



REVIEW OF LICENCE FEE REBATES

A PUBLIC CONSULTATION PAPER

21 MARCH 2005

PREFACE

In this consultation paper, the Commission seeks to invite submission from interested parties on the issues raised in the discussion paper or any other matters of interest relevant to the subject. Written submissions, be it in hard copy or in electronic form, should be provided to the Commission before **5.00 p.m. on 21 April 2005**. Submissions should be addressed to:

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In the interest of fostering an informed and robust consultative process, the Commission may publish the comments received. Any commercially sensitive information should be provided under a separate cover clearly marked '**Confidential**'.

The Commission extends its appreciation to interested parties for their participation and for providing written submissions in this consultative process.

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BACKGROUND

1. The rebate on licence fee is provided for in the Communications and Multimedia (Licensing) Regulations 2000. The Licensing Regulations at Table B of the First Schedule stipulate that holders of Individual Licenses are required to pay the applicable annual licence fees. Both Table B and the definition of applicable annual licence fees stipulates that rebates on licence fees can be granted to Individual licence holders if they invest in industry development expenditure. It is made available to individual licensees with the primary objective of facilitating growth in the communications and multimedia industry. The rebate scheme identifies a number of industry development items which qualify for licence fee rebates, namely research and development (R&D), skills and training, minority investment in Small Medium Industries (SMI), Malaysia value added procurement from Malaysian SMI and local content production.
2. An individual licensee is required to pay an applicable annual licence fee amounting to 0.5% of its Gross Annual Turnover (GAT). With the rebates, a licensee may pay lesser applicable annual license fee. A licensee who qualifies for maximum rebates needs to pay a licensee fee of only 0.15% of its GAT or RM 50,000 (whichever is greater).
3. In December 2002, the Commission issued an Information paper on "Eligible Deductions for Individual Licence Fee Rebates". The paper explains further on the implementation of the rebates; its objectives, definitions, eligibility criteria and the application procedures.
4. Since the release of the Information Paper, the Commission has received numerous feedbacks from licensees and the communications and multimedia industry.
5. The Commission feels that it is timely to conduct a review of the licence fee rebate framework. The findings of this Consultation will thus be used as the basis to initiate the review.

ISSUES FOR CONSIDERATION

INDUSTRY DEVELOPMENT CATEGORIES

1. Currently, the industry development categories that are eligible for deduction in the calculation of applicable annual licence fees are stipulated in Table B, First Schedule of the Communications and Multimedia (Licensing) Regulations 2000 as follow:
 - a) Research and Development (R&D)
 - b) Skills and training (S&T)
 - c) Minority investment in Small and Medium Industries (MI-SMI)
 - d) Malaysian value added procurement from Malaysian SMIs (VA-SMI)
 - e) Local content and production (LCP)
2. The Commission has received proposals to enlarge the categories to include expenses for the Universal Service Provision (USP) contributions, sponsorship of local and international events such as the International Telecommunications Union (ITU), capital investments to improve Quality of Service (QOS), expansion of network coverage, bursaries provided to foundations and contributions towards self-regulation.
3. In considering the proposals we must ensure that, in principle, the expenses incurred are for the development of the industry and are consistent with the National Policy objectives and supports the country's economic development agenda. It must also be an activity that is not already required of the licensee such as contributions towards USP and ensuring QOS.
4. One of the functions of the Commission is to encourage and promote self-regulation in the industry. The Commission has successfully registered the Consumer Forum, Content Forum, Access Forum and the Technical Forum. The contributions of these registered industry forums towards self-regulation are well recognised. Allowing the expenses incurred for the Forum as eligible deduction for rebates would provide further incentive to the industry in achieving self-regulation.
5. The fixed line telephone growth has been on the decline since the year 2000 when it was overtaken by mobile cellular. However, its provision especially in the last mile is vital and strategic to the development of our national broadband plan. As an incentive to industry, the Commission may consider the capital expenditures on fixed line or wired roll-out including fiber to the home especially in greenfield areas as eligible deductions for rebates.
6. In 2002, the Commission developed an initiative called the Community Communications Development Programme (CCDP) to extend internet

usage to semi-rural areas. Under this programme, the Commission works with service providers to install community communications hubs known as Kedai.Kom to serve the communications needs of the community. The Commission recognises the programme as an important initiative towards bridging the digital divide. The Commission may consider other initiatives developed by the industry that would assist in achieving similar goal towards community development such as the CCDP.

7. The provision of scholarships to Malaysians may also be considered for rebates since it contributes to capacity building and development of the industry. However we may need to streamline the type of scholarships that benefits the industry and country.

MCMC preliminary view:

8. The list of ID categories for rebates may be expanded to include the following:
 - a) Expenditure towards self regulation i.e. the registered industry forum.
 - b) Capital investment to roll-out the last mile fixed network including fiber to the home.
 - c) Community development programmes such as the CCDP.
 - d) Scholarships.

Q1. The Commission invites your comments on its preliminary view. You may add further details on the expenses to be considered for the proposed categories.

Q2. The Commission also welcomes further proposals on the industry development categories.

THRESHOLD

9. The Licensing Regulations 2000 (First Schedule, Table B) sets out the methodology to determine the amount of eligible rebates on licence fees. The maximum rebate applicable is effectively 0.35 % of the GAT. The actual rebates eligible however is computed based on the approved industry development expenditures and its associated thresholds as in Table 1 below:

Table 1:

Industry Development Expenditure as % of GAT	% of maximum rebate entitlement
< 2.5 %	0 %
2.5 to < 6%	33%
6% to 15%	66%
> 15%	100%

10. The rationale for thresholds is to reflect the multiplier effect arising from the rebate incentive. However, the Commission has found that a majority of licensees fail to qualify due to the high thresholds.

MCMC preliminary view:

11. The Commission is considering to lower the minimum threshold to allow a fair possibility of success by applicants. A licensee who spends between 1% to 2.5% of its GAT on industry development would be eligible for a rebate of 10%. The lower threshold is considered in relation to the other criteria being reviewed in the rebate framework. However, the removal of the maximum cap of 0.35% is not recommended as it will have a serious impact on the licence fees.

Q3. The Commission welcomes your views and comments on the proposed minimum threshold and its corresponding percentage of rebate applicable.

Q4. The Commission also welcomes further proposals on the appropriate threshold levels.

DEFINITIONS AND ELIGIBILITY CRITERIA

12. The definitions and eligibility criteria for each ID item is described in the Information Paper. The feedback that the Commission has received so far indicates that they are restrictive and that their scope needs to be broadened.

Research and Development (R&D)

13. The definition and scope of R&D as outlined in the Information Paper is said to be telecommunications centric and should be broader based for greater applicability across different industries e.g. to include research on programme surveys conducted by broadcasters. However, in order to be considered such research should benefit the industry and the general public.
14. Most licensees do not conduct in-house R&D but may outsource its programme to the local universities.

Skills and Training (S&T)

15. Some licensees have proposed that S&T should include the cost of educational scholarships disbursed to employees as well as Malaysian citizens. Licensees have also requested for the scope of S&T to be expanded to include the following:
- a) training organised by the International Telecommunication Union (ITU) or the Asia-Pacific Telecommunity (APT);
 - b) computer based training or on-line training;
 - c) knowledge skills and soft skills training;
 - d) annual operating cost of training facilities/centers;
 - e) equipment training; and
 - f) accommodation, travel and allowances for overseas training.

Minority investment in SMI (MI-SMI)

16. To qualify for rebates, a licensee has to make an investment of between 20% to 50% in an SMI. The maximum stake held in an SMI should not be more than 50% of the share capital of the SMI. A few licensees have proposed to remove the minimum threshold of 20% that is set for the minority investment in order to provide further incentive to invest in SMIs.

Malaysian value added procurement from Malaysian SMI (VA-SMI)

17. The Commission has received proposals from local MSC status companies who develop and supply products (hardware and software) to telecommunications companies to be considered besides SMIs, as currently some do not qualify under the classification. Their inclusion would provide greater incentive to the telecommunication companies to support local vendors in the ICT industry.

Local content and production (LCP)

18. To qualify for eligible deductions under the LCP, a programme must fulfill the following criteria:

- a) a first release programme;
- b) a programme that fulfills the local content requirement (i.e. programme materials, Malaysian creative control and production);
- c) specific qualifying programmes which the Commission may publish from time to time (currently classified as Malaysian drama, Malaysian documentary and sketch comedy)

19. It was observed that some licensees have experienced difficulties in fulfilling the first release criteria as their accounting practice distributes the cost of a programme over multiple screenings. This amortization policy only allows broadcasters to claim 30% of the cost of production on its first release whilst 100% has been paid out.

20. The current definition on LCP also inhibits creativity in terms of story line development and growth in the film and broadcasting industry. Programmes which qualify for rebates should not be limited to only three categories i.e. drama, documentary and sketch comedy. It has been proposed that it should allow for other genres such as magazines, stand-up comedy, and children's drama as long as it is a Malaysian production.

21. A few licensees have proposed to expand the scope of LCP to encompass the broader aspects of network content development activities such as the internet based and on-line networks. However, the Commission considers the proposal unfavorable since they are classified under the exempt or class activities.

MCMC preliminary view:

22. As a matter of principle, expenses allowable for rebates in S&T are those incurred by the licensee and for its own employees only. As such, even though scholarship disbursed to non-employees may contribute towards national development it could not be considered under the S&T category.

However, it would be more appropriate to be included under the “Industry Development Category” discussed earlier.

23. Expanding the scope of S&T to include equipment training and annual operating cost of training centers would result in difficulties in implementation since there are no clear definitions and the accounting treatment of these expenditures may differ between companies. However, the Commission may consider allowing the related cost of travel and accommodation for overseas training, computer based/on-line training and training conducted by established institutions or organisations such as the ITU, APT, Asia-Pacific Broadcast Union (ABU) etc. For the latter, the Commission would establish a list of pre-approved training programmes/courses and would welcome detailed input from licensees.
24. To reflect the Commission’s support of the national policy on spurring SMI growth; we would consider providing further incentives to licensees to invest in SMIs by removing the 20% minimum threshold requirement.
25. The Commission takes note of the role played by Malaysian MSC ICT vendors in national economic development. In view of the contribution the Commission may consider broadening the scope of procurement to include the procurement of any locally manufactured products from non-SMI companies with at least 40% Malaysian content. The 40% threshold is retained in this case to be consistent with the requirement by AFTA (ASEAN Free Trade Area) for CEPT (Common External Preferential Tariff).
26. The relaxation on eligibility for LCP by not limiting it to specific programmes i.e. drama, comedy and sketch comedy is considered reasonable as it would enhance creativity in the local content industry. Other genres as long as it is a Malaysian production would be able to qualify.
27. The objective of having first release criteria is to encourage new content production. However, depending on the type of programmes and licence rights the broadcast industry generally adopts a stock amortization policy. The Commission may need to re-look at the first release criteria definition in view of the amortization policy for local programmes as practiced by broadcasters. The Commission welcomes further inputs from the industry.
28. The Commission considered the expansion of the scope of LCP to networked content development activities such as internet based and networks content as not being favourable as currently all of them are being classified under the exempted or class activities.

Q5. The Commission invites your comments on the definitions and eligibility criteria of the industry development items. Please provide detailed examples and information in your proposals.

WEIGHTAGE

29. The Licensing Regulations 2000 (First Schedule, Table B) gives each ID category a weightage as in Table 7 below:

Table 7:

Industry Development Category	Weightage
Research & Development	1
Skills & Training	1
Minority Investments in SMI	1.5
Malaysian value added procurement from Malaysian SMI	0.25
Local content and production	1

30. Some licensees have proposed a review of the weightage factor which they claim do not provide the right incentive for participation in development efforts in the strategic areas.

MCMC preliminary view:

31. The Commission may consider reviewing the weightage factor particularly for the Malaysian value added procurement from SMI category from the current weightage of 0.25 to 0.5 to support national agenda on SMI and entrepreneurship development initiatives.

Q6. The Commission invites your comments on the weightage factor and its impact on industry development.

APPLICATION PROCESS AND DOCUMENTARY EVIDENCE

32. The current rebate process is reported to be tedious, cumbersome and time consuming. The amount of supporting documentation, reports and signatories required are said to be voluminous. It puts a strain on resources to both the licensees and the Commission. It has been proposed that the process needs to be reviewed and simplified.

MCMC preliminary view:

33. The process needs to be reviewed and simplified. However, the Commission needs to balance between control and simplification. The process should provide the Commission with the avenue to check the accounts and verify that the expenditures are really made. One alternative is to introduce a self assessment mechanism on a standard compliance form to be verified by authorised personnel or the external auditor. The application has to be submitted together with a statutory declaration signed by the CEO. The Commission may however conduct random checks and request for additional support documents or records when necessary.

Q7. The Commission seeks your comments on the proposed method to improve the application process.

Q8. The Commission also welcomes further views on the subject matter.

GROSS ANNUAL TURNOVER (GAT)

34. Some licensees have requested for the exclusion of non-licensable activities and contribution towards the Universal Service Provision fund (USP) from GAT in the computation of applicable licence fee and licence fee rebates. They commented that the requirement for non-licensable activities to be disclosed in the audited account is too rigid. Since the accounts are for shareholders and the public, disclosing such information in the financial statement may not be appropriate. As an alternative it was proposed that the Commission accepts attachments certified by auditors detailing non-licensable revenues.

MCMC preliminary view:

35. The Commission may consider excluding revenues from non-licensable activities from GAT if they are presented or noted in the annual audited financial accounts of the licensees. It is not sufficient for licensees to provide attachments detailing revenues from non-licensable activities even if they are to be certified by the auditors as GAT is specifically defined by the Malaysian Standards Accounting Board.

Q9. The Commission invites your comments on its preliminary view.