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INTRODUCTION

Good morning, ladies and gentlemen.

The topic given for my presentation this morning can be expressed in several sets of questions: Why do we need to regulate? Why do we choose a specific regulatory framework for our regulation? What do we need to regulate?

I do not intend to provide the answers to each of these questions. What I hope to do is relate to you the process that we went through a few years ago when we took a bold step of drastically changing the policy and regulatory frameworks as well as our institutional arrangements for the communications sector. In going through this process, we had asked ourselves the same sets of questions and had tried to provide answers that we considered most suitable to the needs of the industry, the consumers and, ultimately, the nation. Perhaps, our approach is not necessarily the best. But an understanding of the rationale and basic principles involved will enable you to see some of the options that are available.

Slide 1

However, let me first introduce Malaysia to you, especially to those who may not be too familiar with our country. At the same time, this will give you an idea of the environment within which the reform measures were undertaken.

Malaysia is a country that is almost 330,000 square kilometres in size, located in South East Asia. It consists of two geographical regions, separated by the South China Sea. Peninsular Malaysia is located between Thailand in the north and Singapore in the south. On the eastern side of the South China Sea, the states of Sabah and Sarawak are located on the northern part of the island of Borneo. Sabah and Sarawak are bordered by Indonesia to the south as well as by Brunei.

Both Peninsular Malaysia and Sabah and Sarawak have coastal plains and mountainous territory in the interior. The country is divided into 13 states plus the federal territories of Kuala Lumpur, Labuan Island and Putrajaya.

Malaysia's location along the Straits of Malacca and on the South China Sea gives it a strategic position in the heart of Southeast Asia.

At the last census, the Malaysian population was estimated at 23.3 million, with a population growth rate of 2.1 per cent per annum and a population density of about 70 inhabitants per square kilometer. The estimated population for 2025 is 37 million. The capital of Malaysia is Kuala Lumpur with an estimated population of 1.3 million (in 2000).

The administrative capital is in Putrajaya. About 62 per cent of the population is urban. Life expectancy at birth for men is 70 years while that for women is 75 years.

Malaysia is a multi-ethnic and multi-religious country, consisting of Malays (47 per cent), Chinese (31 per cent), Indians (7 per cent), and several indigenous groups. The official religion is Islam and about 50 per cent of the population is Muslim. Another 29 per cent are Buddhist and Confucian, seven per cent Hindu and six per cent Christian. Malaysia's official language is Malay while English is widely spoken.

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Let me now describe briefly the communications market in Malaysia and its transformation in the years before 1996.

In the early 1980s, there was only one fixed line service provider which at the time was the government through the Department of Telecommunication.

The first radio phone service was introduced in 1985. Thereafter, another licence was issued for the first analog cellular system in Malaysia. In the late 1980s, another licence was issued, the Advanced Mobile Phone System – an American system (Mobifon 800 service).

From the early 1990s onwards, more licences using different technology platforms were introduced using the second generation digital systems.

As for fixed line service, one more licence was issued in the late 1980s. In order to promote more roll out in the fixed network, in 1996, the cellular players were also issued fixed line licences.

The nation's first ISP was a research venture by a government funded institute called Malaysian Institute of Microelectronics (or MIMOS). In 1996, the government issued ISP licences to all the fixed line operators.

Ever since television was introduced in Malaysia in the 1960s, broadcasting service was provided by Radio Television Malaysia, a department in the Ministry of Information.

In 1984, however, the first private television station, called TV3, was given a licence to operate a television broadcast station. Thereafter, several more radio licences were issued. After 1996, a few more television licences were issued and they were for cable television, free-to-air terrestrial television and for satellite television.

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With the communications sector already growing quite well until 1996, why did we decide to introduce the major change by introducing a convergence legislation for the communications industry? There were several important reasons.

Firstly, Malaysia is determined to fulfill its aspiration of becoming a fully developed industrialized nation by 2020 as envisioned in its Vision 2020. While the manufacturing sector was initially expected to spearhead the drive to fulfilling this vision, globalization

and the emergence of more competitive new economies had reduced Malaysia's own competitiveness.

Secondly, extensive developments in digital technologies had changed the whole environment and potential of communications and multimedia. The government recognised that both content and networking industries will become increasingly important areas of economic growth. Thus, it was a conscious decision made for the communications and multimedia industry to be the new engine of growth for a 'knowledge-based' economy.

Thirdly, it was also acknowledged that digitalisation was enabling the convergence of communications technologies and services leading to new growth areas in communications and multimedia. In order to leverage on this, it might be necessary to enable and facilitate the process of convergence.

Fourthly, while accepting that convergence could be the new driver, the government recognised that other factors such as nation building, fostering and developing a mature democratic society, establishing a scientific and progressive society, and creating a prosperous nation with an economy that is fully competitive, dynamic, robust and resilient, were equally important.

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With the above factors in mind, a review of the situation in the communications sector was then undertaken.

We realised that technology was changing rapidly and would continue to change. The telephone line that was previously only used for the fixed line voice service was already being used to obtain Internet access.

The cellular mobile operators were becoming more mature. Cellular communications penetration was already rapidly catching up with fixed line penetration. Real competition between operators was beginning to come into play.

Convergence was also becoming a reality – technological convergence in the networks, customer equipment convergence and even business convergence in service provision, were already happening. The world was, in fact, getting smaller because the technologies available made it easier to communicate and stay in touch.

Thus, the questions we asked ourselves then were: Do we want to continue the way we did in the provisioning of communications services? If not, what then would be the new concept of regulation? What do we want to regulate and how do we want to do it? More fundamentally, in the face of convergence, was it just the telecommunications sector that we wanted to regulate?

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Having taken into consideration all the factors and the trends in the communications industry, in 1996 the government took the important step of developing comprehensive

measures to achieve its National Agenda of moving Malaysia into the Knowledge Economy, leveraging on the platform of convergence.

These included the formulation of the national convergence policy objectives; the creation of a new institutional framework for the communications and multimedia sector; and the introduction of a new convergence regulatory framework for the communications and multimedia industry.

A key legislation to enable the communications and multimedia sector to move onto a convergence platform was introduced in 1998, the Communications and Multimedia Act 1998 (CMA). The CMA which incorporates regulatory provisions for telecommunications, broadcasting and networked services on one convergence platform, became effective on 1 April 1999.

To implement the CMA, the Malaysian Communications and Multimedia Commission Act 1998 (MCMCA) was passed by Parliament at the same time to enable the formation of the Malaysian Communications and Multimedia Commission (MCMC) on 1 November 1998.

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It was important for the convergence policy objectives to be defined and clearly understood as the basis for the CMA. Thus, for the first time in the history of Malaysian legislation, a provision for this was made in the CMA in the form of the 10 National Policy Objectives which are set out in Section 3(2) of the Act. The 10 National Policy Objectives are:

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

As can be seen, these policy objectives incorporate the concerns and interests of industry growth, consumer needs as well as national growth and aspirations. It was realised that as a developing economy, it was not just a question of a new regulatory

framework that was necessary, but developmental perspectives are just as important if not more.

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In order to ensure that the provisions of the CMA would be in consonance with the 10 policy objectives, five main principles were identified as underlying principles of the Act.

1. The first is transparency of processes and procedures. In the context of good governance, provisions in the CMA ensure that introductions of new regulatory measures or changes to existing regulations will be undertaken through consultative processes with the industry and consumers. (Sharil, will be discussing some of the concepts involved in his sessions).

2. The second principle is that of **technology neutrality.** Since communications and multimedia technologies have been changing rapidly and are expected to continue to change, it would not be practical to specify the technology being used in our regulatory provisions. The interest should be more about the services to be provided than the technology itself.

3. Third is the principle of industry self regulation. This means that industry and consumers are encouraged to participate in the regulatory process so that they can act as regulators at the first level. In this ideal situation, the Commission should only step in when the market is unable to self-regulate.

4. The fourth principle is that of consumer protection. This indicates the importance of the consumers for whom facilities and services for communications are provided for. Thus, their interests and needs for access and quality of services must be protected and ensured. The CMA makes ample provisions for these, especially in the context of universal service.

5. The fifth is the principle of a **competitive market environment.** This is important to enable the development of a robust communications and multimedia industry. The CMA is the first Malaysian legislation to directly address competition for a specific sector. A fair trade legislation for all sectors is still at the drafting stage.

In essence, the CMA is also very generic in its provisions. The detailed provisions are in the subsidiary legislation and legal instruments which can be amended easily without having to go to the Cabinet and Parliament. However, to ensure that the CMA remains relevant, there is a provision for a review every three years.

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Now, let us look at some of the structural changes that were put into effect with the introduction of the CMA and the MCMCA. As can be seen from the slide, the first change was in renaming the previous Ministry of Energy, Telecommunications and Posts as the Ministry of Energy, Communications and Multimedia effective from 1 November 1998. On the same date, the MCMC was formed as the new regulatory authority to implement

the CMA. When the CMA became effective on 1 April 1999, the Telecommunications Act and the Broadcasting Act were repealed. On the same date, the previous regulatory authorities, the Department of Telecommunications and the Broadcasting Licensing Division of the Ministry of Information, were abolished.

An important fact to note here is that the MCMC was allowed to define and set up its own organization.

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The MCMCA itself defines the powers and functions of the MCMC very clearly. This was done with a purpose when the Act was being drafted. The MCMC was the first of such a Commission to be set up (the second was the Energy Commission, also under the same Minister) and it was important for its special role and status to be clearly understood and accepted.

Let us now see what the MCMCA has defined: (Read from the slide).

As you will notice, the emphasis on development is more than the emphasis on regulation.

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Our regulation authority and related functions are important for the present, in a market that is still imperfect. These would involve monitoring and regulating behaviour of the operators in our sector. However, Malaysia is still a developing nation. Thus, we need also to focus on development for the future in order to ensure growth for the country. Hence, we regulate for conformance in the present day and we develop for performance for the future.

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To ensure the effectiveness of the MCMC in carrying out its authority and functions, the MCMCA provides for some very important elements in its management.

One of these is in the context of management independence. One key element is that the MCMC is a body corporate set up by an Act of Parliament. It has management independence from an operational standpoint where the Chairman is also the CEO.

The Commission does its own recruitment and sets its own terms and conditions of appointment to be approved by the Commission and the Minister. A large number of our staff are professionals selected from the industry and government.

The Commission staff are public servants but are not subject to the rules and regulations applicable in the civil service. What this means is that the officials of the MCMC have the protection of the Public Authorities Protection Act 1948 for so long as the work is carried out for the Commission.

The MCMC can develop its own Disciplinary Regulations to be approved by the Minister and it has disciplinary authority over the all staff members.

In essence, the Commission is responsible to the Minister and the Minister may direct the Commission for so long as the directions are not inconsistent with the provisions of the CMA.

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Another important element is that the MCMC is financially self sufficient and not dependant on the government for funding.

It has the power to establish a fund called the Malaysian Communications and Multimedia Fund. This Fund consists of monies transferred from the Telecommunications Fund established under the repealed Telecommunications Act 1950, any sums of money provided by Parliament, licence fees, administration charges, levies or other charges payable to the Commission under the CMA, monies derived as income from investments by the Commission, monies derived from the sale, lease or disposal of its property, mortgages, debentures etc., basically all monies received by the Commission, including all monies earned from consultancy or advisory services.

We spend the money on paying for all expenditure of the Commission's functions, remuneration of employees, allowances, purchases of property, goods, services, hire of equipment, material, acquisition of land and any assets, erecting buildings, repaying any monies borrowed, granting of loans to employees and generally paying off any other expenses.

Our policy is to be prudent and we only take what we need for the upkeep of MCMC and the cost of regulation. The balance is spent on industry development.

We prepare our own budget which we have to submit to the Minister before 1 September each year and the Minister, before 1 January every year, has to authorise the expenditure.

We can open our own bank account/s and have the power to borrow. However, this power to borrow is subject to the oversight of the Minister and the Minister of Finance. We also have the power to invest but this is again subject to the approval of the Minister and the Minister of Finance.

As for the power to enter into contract, we have to seek the approval of the Minister and the Minister of Finance in situations where the Commission is to pay or receive amounts exceeding five million Ringgit Malaysia (which is about USD1.2million).

Last but not least, our Annual Financial Report and Statement of Accounts have to be audited and certified before being presented to the Minister. He will then present them to both Houses of Parliament together with a report dealing with the activities of the Commission for the preceeding financial year.

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Another important element is the institutional framework within which the MCMC operates. This slide shows the relationship between the MCMC and the various stakeholders in the communications and multimedia industry. This slide also shows the decision making process that governs the MCMC.

As a start, the MCMC is central to the convergence sector institutional framework that has been adopted by the government. The MCMC makes policy recommendations to the Minister after consultations with the industry. This can be done through the various industry forums set up pursuant to the CMA, the Access, Consumer, Content and Technical Standards Forums.

The Minister issues directions to the MCMC and this is set out in greater detail in the CMA. In our regulatory function we regulate and enforce the communications and multimedia laws.

In working with the Minister, we are also mindful of decisions of the Cabinet and Parliament and we have a consultative relationship with the Ministry of Energy, Communications and Multimedia.

The law also provides that aggrieved parties may refer decisions of the Commission to an Appeal Tribunal.

Members of the Tribunal shall comprise of a Chairman (who shall be a presiding High Court Judge) and members who would be qualified to be a member if the person has knowledge of the communications and multimedia industry, engineering, law, economics or commerce or public administration.

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In the earlier slide, I mentioned about the institutional setting. The CMA also defines the specific role and functions that the major key players in the communications and multimedia industry have. This is another element that is important in understanding the role and status of the MCMC.

Consumers, by exercising choice of services and service providers, will be able to impose some level of market discipline on the industry. The industry is responsible for service implementation and delivery. In this way, the market should, in theory, impose self discipline.

Through the enabling law, that is, the CMA, the Minister sets policies and priorities in the legislation and issues subordinate instruments in accordance with the object of the legislation and the 10 national policy objectives. In this respect the Minister directs the Commission on matters of general policy and procedures.

The Commission, apart from recommending policies to the Minister, implements the policies and Ministerial directions issued by the Minister.

One important separation of powers and functions is that the Minister issues the licence and imposes licence conditions and confers regulatory rights to the licensees. On the

other hand, the Commission monitors and enforces compliance with legislation and licence requirement. In respect of licences, the Commission makes recommendations on an application by a potential licencee to the Minister but it is the Minister who decides on whether to grant or not to grant the licence.

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Provisions on the Commission itself is another important element.

The MCMCA provides that the Commission shall consist of seven members. The Chairman and Commission members are appointed by the Minister for Energy, Communications and Multimedia. The Act also provides that there shall be a Chairman, one member representing the government and not less than two but not more than six other members.

As you can see, the members come from various disciplines. We have accountants, economists and lawyers. The present government representative is the Secretary General to the Ministry of Domestic Trade and Consumer Affairs.

The tenure of office for the Commission members is provided by law to be not less than 2 years but shall not be more than 5 years. Members of the Commission are eligible for reappointment but cannot hold office for more than 2 successive terms. The Minister may also revoke the appointment of any Commission member and any Commission member my also resign at any time by giving notice to the Minister.

Remuneration and allowances are decided by the Minister after consultation with the Minister of Finance.

The Commission may also establish Committees to assist it in its functions. Currently, there are several committees of the Commission namely, the Audit Committee, the Finance Committee and the Establishment Committee.

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In terms of the organisation itself, the Commission is assisted by the staff of the MCMC. The staff level is structured into 3 operational divisions (the Regulatory Division, the Industry Development Division and the Technical Division, 4 support divisions and five regional offices.

All these divisions report to the Chairman as the Chief Executive Officer of the MCMC.

The Regulatory Division basically does monitoring and supervision of the industry as well as the licensing and spectrum assignment activities. This division is mainly involved in the day to day operations of the MCMC.

The Industry Development Division is mainly involved in the formulation of policies for the development and growth of the communications and multimedia sector. This division is what you could call the think tank of the Commission.

The Technical Division is mainly responsible for providing technical and expert advice on technical matters to both the Regulatory Division and the Industry Development Division.

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I had also earlier introduced the concept of self regulation. The topic of the presentation also asked about what to regulate and how to regulate.

Our method of self regulation is that the consumers and industry players, including non-governmental organizations, work together in imposing self discipline through the creation of industry forums. These forums will then produce industry codes which they then abide by voluntarily.

The CMA provides for 4 of these forums, Access, Consumer, Content and Technical Standards. At present, three of these forums have been formed and have been designated by the Commission and they are the Consumer Forum, the Content Forum and the Access Forum.

Through the codes developed by the respective Forums, the industry is given the opportunity to set their own rules. This is done on the basis that the industry and the market know best what their needs are. As technology moves forward and convergence becomes a reality, it will be more and more difficult for the regulator to impose rules on the industry. Therefore, it was thought that this would be a better way of getting the industry forum to produce its own codes to regulate itself as well as to keep the rules of the game current.

Market theory suggests that consumers will impose market discipline on the industry players and this should, in turn, spur the industry player to work towards the benefit of consumers.

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The 4 forums also have different focus areas.

On the left is the market structure pursuant to the CMA. We license the activities of licensees based on the market structures.

The forums' focus areas are depicted by the boxes on the right.

The dark blue colour depicts the areas of focus of the Access Forum. The Access Forum's area of focus will be to work towards Access Codes for access to network facilities, network services and applications services. The Access Codes are intended to relate to interconnection, access to points of interconnection, exchanges, poles, lines, etc.

The Technical Forum, which is yet to be set up, will also focus on the same sectors as the Access Forum. It would assist in the formulation of technical standards for the communications and multimedia industry.

The Consumer Forum focuses on consumer issues which usually crop up in the applications services market and the content applications services market. It is in these 2 sectors that the service providers deal directly with the consumers. The applications service provision market is where the providers of mobile cellular services, fixed line telephony services, ISP services etc will operate.

The content applications service provision market is mainly the domain of broadcasters, both television and radio. Thus, the Content Forum's area of focus will be in this market sector. Content issues are the area of focus for the Content Forum where issues relating to local content, local culture and many other sensitive issues could be raised.

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It is our hope that the process of undergoing all the changes that I had mentioned will lead to the fulfillment of a vision that the MCMC had developed for itself. This vision is develop a globally competitive, efficient and increasingly self regulating communications and multimedia industry generating growth to meet the economic and social needs of Malaysia.

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In the efforts to achieve this vision and in undertaking our regulatory function, we also acknowledge the need to provide a balance among three competing needs: the needs and interests of the consumers, the need for industry growth and the needs and interest of the investors.

Consumers will always be seeking value for money for services; industry needs transparency and fairness and a stable regulatory environment; and the investor wants maximum returns on investment.

The MCMC will have to find the right balance.

It is not just about competition for the sake of competition, promoting access or connectivity for the sake of access, and having good quality of service for the sake of consumers. It is, fundamentally, about National Interest.

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To provide a strategic approach in carrying out our responsibilities, we have developed a Framework for Industry Development (FID), for 2002-2006. The FID identifies five major challenges as our focus areas: upgrading network capabilities, managing resources efficiently, improving service quality and choice of services, regulating effectively and building of capacity.

The success of the FID and fulfillment of the targets it had set as well as the success of the convergence policy and regulatory frameworks are yet to be seen. However, the positive developments that we have seen in the industry give us the assurance that we did make the right decision.

Thank you.