



REGULATORY TRAINING
(Mongolia, 4-7 July 2003)

SUMMARY REPORT

Name of Session:	Competition 2: Good practices in Malaysia (5 July 2003: p.m.)
Name of Rapporteur:	Wan Faizal Wan Hassan, MCMC, Malaysia
Name of Speaker:	Mr.Mohd Sharil Tarmizi, Senior Manager, MCMC, Malaysia
Summary of Presentation:	<p><u>Introduction</u></p> <p>Malaysia has no general competition law but policies that promote competition are in place e.g. the gradual move from state-owned, corporatisation, privatization, licensing new entrants to full and open competition. Malaysia is also concerned with issues on domestic and international trade, mergers and acquisition but looked at from the investment angle.</p> <p>CMA promotes competition by implementing</p> <ul style="list-style-type: none"> <input type="checkbox"/> licensing regulation <input type="checkbox"/> competition regulation <p><u>Licensing Regulation</u></p> <p>Former approaches in licensing has been amended to facilitate convergence, with the licensing framework are now categorically divided into facilities-based and service-based activities. The licensing framework are also technology-neutral and service-neutral approaches to categorizing licensable activity.</p> <p>Licenses are further divided into two types of licenses; individual and class. The third category is the exempted activities. The move is intended to allow more self-regulation where individual licenses are moving into class licenses gradually.</p> <p>Examples of licensing mapping (e.g. NFP individual and class licenses, NSP individual and class licenses, ASP individual and class licenses) are given.</p> <p>The move from vertical to horizontal structure is motivated by the concern on duplication of facilities and facilitates infrastructure sharing, thus promoting more service-based competition.</p> <p>The approach on spectrum regulation (spectrum assignment, apparatus assignment, class assignment and spectrum exemption) is also another example of promoting competition in Malaysian communications and multimedia industry.</p> <p>As a result of these approaches, three separate and distinct economic markets prevails (transport market, bandwidth market, application market)</p> <p><u>Competition Regulation</u></p> <p>Competition regulation is part and parcel of economic regulation which has the objectives of promoting efficient market outcomes and structural reforms.</p> <p>Specifically, CMA provides for competition regulation in Chapter 2 Part VI with objectives of protection of smaller industry players, context of and certainty about enforcement powers of MCMC.</p> <p>Examples of anti-competitive behaviour are given.</p> <p>Specific prohibitions on conduct prohibits;</p> <ul style="list-style-type: none"> <input type="checkbox"/> conduct which has the <i>purpose</i> of substantially lessening competition; <input type="checkbox"/> collusive arrangements such as rate fixing, market-sharing and boycotts; and <input type="checkbox"/> mandatory tying or linking arrangements

	<p>Brief descriptions on Guideline on Substantial Lessening of competition and Dominant Position and Information Paper: Process For Assessing Allegations of Anti-Competitive Conduct are also given</p> <p><u>Authorisation of Conduct</u></p> <p>The authorisation provides that before engaging in any conduct that may be construed to have the purpose or effect of substantially lessening competition, a licensee may apply to the MCMC for authorization of the conduct Before authorizing the conduct, the MCMC shall be satisfied that the authorization is in the national interest</p> <p><u>Assessment of Dominance and SLC</u></p> <p>Determination of dominance is necessary due to extensive market power of licensees which renders the licensee independent from competitors and customers. Once dominance is determined, MCMC may direct the licensee to cease the conduct (which has the effect of SLC).</p> <p>Key concepts that are used in the context of dominance and substantial lessening of competition are also discussed with definitions of conduct, purpose and effect elaborated. The definition on conduct, for example, is not necessarily conclusive of SLC but is indicative of SLC. The analytical framework for SLC is examined which consisted of defining the context and legislative basis, defining the market and assessing the conduct.</p>
<p>Highlights of Question & Answer period:</p>	<p>Q: What is the participation of government agencies (MCMC) in spectrum allocation? A: MCMC is given the full power by CMA to manage spectrum However, in the case of federal government applications (military, police, emergency services), MCMC allocates but does not control the usage for those bands. MCMC is also involved coordinating committee for spectrum coordination with bordering authorities in Brunei and Singapore (FACSMAB?). MCMC's Spectrum Plan is available on its website.</p> <p>Q: Do the operators require licensing for spectrum? A: Not licensing per se but according to assignment of spectrum which can be either spectrum assignment, apparatus assignment, class assignment and exempt)</p> <p>Q: Is there charging for radio frequency for military use? A: Not currently. Currently utilization and possible charging of military's spectrum use is under discussion.</p> <p>Q: How are spectrum charged? A: Spectrum assignment – Fixed prices, auction, beauty contest. Apparatus assignment – Spectrum bands, usage and base stations. Class assignment, exemption – No charge</p> <p>Q: Who owns the right to frequency? In Mongolia, it is the property of the government. A: The presumption is that the spectrum is owned by the country and the Communications and Multimedia Act 1998 vests in the Commission the authority to manage the spectrum.</p>
<p>Recommendations (if any):</p>	<p>Mongolia should consider applying the Malaysian test criteria for assessment of dominance and substantial lessening of competition that was shown by Mr Tarmizi. This should prove to be an interesting intellectual exercise before Mongolia embarks on its own competition provisions.</p>