
8. THE MALAYSIAN MEDIA INDUSTRY

The following information has been extracted from various Government and publicly available documents. These includes the Commission website, ZenithOptimedia (Television in Asia Pacific to 2010, April 2002 and Advertising Expenditure Forecasts, July 2002 and December 2002), Informa Telecoms and Media Group (Asia Pacific Television, December 2002 and AsiaCom, March 2003) and NMR (Media Index Q2, 2002, Media Research, September 2002), which have not been prepared or independently verified by the Company or any of their affiliates or advisers.

Television

ASTRO believes that Malaysia had approximately 4.8 million television households as at 31 July 2003. According to NMR, for the month of July 2003, individuals aged 15 and above watch, on average, 153 minutes of television daily while individuals over 50 typically watch on average 174 minutes per day. However, current viewing levels are still relatively low in contrast to international standards. For example, in Japan average daily viewing is 208 minutes and in Taiwan 210 minutes.

There are currently five television broadcasters in Malaysia:

- RTM, the Government-owned broadcaster that operates TV1 and TV2;
- TV3, ntv7 and Channel 9 the private, advertising-supported free-to-air terrestrial channels; and
- ASTRO digital satellite platform, currently the only multi-channel subscription television operator.

Free-to-air Television Services

Analogue terrestrial television channels are broadcast through a network of ultra-high frequency radio wave transmitters and are received by connecting a standard television set to an aerial located within the range of a transmitter. These free-to-air channels are defined as broadcasts that can be viewed without charge and include, in Malaysia, TV1, TV2, TV3, ntv7 and Channel 9. Metrovision Sdn Bhd is also a licence holder for free-to-air television services. Metrovision Sdn Bhd, which ceased broadcasting in November 1999, is planning to relaunch its service Channel 8. These channels are financed principally through revenues from selling advertising airtime. Free-to-air stations can be carried in Malaysia by a licensed multi-channel operator and transmitted through their own platform to subscribers.

RTM is currently Government-owned, but recent news reports suggest that it could be either fully or partially privatised in the future. RTM has recently begun to re-focus its programming away from general entertainment towards education content and infotainment, with an emphasis on locally produced programming.

TV3 was launched by Sistem Televisyen Malaysia Berhad ("STM") in June 1984. The channel is the most popular station in Malaysia with a market share of 52.3 per cent. of the television advertising market as at 31 July 2003 according to NMR. TV3's market share is attributable to their strong local programming content which is popular with the television viewership in Malaysia.

Launched in 1998 and operated by Natseven TV Sdn Bhd, ntv7 has achieved rapid success with a mixture of local and imported programming aimed at the young urban audience and capturing a high proportion of the free-to-air advertising share relative to its viewing share.

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Channel 9, which was launched on 9 September 2003, is owned and operated by Medan Mas Sdn Bhd. The channel targets young urban audiences with a majority of the programming content sourced from outside of Malaysia.

Multi-channel Subscription Television

Multi-channel subscription television services represent all television services where a household must contract as a subscriber and pay a regular subscription fee to obtain the service. Typically, a subscriber pays an initial fee to be connected to the service and install the receiving equipment, and thereafter pays a monthly charge to continue accessing the service.

A range of technologies can be adopted to provide multi-channel service. The most common in use around the world are:

- **DTH satellite** where the broadcast feed is transmitted to a geostationary satellite and transmitted back down across the area containing the homes of subscribers. A small dish (typically 60 centimetres in diameter) at each subscriber's home picks up the signal. The dish is connected to a set-top box that decodes the signal and converts it into images, sound and information. Digital compression and encoding of the signals means that digital DTH is capable of broadcasting an increased number of channels within the existing Ku-band spectrum as compared to analogue DTH satellite;
- **Cable** uses optical fibre and/or coaxial cables that pass subscribers' homes to deliver the signals around a local area. The local area feed is then split and fed into a set-top box in each home where the signal is decoded. Digital compression and encoding of the signals means that digital cable is capable of broadcasting an increased number of channels within the existing cable spectrum as compared to analogue cable;
- **MMDS** uses a short range wireless transmission from a local terrestrial distribution point to deliver the signals to set-top boxes within the subscriber's home. Digital MMDS can offer additional capacity and improved reception quality and reach as compared to analogue MMDS;
- **DSL** is a technology capable of offering video and broadband Internet services across a conventional fixed telephone line. This technology requires signal modification at the exchange and dedicated terminating equipment is needed in the subscriber's home. Most DSL technologies cannot be used when the distance between the exchange and a subscribers home is greater than six kilometres; and
- **DTT** is a digital technology that utilises the existing UHF broadcast spectrum of analogue terrestrial television. Compression and encoding of broadcast signals means that DTT is capable of broadcasting an increased number of channels within the existing spectrum as compared to analogue terrestrial television.

ASTRO is currently the only multi-channel subscription television service operating in Malaysia. ASTRO launched its DTH satellite service in September 1996, and has a 25-year broadcasting licence, with exclusivity for DTH services until 2017 and on a non-exclusive basis until 2022. At launch, ASTRO faced competition from MegaTV, a subscription television service using the MMDS platform operated by Cableview Services Sdn Bhd. The MegaTV service was launched at the end of 1995 but discontinued operations in September 2001. Maxis Broadband Sdn Bhd also offered multi-channel television service to its subscribers. However, Maxis Broadband Sdn Bhd and MBNS have agreed to discontinue the distribution of ASTRO service through Maxis Broadband Sdn Bhd's cable network and Maxis Broadband Sdn Bhd is in the process of migrating its customers to the ASTRO satellite platform and the customer relationships will be taken over by MBNS.

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Two other subscription television licences have been issued in Malaysia, but the licence holders, Grafimatix Sdn Bhd and Network Guidance Sdn Bhd, have not commenced services. Cable television services have been slow to develop in Malaysia due to the lack of infrastructure in most of Malaysia and the high cost of building out this infrastructure.

DSL penetration is currently limited within Malaysia. Telekom Malaysia's Streamyx is Malaysia's largest residential DSL operation with approximately 35,000 subscribers according to Telekom Malaysia.

The Commission has issued a discussion paper on the potential plans for DTT exploitation in Malaysia. The proposed rollout dates for DTT are trial transmission in 2004 and commencement of commercial broadcast in 2005. In order to minimise disruption to existing service and to ensure that the viewers are prepared for the new digital service, existing free-to-air, terrestrial broadcasters are expected to simulcast their programmes both in analogue and digital pending the phasing out of analogue transmission. The Commission has proposed that analogue transmission be phased out starting in 2009.

Radio

Malaysia has a radio industry with more than 31 national and regional radio stations, according to NMR, as at 31 July 2003. NMR Radio Listenership Survey, Sweep 1 April 2003 found that cumulatively, these stations had a weekly reach of approximately 12.4 million listeners, or about 89.8 per cent. of all individuals in Peninsular Malaysia aged 12 and above. According to NMR, total radio advertising spending in Malaysia amounted to RM153 million for the 12 months ended 31 July 2003 or 4.4 per cent. of Malaysia's total estimated advertising spending of RM3.5 billion. Radio as an advertising medium in Malaysia has grown over the last five years, with both total expenditure and radio's share of total advertising sales increasing.

The table below identifies the four major operators in the radio sector. The market is led by ASTRO's radio group, operated through AMP, which captured approximately 43.0 per cent. of average quarter hour (NMR Radio Listenership Survey, Sweep 1 April 2003) and 67.7 per cent. of the total radio advertising market in the 12 months ended 31 July 2003, according to NMR.

Radio Broadcaster	Stations	Share of listeners	Share of advertising ⁽¹⁾
		(in percentage)	
ASTRO's AMP	Era, MY, hitz.fm, Mix FM, Light&Easy	43	68
RTM	Radio 1, 4, 5, 6, Radio Muzik plus 13 regional stations	31	9
Radio Rediffusion	Red 104.9, 988	Included in Others	15
Radio Lebuhraya	THR	11	9
Others		15	Not available

*Source: NMR Radio Listenership Survey Sweep 1, April 2003
 NMR 12 months to 31 July 2003*

Note:

(1) 100 per cent. based on total of AMP, RTM, Radio Rediffusion and Radio Lebuhraya.

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Magazine Publications

According to NMR, for the year ended 31 March 2003, Malaysia's leading 28 magazines had a cumulative reach of approximately 24.3 per cent. of the Malaysian population aged 15 years and older. The magazine sector accounted for 4.6 per cent. of total advertising expenditure in that period. The leading titles include Mastika, Cleo, Female and Fu Ni. The highest circulating magazine in Malaysia is the ASTRO Guide, a publication that is currently distributed without charge to all subscribers.

Film Production

Local film production is relatively small, with 10 films released in 2002. Malaysian cinema is dominated by imported American movies. The leading production houses include Tayangan Unggul, a subsidiary of ASTRO Shaw, and competitors Grand Brilliance Sdn Bhd and Skop Production. The film sector faces strong competition from the availability of pirated VCDs and DVDs within Malaysia.

Related Technologies

ASTRO also operates within other industries that use multi-media technologies. These include both the Internet and mobile telephony.

Internet

The number of Internet users within Malaysia has grown rapidly in recent years. ASTRO expects the number of ISPs and websites in Malaysia to increase with further competition helping to drive the uptake of Internet access. The Commission estimates that as at 30 June 2003 there were 2.7 million dial-up Internet subscribers in Malaysia, up from 64,000 at the end of 1996. There are approximately 53,594 subscribers to high speed broadband connections at present. Current product offerings provide Internet access with speeds of up to two Mbps.

Mobile Telecommunications

Mobile telecommunication services were first introduced in Malaysia in 1985. There are currently three mobile operators, DiGi.com Berhad, Maxis (which acquired TIMECel Sdn Bhd) and Telekom Malaysia (which acquired Celcom (Malaysia) Berhad).

The use of mobile phones has been growing very rapidly in recent years. As at 30 June 2003, approximately 39.6 per cent. of Malaysians were mobile phone subscribers according to the Commission. According to Informa Telecoms and Media Group, by the end of 2002, around six per cent. of mobile revenues were accounted for by data services such as text messaging, an increase from two per cent. as at 31 December 2001.

The Commission recently allocated spectrum for third generation ("3G") mobile networks, a new standard in mobile telephony that supports data services at higher speeds than General Packet Radio Service ("GPRS") enabling further services such as video calling and location based services. The spectrum was awarded to Telekom Malaysia and UMTS, a wholly owned subsidiary of Maxis.

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Advertising Market

Given that advertising is a key revenue stream for much of the media industry, the financial health of the media industry is closely related to the performance of the advertising market. Malaysia has a strong and diverse advertising market across the full range of media, comparable to that found in other developed nations. In 2002, according to NMR, the advertising market was estimated at RM3.4 billion, around 0.97 per cent. of GDP. This rate of advertising spending is in line with countries such as Japan at 0.87 per cent., Singapore at 0.96 per cent., and the U.K. at 0.96 per cent. of GDP.

The following table provides a breakdown of advertising market revenue in Malaysia since 1999 and reflects the predominance of newspaper advertising. The figures below do not include revenues from multi-channel subscription television:

Media	Year ended 31 January					Share in 2003 %	Six months ended 31 July 2003 RM (in millions)
	2000	2001	2002	2003			
	RM	RM	RM	RM			
	<----- (in millions) ----->						
Television	786	931	872	930	27	435	
Radio	87	104	120	148	4	69	
Newspaper	1,502	1,876	1,959	2,204	63	1,088	
Magazine	106	135	181	158	5	68	
Other ¹	43	43	40	39	1	22	
Total	2,524	3,089	3,172	3,479	100	1,682	

Source: NMR

Note:

¹ Other refers to cinema and outdoor advertising

The bulk of advertising sales in Malaysia was spent within the newspaper sector, approximately 63 per cent. in financial year ended 31 January 2003 according to NMR. This level of expenditure is double the share found in many other markets, for example, reaching approximately 15 per cent. in the Philippines and 26 per cent. in Thailand. This is due in part to the existing restrictions on television advertising.

The television advertising market share is relatively small in Malaysia, accounting for approximately 27 per cent. of total advertising in financial year ended 31 January 2003 according to NMR. This compares to around 47 per cent. in Japan and 63 per cent. in Indonesia. The proportion of television advertising has also been declining over time from a high of approximately 44 per cent. in 1990. This is due to the highly competitive market for television advertising revenue, the restriction placed on television by the Government requiring advertisements to be locally produced, the prohibition on alcohol advertising in Malaysia, limited programming for certain genres by the free-to-air broadcasters and the relatively low television viewing time by international comparison.

A further trend within the advertising market has been the relatively strong growth within the radio sector. The radio advertising market developed rapidly throughout the 1990s doubling its share of total advertising from two per cent. in 1991 to four per cent. in 2002, according to ZenithOptimedia. This has been led by improvements in coverage and in the number of commercial radio stations.

9. REGULATION OF BROADCASTING IN MALAYSIA

Regulatory Regime

The Government introduced a new regulatory regime in November 1998 to govern the telecommunications, broadcasting and Internet industries (collectively referred to as the communications and multi-media industry). The CMA was enacted to promote the convergence of the traditional telecommunications, broadcasting and Internet industries and to promote greater transparency and clarity as well as industry self-regulation.

Regulator

The communications and multi-media industry is regulated by the Minister and the Commission which assumed responsibility on 1 April 1999. Previously, the telecommunications industry was regulated by Jabatan Telekom Malaysia, while the broadcasting industry was regulated by the Ministry of Information. The Commission was established under the Malaysian Communications & Multimedia Commission Act 1998 which came into force on 1 November 1998.

The Commission's functions include:

- Advising the Minister on all matters concerning the national policy objectives for communications and multi-media activities;
- Implementing and enforcing the provisions of the communications and multi-media laws;
- Considering and recommending reforms to the communications and multi-media laws;
- Supervising and monitoring communications and multi-media activities;
- Encouraging and promoting the development of the communications and multi-media industry, including in the area of research and training; and
- Encouraging and promoting self-regulation in the communications and multi-media industry.

Under the CMA, the Commission has the power to issue licences for the use of spectrum, issue directions to licensees, to make determinations, to hold public inquiries and to conduct investigations. The Commission is responsible for policy implementation while the Minister is responsible for policy making in respect of the communications and multi-media industry. The Minister is empowered to issue licences to network and service providers and to issue directions to the Commission on the exercise of its powers and performance of its functions under the CMA.

Legislation

The CMA and its subsidiary legislation are the principal legislation governing the communications and multi-media industry. The CMA (except certain sections) came into force on 1 April 1999 replacing the Telecommunications Act 1950 and the Broadcasting Act 1988.

The CMA sets forth the national policy objectives for the communications and multi-media industry. These include but are not limited to:

- Establishing Malaysia as a major global centre and hub for communications and multi-media information and content services;
- Promoting a high level of consumer confidence in service delivery from the industry;

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- Growing and nurturing local information resources and cultural representation that facilitate the national identity and global diversity;
- Ensuring an equitable provision of affordable services over ubiquitous national infrastructure;
- Facilitating the efficient allocation of resources; and
- Promoting the development of capabilities and skills within Malaysia's convergence industries.

Subsidiary legislation made under the CMA include:

- Communications and Multimedia (Spectrum) Regulations 2000, which regulate the allocation of frequency spectrum and the use of radiocommunications equipment;
- Licensing Regulations, which regulate the procedures for the granting of licences under the CMA; and
- Communications and Multimedia (Technical Standards) Regulations 2000, which regulate the certification of communications equipment.

Licensing Regime

Under the CMA, the ownership or provision of any network facilities, the provision of any network services, the provision of any application services, or the provision of any content applications services requires a licence. The regulatory framework established by the CMA and the Licensing Regulations provide for four main categories of licences as follows:

- **Network facilities provider ("NFP") licence:**
For the ownership and provision of physical infrastructure used to provide communications services (for example, fixed links and radiocommunication transmitters and links);
- **NSP licence:**
For the provision of communications services over network facilities (for example, cellular mobile services and broadcasting distribution services);
- **Applications services provider licence:**
For the provision of application services by means of network services (for example, public switched telephone network telephony, public cellular telephony and IP telephony); and
- **Content applications services provider licence:**
For the provision of content applications services (for example, satellite broadcasting and terrestrial free-to-air television).

Within each of the above four categories, the CMA provides for the issuance of individual and class licences.

Individual Licences

The CMA and the Licensing Regulations do not impose any limit on the number of licences that can be issued, however, the Minister has indicated via a Ministerial Direction on General Licensing Policies dated 23 March 2001 that no additional individual content applications service provider licences will be issued to reflect the current policy of limiting new entrants.

9. REGULATION OF BROADCASTING IN MALAYSIA *(Cont'd)*

Licence conditions consist of standard and special conditions which vary depending on the category of licences. The standard licence conditions applicable to individual licences generally include the following:

- The licensee shall be a company that is incorporated in Malaysia;
- The shareholding of the licensee shall comply with relevant Malaysia foreign investment restrictions;
- The licensee shall notify the Minister of any changes of shareholdings which are required to be notified to the relevant authority;
- The licensee shall notify the Minister of any joint ventures with other licensees into which the licensee enters;
- The licensee shall comply with the provisions of the CMA;
- The licensee shall comply with the provisions of any subsidiary legislation made, or other instruments, guidelines or regulatory policies issued, under the CMA; and
- The licensee shall indemnify the Minister and the Commission against any claims or proceedings arising from any breaches or failings on the part of the licensee.

The Minister may declare special licence conditions applicable to individual licences which may include but are not limited to the following:

- Term of the licence;
- Licence fees;
- Licensed area;
- Specific undertakings with respect to levels of investments, specific activities and operations; and
- Specific rights and privileges agreed between the licensee and the government which are conditional upon the undertakings entered into by the licensee.

Under the CMA, the Minister is vested with the power to make a declaration at any time:

- To modify or vary the special or additional conditions (as distinguished from the standard conditions) of an individual licence;
- To revoke the special or additional conditions of an individual licence; or
- To impose further special or additional conditions on an individual licence.

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The term of an individual licence (except an individual applications service provider licence) granted under the CMA is generally 10 years. However, where a licence granted under the Telecommunications Act, 1950 or the Broadcasting Act, 1988 for a similar activity or service which has a residual licence term exceeding 10 years from the date an individual licence is granted, the validity period of that individual licence is equivalent to the residual term of the licence granted under the Telecommunications Act, 1950 or the Broadcasting Act, 1988. An individual licence may be suspended or cancelled by the Minister if:

- The licensee fails to pay any amount required under the CMA or the licence;
- The licensee fails to comply with the provisions of the CMA or the conditions of the individual licence;
- The licensee contravenes the provisions of any other written law relevant to the communications and multi-media industry;
- The licensee fails to comply with any instrument issued by the Minister or the Commission; or
- The suspension or cancellation is in the public interest.

Licences Held by ASTRO

Background

Although the Telecommunications Act 1950 and the Broadcasting Act 1988 (“Acts”) have been repealed by the CMA, the licences issued under these Acts continue to have effect under the CMA provided that those licences are registered by the Commission within a specified period. Licensees under the Telecommunications Act 1950 and the Broadcasting Act 1988 are encouraged to migrate to new licences under the CMA and may apply for individual licences under the CMA in substitution of the old licences. There is no statutory limitation period on migration. MBNS has duly registered its licences issued under the Telecommunications Act 1950 and the Broadcasting Act 1988 and has also indicated its intention to migrate to the new regulatory regime on the basis that MBNS will be in a “no worse off” position vis-à-vis its current position under the existing licences. MBNS has sought the Government’s assurances that all licence conditions are preserved, in particular with regard to DTH satellite broadcast exclusivity. Pending the receipt of these assurances from the Government, MBNS will continue to operate on its existing licences issued under these Acts as a registered licensee under the CMA. As at the date of this document, no application for new licences under the CMA has been made by ASTRO to replace the existing broadcast and telecommunications licences.

MEASAT Radio and Maestra Broadcast have migrated to new licences under the CMA.

Licences

MBNS currently holds a broadcast licence originally issued by the Minister of Information under the Broadcasting Act 1988 that contains the following principal terms:

- Valid for a term of twenty-five years commencing on 1 March 1997 and expiring 28 February 2022;
- The right to offer DTH broadcast satellite services on an exclusive basis for a term of twenty years commencing on 1 March 1997, and thereafter on a non-exclusive basis for the duration of the broadcasting licence or any extended term;
- The right to broadcast an unlimited number of channels;
- The non-exclusive right to broadcast pay television and other interactive services;

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- The non-exclusive right to broadcast through cable, terrestrial or other means;
- The right to assign the licence to related corporations;
- Approval to carry commercial advertisements up to an average of 10 minutes per broadcast hour per channel over a twenty-four hour period;
- Payment by MBNS of fees of RM200,000 for the first calendar year of the licence, and for each year thereafter a fee to be determined by the Minister. Payment was made by MBNS of licence fees amounting to RM200,000 per annum for the period 1 January 1998 to 31 December 2001 to the Ministry of Information and RM600,000 for the period of 1 January 1999 to 31 December 2001 to the Commission. However, as the Minister has yet to make a final determination on the licence fee applicable under MBNS' broadcast licence from the period 1 January 1999 onwards, the Commission has reserved the right to charge MBNS a royalty based licence fee for the applicable period. The licence fee is expected to be a maximum of 0.5 per cent. of gross turnover subject to applicable rebates which is the current statutory fee imposed on licensed broadcasters under the CMA;
- The Minister may at any time in his discretion take action to vary, modify, revoke or impose additional conditions on that licence. MBNS must be given at least 14 days notice of the Minister's intention to vary, modify, revoke or impose new conditions and MBNS has the right to appeal such action; and
- Subject to a 30-day cure period after notice, the licence can be revoked or suspended for specified reasons. As of the date of this document, no such notice has been received by MBNS.

The terms of the licence also permit MBNS to offer pay-per-view, video-on-demand and premium television services within the general ambit of pay television services permitted in the licence.

MBNS also currently holds a telecommunications licence originally issued by the Minister of Energy, Telecommunications and Posts under the Telecommunications Act 1950 to operate a telecommunications network for the transmission of audio, video and other data to subscribers and the general public. The principal terms and conditions of this telecommunications licence include the following:

- The licence is valid until 25 October 2016;
- The telecommunications network may comprise of various components and equipment, including facilities for transmitting signals up to and down from satellites for television and radio, set-top boxes, radiowave transmitters and related equipment;
- A licence fee of RM20,000 payable by MBNS annually, which may be reviewed by the Minister as of 26 October 1999, although no review has been undertaken to date; and
- The licence may be revoked, with notice, in circumstances of breach, for failure to make payment of fees or upon MBNS's liquidation, winding up or cessation of business.

Under the telecommunications licence, MBNS must obtain the approval of the Minister of Energy, Telecommunications and Posts prior to its issuing any shares, or any of its shareholders' transfer of any MBNS shares, to any non-Malaysian citizen or company. MBNS has obtained these approvals in respect of its shares transferred to AAAN Bermuda Ltd under the reorganisation agreement and share exchange agreement.

9. REGULATION OF BROADCASTING IN MALAYSIA (*Cont'd*)

In addition to the general authorisation under the telecommunications licence, MBNS holds an apparatus assignment for each of MBNS's radio-communication apparatus under the CMA. The said apparatus assignments are generally for transmitting signals up to and down from satellites for television and radio broadcast. Apparatus assignments are generally valid for a period of 12 months and renewable annually upon payment of licence fees calculated on radio frequency used.

MEASAT Radio and Maestra Broadcast have each been issued with a content applications service provider ("CASP") individual licence pursuant to the CMA for the provision of terrestrial radio broadcasting services in Malaysia. The principal terms and conditions of these licences include the following:

- MEASAT Radio is permitted to provide content in English on two channels and to provide Chinese language content in one other channel. Maestra Broadcast is permitted to provide content in Bahasa Malaysia on one channel and to provide English language content on one other channel;
- MEASAT Radio and Maestra Broadcast are permitted to broadcast up to 10 minutes of commercial advertisements per hour of transmission on each channel;
- The licences are both valid for 10 years until 30 June 2010;
- The annual licence fees payable by the licensees shall be the greater of (i) 0.5 per cent. of the preceding financial year's gross turnover less applicable rebates for the year; (ii) 0.15 per cent. of the preceding financial year's gross turnover, or (iii) RM50,000; and
- The licences may be revoked, with notice, in circumstances of breach, for failure to make payment of fees or upon the respective licensee's liquidation, winding up or cessation of business.

In respect of the registered licences and individual licences under the CMA, ASTRO believes that its licences and approvals are in good standing and expects to be able to continue to fulfil its licence and approval terms to the satisfaction of the Commission. The CMA provides that the renewal of an individual licence shall be granted unless the Minister, on the recommendation of the Commission, determines that the licensee has failed to comply with any conditions of the licence, the CMA or any instrument issued by the Minister or the Commission.

Other licences which MBNS holds directly or through its subsidiaries in relation to its operations and business are:

- A direct sales licence issued by the Ministry of Domestic Trade and Consumer Affairs for sales and marketing activities;
- A publishing permit issued by the Ministry of Home Affairs for the subscriber programme guide and V Mag;
- Production and distribution licences issued by the National Film Development Corporation for programme production activities; and
- A permit to sell programmes to RTM issued by the Treasury Department, Ministry of Finance.

These licences/permits are renewable annually (save for the permit to sell programmes which is renewable every three years) and are not affected by the CMA.

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Foreign Ownership Restrictions

A foreign company (as defined under the Companies Act, 1965) is ineligible to apply for an individual licence or to be registered as a class licensee. The Government may impose foreign ownership restrictions on local companies licensed or registered under the CMA. Individual licences and class licences issued under the CMA are terminable by the Minister on the recommendation of the Commission if the licensee breaches any relevant rules or laws pertaining to restrictions on foreign ownership.

Restrictions on Anti-Competitive Behaviour

The CMA prohibits a licensee from engaging in conduct which has the purpose of substantially lessening competition in any communications market in Malaysia. The CMA also prohibits certain collusive arrangements for rate fixing, market sharing or boycotts. Furthermore, if the Commission determines that a licensee is in a dominant position and engages in conduct which would substantially reduced competition in any Malaysian communications market, it may implement appropriate remedies.

The Commission has formulated and published guidelines on “Dominant Position in a Communications Market” and “Substantial Lessening of Competition”, both of which came into force on 1 February 2000. These guidelines underscore the Government’s policy to develop a framework for competition in the communications and multi-media industry.

Framework for Industry Development

The Commission issued the Framework for Industry Development (“FID”) dated 27 August 2001, to provide a five year perspective plan for the orderly development of the communications and multi-media industry in Malaysia. The FID was launched by the Minister on 15 October 2001. Specific items targeted in the FID for 2002 include the introduction of a national spectrum plan, a national content policy, and national content benchmarks.

Quality of Service

The Commission has determined mandatory standards for quality of service for each of the areas of public cellular services, Internet access services through dial-up connection and content applications services (satellite broadcasting, terrestrial free-to-air television and terrestrial radio broadcasting). These standards came into operation on 1 January 2003.

With regard to CASPs (including satellite broadcasters and terrestrial radio broadcasting), the standards relate to:

- annual service availability;
- billing performance; and
- general customer complaints.

In the event of non-compliance, the Commission may take action against the licensee as such non-compliance is in breach of section 105(3) of the CMA. Section 242 of the CMA makes this breach an offence for which the offender shall be liable for a fine not exceeding RM100,000 or to imprisonment for a term not exceeding two years or both.

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Film Censorship Act 2002 and the Advertising Code of Ethics for Television and Radio

Television broadcasters, including the ASTRO broadcast services, are subject to the provisions of the Film Censorship Act 2002 and the Advertising Code of Ethics for Television and Radio. Under the Film Censorship Act 2002, all publicly shown films are required to be submitted to the Board of Film Censors for their prior review and approval. ASTRO obtained an exemption on 14 May 1997 from having to submit its broadcasts to the Board of Film Censors. Self censorship under guidelines drawn up by the Minister of Home Affairs is instead practised by ASTRO.

Under the Advertising Code of Ethics for Television and Radio adopted by the Minister of Energy, Communications and Multimedia, broadcasters in Malaysia are required to comply with the Advertising Code of Ethics for Television and Radio and to ensure that advertisements comply with a made-in-Malaysia rule. The made-in-Malaysia rule requires that the content of advertisements be shot and produced in Malaysia but allows up to 20.0 per cent. of advertisements to be shot and produced outside of Malaysia.

Self regulation and industry forums

The CMA seeks to establish a regime of self-regulation by providing for the creation of industry forums. An industry body may be designated or appointed as an industry forum if the Commission is satisfied that the criteria stipulated in Section 94 of the CMA has been fulfilled.

The primary function of a designated industry forum would be to formulate and implement voluntary industry codes, which would serve as a guide for the industry to operate. The relevant codes may be developed on the forum's own initiative or upon request by the Commission.

If the Commission is of the view that a voluntary code prepared by the designated industry forum is ineffective, the Commission may determine a mandatory standard, which is the subject matter of the voluntary industry code. The Minister may also direct the Commission to determine a mandatory standard in place of a voluntary industry code.

To date, the Consumer Forum, the Content Forum and the Access Forum have been designated. The objectives of the Content Forum are, inter alia, to develop and adopt a Content Code to set out guidelines which may include model procedures for classifying and dealing with indecent or offensive content disseminated by way of networked medium, to provide an avenue and channel for complaints in relation to content and to administer sanctions for breaches of the Content Code. Amongst the objectives of the Consumer Forum are to draft and develop codes which protect the rights of the consumer pursuant to the provisions of the CMA, to monitor service delivery of the communications and multi-media industry concerning consumer interests to ensure compliance with the codes and to provide an avenue and channel for complaints, disputes and grievances for consumers. The Access Forum has the task of developing the access codes. The Access Forum may also recommend facilities or services that should be included in or removed from the access list.

Digital Terrestrial Television Broadcast

On 28 April 2003, the Commission published a discussion paper on DTT broadcast in Malaysia. Terrestrial television programs in Malaysia are currently being transmitted via analogue. In its paper entitled "Concepts for the introduction of digital terrestrial television broadcast in Malaysia", the Commission invited submissions from members of the public and participants in the industry on the questions raised in the paper.

9. REGULATION OF BROADCASTING IN MALAYSIA (*Cont'd*)

The proposed rollout dates for DTT are trial transmission in 2004 and commencement of commercial broadcast in 2005. In order to minimise disruption to existing service and to ensure that the viewers are prepared for the new digital service, existing broadcasters are expected to simulcast their programs both in analogue and digital pending the phasing out of analogue transmission. The Commission anticipates analogue transmission to be phased out starting 2009, five years after digital transmission is introduced. The Commission has also proposed implementing the model of transmission infrastructure with a multiplex operator and broadcasters providing content services via such infrastructure to a common set-top box which the public will need to receive broadcast services. No licences will be awarded for DTT. Instead spectrum will be assigned to either existing network facilities provider and network services provider infrastructure licensees who operate the multiplex or to CASP licensee broadcasters. The Commission is also considering whether DTT services should be made available as free-to-air services only or to allow a pay service element on this platform too.

MSC Status

MBNS was one of the first projects to be launched in the MSC, and has been awarded MSC status. As a MSC status company in Malaysia, MBNS enjoys the incentives and benefits set forth in the Government's ten-point Bill of Guarantees. This ten-point declaration consists of the Government's commitment to the following:

1. providing a world-class physical and information infrastructure;
2. allowing unrestricted employment of local and foreign knowledge workers;
3. ensuring freedom of ownership by exempting companies with MSC status from local ownership requirements;
4. giving the freedom to source capital globally for MSC infrastructure and the right to borrow funds globally;
5. providing competitive financial incentives, including no income tax for up to ten years or an investment tax allowance, and no duties on the importation of multi-media equipment;
6. becoming a regional leader in intellectual property protection and cyber laws;
7. ensuring no censorship of the Internet;
8. providing globally competitive telecommunications tariffs;
9. tendering key MSC infrastructure contracts to leading companies willing to use the MSC as their regional hub; and
10. providing a high-powered agency to act as an effective one-stop super shop.

Due to the broadcast and telecommunications licences that MBNS holds, it is subject to more regulatory requirements than other companies having MSC status.

Four other ASTRO subsidiaries enjoy MSC status, namely AMP, ASTRO Shaw, MIT and ASTRO Productions.