



**MALAYSIAN COMMUNICATIONS AND
MULTIMEDIA COMMISSION**

**RECORD KEEPING RULES FOR THE
COMMUNICATIONS AND MULTIMEDIA SECTOR**

A REPORT ON THE PUBLIC CONSULTATION PAPER

January 2004

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SECTION 1 - SUMMARY

1.1 Introduction

The purpose of this paper is to present a summary of the key comments received from the stakeholders who responded to the Public Consultation Paper on Record Keeping Rules for the Communications and Multimedia Sector, the position of the Malaysian Communications and Multimedia Commission (MCMC) and to outline the steps that will be taken in furtherance of the record keeping rules.

1.2 Public Consultation

1.2.1 The consultation period ran from 14 August 2003 (publication of public consultation paper on MCMC website) to 25 September 2003 (last date of submission for licensees), i.e. 43 days. Two workshops were held viz 10 September for NFPs, NSPs and ASPs and 11 September 2003 for CASPs.

1.2.2 9 written submissions were received. Of these 9, 8 were from licensees and 1 was from a non-licensee. The submissions were from:

- i. Telekom Malaysia Group (Telekom Malaysia Berhad, Celcom Malaysia Berhad and TMNet Sdn Bhd hereinafter collectively referred to as Telekom Malaysia)
- ii. Maxis Communications Bhd (on behalf of all subsidiaries that hold licences, apparatus assignments or spectrum assignments)
- iii. DiGi Telecommunications Sdn Bhd
- iv. TIME dotCom Berhad
- v. Swiftnet (M) Sdn Bhd
- vi. J & C Pacific Sdn Bhd
- vii. Measat Broadcast Network Systems Sdn Bhd
- viii. Maestra Broadcast Sdn Bhd
- ix. Sistem Televisyen Malaysia Berhad

1.2.3 MCMC would like to thank the abovementioned as well as those who attended the workshops for their participation in this consultative process.

1.3 Structure of the Report

The rest of the Report is structured as follows:

Section 2 delves into the background of the Public Consultation Paper

Section 3 summarises the key comments of the respondents followed immediately by MCMC's stand and

Section 4 sets out the next steps

SECTION 2 - BACKGROUND

2.1 The Minister of Energy, Communications and Multimedia (Honorable Minister) had proposed to make record-keeping rules (RKR) in accordance with Section

268 of the Communications and Multimedia Act 1998 (CMA). This would require a set of records to be kept by holders of licences issued by MCMC by virtue of Part IV of the CMA. It also extends to any person holding a spectrum, apparatus or class assignment issued under Part VII Chapter 1 of the CMA.

2.2 The MCMC published a Public Consultation Paper on 14 August 2003. In that paper the intent of the Honorable Minister to put in place RKR for the industry was made clear and the paper explained the need for those rules. The paper went on to identify 6 issues of immediate concern. In respect of these issues, MCMC stated their case as the regulator and sought the points of view of the licensees.

2.3 These issues are:

2.3.1 Development and amendment of RKR

Licensees were informed of the procedure that will be followed in all future revisions to the RKR.

2.3.2 Stock data

Licensees were informed that it will be necessary to rework existing customer bases to the form specified by the RKR. However, it is envisaged that licensees need not revert to their subscribers to obtain the additional data required by the RKR.

2.3.3 Implementation schedule

Licensees were informed of the proposed date that individual records will come into force.

2.3.4 Format of records and delivery

Licensees were informed that an online delivery system is to be aimed for ultimately, and were asked for their feedback.

2.3.5 Regularity of submission

Licensees were informed of the proposed frequency of submissions to MCMC.

2.3.6 Length of retention of records

Licensees were informed of the proposed retention period for records kept under the RKR.

2.4 MCMC also expressly stated that the issues identified above are not intended to limit comment on other issues but to stimulate discussion on other issues that the licensees may consider relevant to the development of RKR.

2.5 Aside from the issues identified above, feedback was also invited from licensees on the subsidiary legislation which includes a schedule of some 700 generic records that they are to keep. The subsidiary legislation was presented to the licensees and their comments, suggestions and opinion were sought on the ramifications of the subsidiary legislation.

2.6 In respect of the records to be kept, the licensees' views were invited with particular regard to

2.6.1 difficulty in recording

2.6.2 confidentiality

2.6.3 other relevant remarks

SECTION 3 – SUMMARY OF KEY COMMENTS

3.1 This section highlights the key comments raised in the written submissions as well as in the workshops. It also details the stand of MCMC following internal deliberations (italicized). The points raised may be classified broadly into 4 viz

- Justification
- Scope and coverage
- Confidentiality
- Penalty

3.1.1 Justification

Telekom Malaysia, in general felt that the proposed RKR regime is unreasonable and impractical and urged MCMC to reconsider. In addition, they hold the view that with an increasingly competitive environment there should be less not more regulation. It was also of the opinion that the proposed regime cannot be justified on the basis of the CMA policy objectives and that of the ten objectives, it relates to only one and even that, only indirectly. It was generally felt that the RKR need further careful deliberation as significant investments in time, manpower, hardware and software are involved.

MCMC takes note of the view points expressed by the licensees.

However, it holds the opinion that the proposed RKR regime as it stands

is neither unreasonable nor impractical as claimed. It is willing to enter into further discussion with licensees on ways and means of reworking the customer base as well as consider views from industry on timelines for a smooth and orderly implementation of the RKR. It is also willing to meet and discuss with licensees on the matter of templates, guidelines and a secure online system.

In so far as an increasingly competitive environment is concerned the regulator will have to ensure that no licensee engages in anticompetitive practice. The means to verify this has to be made available and in this context in the form of RKR. At the same time, to ensure level playing field conditions, transparency and to gauge the growth of the C&M sector, a monitoring mechanism is required. The proposed RKR regime is to facilitate the role of MCMC in promoting self regulation rather than advocating more regulation.

The MCMC is always mindful of the 10 national objectives. It refutes the claim that the proposed regime cannot be justified on the basis of the policy objectives. This is because the MCMC is organised so that it functions in part and in whole to realise all of the 10 objectives. The proposed regime is a result of extensive deliberations within the internal organisation of MCMC and was based on past performance of the licensees in supplying data as well as projections of future data needs in line with the MCMC's declared goal of regulating effectively. Licensees must also realise that MCMC as the regulator has always been seen as the source of all data and statistics concerning not only communications

and multimedia (C&M) but also ICT for input into national as well as regional planning, economic as well as social. In fulfilling this it has to require licensees to keep records which do not always tie in with licensees' perception of necessary regulatory record keeping. RKR's were made pursuant to Section 268 of the Act itself and it shares the same spirit in which the Act was based.

The MCMC agrees that RKR's need careful deliberation as significant investment in time, manpower, hardware and software are involved. The MCMC reiterates that it is willing to enter into further discussion with licensees on ways and means of reworking the customer base as well as consider views from industry on timelines for a smooth and orderly implementation of the RKR's. It is also willing to meet and discuss with licensees on the matter of definitions, guidelines, templates and a secure online system.

3.1.2 Scope and Coverage

It has been contended that MCMC's proposal extended beyond common international industry practice and that in other jurisdictions, specific financial and operating information of the scope and depth as required by the proposed RKR regime provided by operators to the regulatory authority is on an "as required" basis.

Further, licensees suggested that incremental reporting be practised for records that are not dynamic and that the scope of the recording required does not extend to forecast and past data. Non-licensees in particular Measat Broadcast Network Systems Sdn Bhd (MBNS) sought

confirmation from the MCMC as to the applicability of the RKR on MBNS, given that MBNS has not been issued new licenses under the CMA.

MCMC would like to stress that the proposed regime is, in part, based on past performance of the licensees in supplying data on an “as required” basis. Licensees have been deficient in meeting data requests in the past, on an “as required” basis. They have often cited difficulty or inavailability of records and this has to an extent affected special studies in terms of depth and comprehensiveness of data, the ability to perform analysis and to form firm conclusions. It is precisely for this reason that RKR are required.

The idea of incremental reporting will be studied further and if it meets monitoring needs will be practised.

Licensees will not be required to provide forecast data under the RKR and the RKR will not have retrospective effect.

Regarding non-licensees in the industry Section 268 allows for ‘persons’ to be covered by RKR. This would mean that, MBNS could be brought into the fold.

3.1.3 Confidentiality

All licensees voiced their concerns about confidentiality, in particular information which could cause competitive damage. It has also been suggested that if data were to be released it should be done only on an aggregate basis and that only topline data be published.

Telekom Malaysia believes that it may be in breach of other laws to collect and disseminate information on the age and gender of customers and that the collection cost relating to such questions is non-trivial.

MCMC realizes the heaviness of the confidentiality issue. However, it feels that licensees should not be unduly concerned about the issue of confidentiality. MCMC has a good track record in maintaining confidentiality. All members of the commission, its committees, employees and agents or any person attending any meeting of the commission or its committees whether during the tenure of his office or during his employment or thereafter are bound by an obligation of secrecy provided for by Section 52 of the Malaysian Communications and Multimedia Commission Act. This section provides for a fine not exceeding RM10,000 (Ringgit Malaysia : Ten Thousand only) or to a jail term not exceeding 1 (one) month or to both upon conviction. MCMC's Terms and Conditions of Service for Executives also provides for termination of service of an officer guilty of disclosing confidential matters.

Pertaining to the release and publication of data, MCMC agrees that one way to preserve confidentiality would be to go on an aggregate basis.

Telekom Malaysia has misread our intentions. Licensees will not be required to disseminate age and gender of individual customers. Further, licensees will not be required to canvass the required data from existing subscribers. MCMC is willing to enter into discussion with licensees to explore ways and means of reworking existing customer bases so that

statistics based on gender and age groups may be derived. One way would be to look into new IC numbers and addresses and postcodes of subscribers to glean the necessary information with the help of other agencies. Care will be taken in this process to ensure that complete customer records are not transmitted in the interest of confidentiality.

3.1.4 Penalty for Non-Compliance

Licenseses are of the opinion that the penalty for non-compliance i.e. a fine not exceeding RM100,000 (Ringgit Malaysia : One Hundred Thousand only) and/or imprisonment of up to 6 months is too harsh. It feels that the penalty should only be financial. They also highlighted restrictions by KLSE reporting requirements especially that of a financial nature, license condition pertaining to customer confidentiality, terms and conditions of service protecting confidentiality of customer information, Data Protection bill and General Consumer Code. They requested that MCMC liaise with AG's chambers in determining ramifications.

MCMC, on the other hand believes that the penalty is not too harsh and will study this to provide for a further fine not exceeding one thousand ringgit for each day after conviction during which the offence continues. Custodial sentence stays. It will also study the KLSE reporting requirements especially that of a financial nature.

3.2 Various other questions were raised in the workshops as well as written submissions that were not highlighted above. These relate, in the main, to operational issues. These had been duly noted and will be given due

consideration by MCMC when formulating the definitions, guidelines and templates to facilitate a smooth and orderly implementation of the RKR as well as when determining the effective dates of each RKR.

SECTION 4 – NEXT STEPS

- 4.1 From the written submissions and from the workshops it may be seen that the participants harboured concerns about
 - 4.1.1 the scope and depth of the data required
 - 4.1.2 difficulty in recording
 - 4.1.3 confidentiality
 - 4.1.4 the time and costs involved in setting up systems to extract the required records
 - 4.1.5 the time and costs incurred in training and staffing in respect of systems above
 - 4.1.6 proposed timeline
 - 4.1.7 conflict with KLSE listing requirements
 - 4.1.8 security in an online mode of access/delivery
 - 4.1.9 the need to rework their existing databases

- 4.2 View points expressed indicated that the licensees are not yet ready to embrace the RKR that MCMC had proposed. A licensee has expressed a desire to meet and work with MCMC over RKR and another has sent out feelers if MCMC's officers would be kind enough to attend their internal workshops to be held to

apportion responsibilities in meeting the RKR. Left alone to their own devices they will not be able to comply with the proposed RKR regime as it stands.

4.3 Against this backdrop, MCMC feels that the targeted gazettal date (end 2003) is not achievable and has decided as follows:

4.3.1 Ready the RKR for gazettal soonest possible but to include only those records that are already being required for reporting. This serves to formalise those records within the RKR fold.

4.3.2 Form a working group (WG) with members drawn from those present at the workshops so as to be representative of responsive members of the industry. The WG will, under the stewardship and direction of MCMC,

4.3.2.1 take stock and review those records already being reported as mentioned in 4.3.1 in terms of definitions, guidelines, timelines and templates.

4.3.2.2 go through the remainder of the items, in continuous consultation, studying and providing feedback on guidelines and reporting templates put forth by the MCMC as well as effective dates for implementation. This in effect staggers implementation of the RKR.

4.3.2.3 examine the structure of existing customer databases and brainstorm on ways of reworking the existing customer

bases without reverting back to customers to elicit the required information. This may require working with other parties.

4.3.2.4 look into possible conflict with KLSE listing requirements as well as other statutory obligations vis-à-vis Section 271 of the CMA.

4.3.2.5 consult on the confidentiality and security issues brought up during the workshops.

4.3.2.6 consult on how the data might be reformulated to be of use to industry players themselves.

4.3.2.7 consult on the secure online access system that will be the apex of a genuine “state-of-art” RKR system.