



**COMMUNICATIONS AND MULTIMEDIA ACT 1998**

**VARIATION TO COMMISSION DETERMINATION ON THE  
MANDATORY STANDARD ON ACCESS (DETERMINATION NO. 2 OF 2005)**

**DETERMINATION NO. 2 OF 2009**

Pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No.2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104 (2) and 106 of the Communications and Multimedia Act 1998 [Act 588], the Commission hereby determines as follows:

**Citation and commencement**

1. (1) This Determination may be cited as the **Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009**.

(2) Subject to paragraph 6, this Determination shall come into force on 2 February 2009.

**Variation of paragraph 3**

2. The Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2005 ("the principal Determination") is varied in paragraph 3 as follows:

- (a) by deleting the definition of "Carrier Selection Code" or "CSC";
- (b) by deleting the definition of "Fixed Access Lines";
- (c) by deleting the definition of "Line Activation";
- (d) by deleting the definition of "New Fixed Access Lines";
- (e) by deleting the definition of "RPI March 2001"; and
- (f) by inserting after the definition of "Transfer Request" the following definition:

' "Variation Determination" means the Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009.'

## Variation of paragraph 6

3. The principal Determination is varied in paragraph 6 as follows:

- (a) in paragraph 1.2.5(c), by deleting paragraph (viii);
- (b) in paragraph 5.2.1(c), by deleting paragraph (vii);
- (c) in subsection 5.3.4, by substituting for paragraph (d) the following paragraph:
  - “(d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities and Services are available individually and separately under an ARD;”;
- (d) in subsection 5.4.11 –
  - (i) by substituting for paragraph (d) the following paragraph:
    - “(d) subject to this Standard, the Access Provider has insufficient capacity or space to provide the requested Services or Facilities;”;
  - (ii) in paragraph (f), by deleting the word “or”;
  - (iii) by inserting after paragraph (f) the following paragraph:
    - “(fa) in respect of Full Access Service, Line Sharing Service and Sub-loop Service, save in cases where an Access Agreement has been entered into between the Access Provider and an Access Seeker, the Access Provider provides evidence that those premises will be served by a HSBB Network Service (with or without QoS) within 3 years from the date of the request; or”
- (e) in subsection 5.5.1, by deleting paragraph (h);
- (f) in paragraph 5.6.10(d), by substituting for the words “subsection 5.4.20” the words “subsection 5.4.18”;
- (g) in paragraph 5.7.16(d), by substituting for the words “subsection 5.7.6(a)” the words “subsection 5.7.16(a)”;
- (h) in subsection 5.7.17 –
  - (i) in paragraph (a), by substituting for the words “subsection 5.4.19” the words “subsection 5.4.17”; and
  - (ii) in paragraph (b), by substituting for the words “subsection 5.4.20” the words “subsection 5.4.18”;
- (i) in subsection 5.7.19, by substituting for the word “5.4.20” the words “subsection 5.4.18”;

- (j) in subsection 5.8.4, by substituting for paragraphs (a) and (b) the following paragraphs:
  - “(a) use its best endeavours to activate in the Access Provider’s Network a code or number range within ten (10) Business Days of being requested to do so by the Access Seeker; and
  - (b) in all cases, activate a code or number range within thirty (30) days of being requested to do so by the Access Seeker.”
- (k) in subsection 5.9.5, by substituting for the words “all Access Providers” the words “all Access Seekers”;
- (l) by deleting subsection 5.12;
- (m) in subsection 5.13.5, by substituting for the words “the Access Seeker’s property” the words “the Access Provider’s property”;
- (n) by substituting for subsection 5.14.6 the following subsection:
  - “5.14.6 **Summarised Invoice and billing information:** An Access Provider shall provide the Access Seeker on written request with an aggregated summary of billings for access to the Facilities and Services provided to the Access Seeker, in monthly tranches.”;
- (o) in subsection 5.14.13, by inserting after paragraph (c) the following paragraph:
  - “(d) evidence in the form of the Invoiced Party’s outgoing report, indicating the relevant traffic data which is in dispute.”;
- (p) in subsection 5.17.1, by inserting after the word “shall” the words “, unless otherwise required by the Access Seeker,”;
- (q) in subsection 5.18.7, by substituting for the word “The” the words “Unless otherwise specifically provided in this Standard, the”;
- (r) in subsection 5.19.10, by inserting after the word “imposed” the words “in relation to its subject matter”;
- (s) by deleting subsection 5.20;
- (t) in subsection 5.23.2, by deleting the words “, which shall be no less than 4.5Mbps”;
- (u) by inserting after subsection 5.23.5 the following subsection:
  - “5.23.6 **Technical standards:** An Operator must comply with the Commission Determination on the Mandatory Standard for Free to Air Transmission of Digital Terrestrial Television Service Determination No. 2 of 2006 including such modification or variation and any other mandatory standards as may be determined by the Commission from time to time.”;

(v) in paragraph 5.24.2(g), by substituting for the words “subsection 5.24.4” the words “subsection 5.24.3”;

(w) by inserting after subsection 5.24.7 the following subsections:

“5.24.8 The Access Provider shall not require an end user to acquire a retail line rental service if the Access Seeker is acquiring the Wholesale Line Rental Service, Full Access Service, Bitstream Services (with and without Network Service) or Sub-loop Service.

5.24.9 Subsection 5.26.5(a) shall apply in relation to an Access Seeker who:

(a) has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Sub-loop Service and/or Bitstream Services (with and without Network Service); and

(b) is acquiring the Facilities and/or Services specified in paragraph 5.24.9(a) at premises that will be served by a HSBB Network Service (with or without QoS) within five (5) years or less.”;

(x) by inserting after subsection 5.24 the following subsection:

**“5.25 WHOLESALE LINE RENTAL SERVICE**

5.25.1 **Application:** This subsection only applies to an Access Provider which provides or is required to provide a Wholesale Line Rental Service.

5.25.2 **Sole relationship with Customer:** The Access Seeker has the sole relationship with the Customer when providing a service to the Customer which uses the Wholesale Line Rental as an input to that service provision.

5.25.3 **Prohibited use of Customer information:** The Access Provider is expressly prohibited from using any Access Seeker’s Customer information to market its goods or services to that Customer, except where:

(a) information on the Customer is publicly available; or

(b) information on the Customer has been received or developed by the Access Provider from sources other than the Access Seeker.

This includes any use or intended use by the Access Provider to persuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the Wholesale Line Rental Service as an input or to persuade that Customer to enter into a contractual relationship with the Access Provider for the Access Provider’s retail services.”;

(y) by inserting after subsection 5.25 the following subsection:

**“5.26 HSBB NETWORK SERVICES**

5.26.1 **Application:** This subsection only applies to an Access Provider which provides or is required to provide and an Access Seeker acquiring and/or seeking to acquire:

- (a) HSBB Network Services;
- (b) Bitstream Services (with and without Network Service);
- (c) Digital Subscriber Line Resale Service;
- (d) Full Access Service;
- (e) Line Sharing Service; and/or
- (f) Sub-loop Service.

5.26.2 **Forms of HSBB Network Services:** There are 2 forms of HSBB Network Services:

- (a) HSBB Network Service with QoS; and
- (b) HSBB Network Service without QoS.

5.26.3 **Implementation and Migration Plan:** The Access Provider shall, no later than 90 days from the date the Variation Determination comes into force, maintain and publish on a publicly accessible website a detailed up-to-date implementation plan that provides its procedures and timing for the HSBB Network Services that includes:

- (a) the implementation plan covering a total period of not less than five (5) years;
- (b) the migration from copper to fibre at all existing nodes by location;
- (c) the construction of new nodes by location;
- (d) notification processes to Customers and Access Seekers for such migration and the minimum notice periods to be provided; and
- (e) ordering and provisioning procedures for HSBB Network Services including the applicable terms and conditions.

The Access Provider shall manage the implementation plan in a non-discriminatory manner. This includes giving the same priority to Access Seekers who are similarly situated as it gives itself in the handling of the migration or orders for HSBB Network Services.

5.26.4 **Completion of work:** The Access Provider shall maintain and publish on a publicly accessible website an up-to-date list of locations where HSBB Network Services are available. The list shall be published within two (2) Business Days from the date of completion of the work specified at paragraphs 5.26.3 (a) or (b) at each location.

5.26.5 **Availability to Access Seeker:** The Implementation and Migration Plan specified in subsection 5.26.3 and the list of locations specified in subsection 5.26.4 shall be made available in paper or electronic form to:

- (a) an existing Access Seeker within five (5) Business Days from the date of inclusion of the premises in the Implementation and Migration Plan or any subsequent updates; or
- (b) any Access Seeker on request.

5.26.6 An “existing Access Seeker” in paragraph 5.26.5(a) is an Access Seeker who:

- (a) has entered into an Access Agreement with an Access Provider for the provision of Full Access Service, Line Sharing Service, Sub-loop Service, Bitstream Services (with and without Network Service) and/or Digital Subscriber Line Resale Service; and
- (b) is acquiring the Facilities and/or Services specified in paragraph 5.26.6(a) at premises that will be served by a HSBB Network Service (with or without QoS) within five (5) years or less.”;

(z) by substituting for subsection 6.2.4 the following subsection:

“6.2.4 **Existing agreements:** Parties to existing agreements executed prior to the Effective Date or the date the Variation Determination comes into force, whichever is applicable, must review such agreements to ensure compliance with this Standard. Such agreements should be amended according to the requirements of the Standard no later than 210 days after the Effective Date or after the date the Variation Determination comes into force, whichever is applicable, or by any other date as stipulated by the Commission.

If the Parties are unable to effect such amendments, the Parties shall first attempt to resolve the dispute in accordance with the Dispute Resolution Procedures. If the Parties to the disputes cannot or otherwise fail to reach an agreement, either Party may notify a dispute in accordance with Chapter 7 of Part V of the Act.”;

(aa) by substituting for subsection 6.2.6 the following subsection:

“6.2.6 **Timeline for Implementation:** Each Access Provider shall prepare, maintain and/or modify an ARD in relation to Facilities or Services on the Access List Determination no later than 90 days after the

Effective Date or after the date the Variation Determination comes into force, whichever is applicable, or by any other date as stipulated by the Commission.”;

- (bb) in subsection 6.5 of Annexure A, by substituting for the subsection the following subsection:

“6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.14.11 of the Standard. If the dispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate specified in subsection 5.14.15 of the Standard on the amount payable.”; and

- (cc) in subsection 6.6 of Annexure A, by substituting for the words “in accordance with clause 5.14.15.” the words “at the rate specified in subsection 5.14.15”.

### **Variation of paragraph 7**

4. The principal Determination is varied in paragraph 6 by substituting for the words “Determination No. 1 of 2003” the words “Determination No. 2 of 2003”.

### **Other provisions of principal Determination intact**

5. Save for the variations expressly provided in this Determination, all other provisions as contained in the principal Determination shall remain unchanged and remain in full force and effect.

### **Transitional and Savings**

6. Notwithstanding this Determination, all provisions as contained in the principal Determination shall remain in force for the purpose of and application to access agreements registered with the Commission prior to 2 February 2009.

Made: 5 January 2009



**DATUK DR. HALIM BIN SHAFIE**

*Chairman*

*Malaysian Communications and Multimedia Commission*