly disproportionate, even after taking into account of the migration to a BU LRIC+ costing method. No further justification is provided by the MCMC for this major increase other than the reference to increasing cost of cables and related civil infrastructure, which on balance, the APCC submits does not address such a substantial increase in prices.</p> <p>It is noted that the previous method of calculating cost was based on the cost of trunk fibre and the APCC suggests for this approach to be maintained.</p> <p>The significant increase in price will need to be passed on to the end consumer and would run counter to the MCMC's objective to regulate for the LTBE in section 3(2) of the CMA.</p>

¹¹ Commission Determination on the Mandatory Standards on Access Pricing (No. 1 of 2012) dated 20 December 2012. Available at: <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Commission-Determination-on-MSAP-2012.pdf>

Ref.	MCMC Question	APCC Response
Table 29 and 32	Wholesale Local Leased Circuit Service	<p>The APCC agrees with the imposition of price regulation on Wholesale Local Leased Circuit Service</p> <p>However, we note that the proposed price tables do not distinguish between costs in Peninsular Malaysia and East Malaysia in the same way the 2012 Commission Determination on Mandatory Standard on Access Pricing did for Wholesale Local Leased Circuit Services. The approach undertaken by the MCMC in 2012 was in recognition that there may be materially different costs associated with the prices in East Malaysia. The MCMC decided that based on its analysis of the data received from providers in Peninsular Malaysia and East Malaysia and concluded that although equipment prices do not significantly differ, average distance-related costs were approximately 20% higher in East Malaysia, and as such, it warranted different regulated prices for Peninsular Malaysia and East Malaysia. As such, the APCC enquires if this differential between Peninsular Malaysia and East Malaysia was intentionally removed by the MCMC in the present PI Paper, and if so, what was the reason for doing so.</p> <p>The APCC's concern is whether the approach proposed in Table 29 and 32 are geographically averaged prices which would result in higher prices overall and would generally be unfair for operators who are involved exclusively in only one of the two areas.</p> <p>Additionally, the APCC submits that based on global benchmarks for the provision of Wholesale Local Leased Circuit Service, installation costs should not exceed USD 200. The MCMC's justification for such high installation costs is the increasing cost of labour. However, the APCC submits that the proposed figures in Table 32 are excessive and should be revised to be in line with international benchmarks.</p> <p>Further, the APCC respectfully submits that the current categories of pricing are too wide and fails to take into account the large variance in costs and conditions in provisioning access within each proposed range. The APCC proposes for the services to be segmented more narrowly, as follows:</p> <ul style="list-style-type: none"> (a) Up to 1 Mbps; (b) 1 Mbps - 10 Mbps; (c) 10 Mbps - 100 Mbps; (d) 100 Mbps - 500 Mbps; (e) 500 Mbps - 1 Gbps; and (f) 1Gbps -10 Gbps.
Table 33	Domestic Connectivity to International Service Costs	<p>The APCC agrees with the continued imposition of price regulation for Domestic Connectivity to International Services, as well as the proposed price table.</p> <p>On a related note, the APCC would like to take this opportunity to submit on the lack of competition in the provision of submarine cable landing station services. The APCC submits that its members depend heavily on such facilities. However, the APCC notes that only Telekom Malaysia possesses submarine cable landing rights in the whole of Malaysia. As a direct result, this has created an artificial monopoly in the provision of these facilities and the resulting uncompetitive state of the market is evident.</p>

Ref.	MCMC Question	APCC Response
		<p>The APCC submits that in the course of seeking submarine cable landing station access from the incumbent access provider, access would only be provided on the condition that it is bundled together with the provider's backhaul service. The APCC submits that such practice is an abuse of the access provider's dominance.</p> <p>Anti-competitive bundling is widely condemned as an exclusionary practice under competition laws. The MCMC has issued a Guideline on Substantially Lessening of Competition¹² and in the guideline, the MCMC sets out bundling as a form of conduct that may have an adverse impact on competition in the market. According to the guideline, the conduct by Telekom Malaysia does suggest anti-competitive behavior as (i) the entity bundling the product is a monopoly; (ii) such bundling involves two separate services; (iii) bundling backhaul services would foreclose the market to other access providers who are too small to compete, and (iv) such bundling has an actual anti-competitive effect as illustrated by the significantly increased rates for this service as compared to its neighboring jurisdictions.</p> <p>The APCC therefore urges the MCMC to investigate the incumbent provider's practice of bundling, as described above.</p>
Table 44	Full Access Service	<p>The APCC respectfully disagrees with the MCMC's decision to not regulate prices for Full Access Service and submits that such prices should be regulated.</p> <p>The APCC submits that the MCMC did not provide any justification on its decision to not regulate the pricing for Full Access Service. The approach taken in this PI Paper significantly departs from the manner in which the public inquiry for access pricing review was conducted in 2012 whereby reasons were provided to the stakeholders whenever the MCMC made a decision to not regulate prices.</p> <p>The APCC respectfully submits that the Full Access Service satisfies the Three Criteria Test used to determine a need for ex-ante regulation. It has high, non-transitory barriers to entry given its difficulty for a new entrant to duplicate an existing fixed network. There is no trend at all towards effective competition as the relevant market is, and will for the foreseeable future, remain to be a monopolistic market. The APCC further submits that ex-post regulatory measures would be ineffective in remedying the injury caused by excessively priced services.</p> <p>Furthermore, the timeframe in the Ministerial Direction on High-Speed Broadband and Access List, Direction No. 1 of 2008 which directed the MCMC to defer the implementation of Full Access Services for seven years from 16 September 2007 to 15 September 2015 has lapsed. As such, the regulation of prices for Full Access Services is much more crucial given its utility and involvement in the HSBB network today.</p>

¹² Guideline on Substantial Lessening of Competition issued by the MCMC dated 11 July 2014. Available at: <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Assessment-of-Dominance-in-Communications-Markets-Public-Inquiry-110714.pdf>

Ref.	MCMC Question	APCC Response
Table 53, 54 and 55	Digital Subscriber Line Resale Service	<p>The APCC respectfully disagrees with the MCMC's decision to not regulate prices for Digital Subscriber Line Resale Service and submits that such prices should be regulated.</p> <p>The APCC submits that the MCMC did not provide any justification on its decision to not regulate the pricing for Digital Subscriber Line Resale Service. The approach taken in this PI Paper significantly departs from the manner in which the public inquiry for access pricing review was conducted in 2012 whereby reasons were provided to the stakeholders whenever the MCMC made a decision to not regulate prices.</p> <p>The APCC respectfully submits that the Digital Subscriber Line Resale Service satisfies the Three Criteria Test used to determine a need for ex-ante regulation. It has high, non-transitory barriers to entry given its difficulty for a new entrant to duplicate an existing fixed network. There is no trend at all towards effective competition as the relevant market is, and will for the foreseeable future, remain to be a monopolistic market. The APCC further submits that ex-post regulatory measures would be ineffective in remedying the injury caused by excessively priced services.</p>
Table 60 and 63	Layer 2 HSBB Network Service with QoS	<p>The APCC agrees with the imposition of price regulation on these services and that prices for the relevant services should decrease over time due to the decreasing costs of the transmission equipment and increasing traffic in the core network.</p>
Table 64 and 67	Layer 3 HSBB Network Service with Network Service	<p>The APCC submits that sufficient regulation on the provision of HSBB network is crucial as the HSBB functions as one of the main drivers for Malaysian economy. During its launch in 2008¹³, the MCMC recognised its potential in creating opportunities and markets for applications and content developers. It also recognised the role of the HSBB network in boosting local industries and employment in Malaysia. Specifically, the MCMC addressed the fact that there is a need to ensure that there is no unfair advantage to Telekom Malaysia with regards to other service providers and to ensure fair pricing that allows other service providers to provide their own services on top of the HSBB network.</p>
Table 71, 72, 73 and 74	Bitstream with Network Service	<p>The APCC respectfully disagrees with the MCMC's decision to not regulate prices for Bitstream with Network Service and submits that such prices should be regulated.</p> <p>The APCC submits that the MCMC did not provide any justification on its decision to not regulate the pricing for Bitstream with Network Service. The approach taken in this PI Paper significantly departs from the manner in which the public inquiry for access pricing review was conducted in 2012 whereby reasons were provided to the stakeholders whenever the MCMC makes a decision to not regulate prices.</p> <p>The APCC respectfully submits that the Bitstream with Network Service satisfies the Three Criteria Test used to determine a need for ex-ante regulation. It has high, non-transitory barriers to entry given its difficulty for a new entrant to duplicate an existing fixed network. There is no trend at all towards effective competition as the relevant market</p>

¹³ .my Convergence volume 3 / No. 1 January 2009, HSBB Malaysia's Drive for High Speed Broadband published by the MCMC. Available at: https://www.skmm.gov.my/skmmgovmy/media/General/pdf/MYC04_all_lowres.pdf

Ref.	MCMC Question	APCC Response
		<p>is, and will for the foreseeable future, remain to be a monopolistic market. The APCC further submits that ex-post regulatory measures would be ineffective in remedying the injury caused by excessively priced services.</p>
<p>Table 78, 79 and 80</p>	<p>Network Co-Location Service</p>	<p>The APCC respectfully disagrees with the MCMC's decision to not regulate prices for Network Co-location Services and submits that such prices should be regulated.</p> <p>The APCC submits that the MCMC did not provide any justification on its decision to not regulate the pricing for Network Co-location Services. The approach taken in this PI Paper significantly departs from the manner in which the Public Inquiry Report for Access Pricing of 2012 was conducted whereby reasons were provided to the stakeholders whenever the MCMC makes a decision to not regulate prices.</p> <p>The APCC respectfully submits that the Network Co-Location Service satisfies the Three Criteria Test used to determine a need for ex-ante regulation. It has high, non-transitory barriers to entry given its difficulty for a new entrant to duplicate an existing fixed network. There is no trend at all towards effective competition as the relevant market is, and will for the foreseeable future, remain to be a monopolistic market. The APCC further submits that ex-post regulatory measures would be ineffective in remedying the injury caused by excessively priced services.</p> <p>The APCC further notes that physical co-location services were regulated under the 2012 Commission Determination on Mandatory Standard on Access Pricing. Given that the landscape for Network Co-Location has not undergone any substantial changes, the APCC urges the MCMC to maintain its stance and rationale given in 2012, and to continue price regulation for this service.</p> <p>Additionally, the APCC submits that it is widely accepted that Network Co-Location Service is a service commonly subjected to price regulation in many jurisdictions, such as Singapore. As such, imposing price regulation would be an adherence to international best practices.</p>
<p>Table 81</p>	<p>Duct and Manhole Access</p>	<p>The APCC agrees with the imposition of price regulation and the proposed table.</p> <p>Further the APCC commends the MCMC on its decision in the 2015 Public Inquiry for Access List to include Duct and Manhole Access as a regulated facility. This illustrates MCMC's constant efforts to ensure that its regulatory scope remains flexible and responsive to uncompetitive markets.</p> <p>However, the APCC notes that Duct and Manhole Access comprises of physical access to, inter alia, "Mainline Ducts and associated manholes in areas which a single Operator has <i>exclusive rights</i> to develop or maintain duct and manhole infrastructure...". Exclusive rights here is defined as "...exclusive rights in contracts, arrangements, or understandings between the Access Provider and any person.</p> <p>The APCC submits that this exclusivity is further fleshed out in the 2016 Mandatory Standards on Access whereby a particular access provider is able to refuse access to duct and manholes where exclusivity arrangements are in place in Putrajaya. The APCC submits that this</p>

Ref.	MCMC Question	APCC Response
		<p>may set a precedent that exclusivity is acceptable within the access regime, and as a result of this, state-backed companies may claim that they are allowed to refuse access to their infrastructure based on their exclusivity arrangements with state government. The APCC submits that allowing such exclusivity arrangements while expanding the scope of regulation to cover uncompetitive markets is akin to taking two steps in the right direction and one step back.</p> <p>As such, the APCC strongly urges for the MCMC to remove all recognition of exclusivity in the access regime to maintain a competitive market.</p>