



Frequently Asked Questions **on Determination on Access List (1 of 2005) and** **Mandatory Standard on Access (2 of 2005)**

This Frequently Asked Questions should be read with the Determinations.

General

The MCMC has issued Determinations on Access List and Mandatory Standard on Access on 1 July 2005. Frequently Asked Questions are aimed to enhance the understanding of Access Providers and Access Seekers to ensure effective implementation of these determinations.

Access List Items

1. **Who is required to provide the facilities and services on the Access List Determination?**

Generally, NFPs and NSPs are required to provide facilities and services listed on the Access List Determination. However, NFPs and NSPs can decline to provide facilities and services subject to grounds of refusal under subsection 5.4.11 of the Mandatory Standard on Access (MSA).

2. **What triggers an Access Provider's obligation to provide the facilities and services on the Access List Determination?**

An Access Provider only has an obligation to provide facilities and services on the Access List Determination upon receiving a written request from an Access Seeker.

3. **Who has rights to seek access to the facilities and services on the Access List Determination?**

All NFPs, NSPs, ASPs and CASPs have rights of access to the facilities and services on the Access List Determination. Access rights are not dependent on investment in

infrastructure. Therefore, an ASP or CASP is equally entitled to access a facility or service on the Access List Determination.

4. **Are Access Providers obliged to provide all forms of Access to Network Elements?**

Currently there are four forms of Access to Network Elements in the Access List. Access Providers are required to provide Bitstream with and without Network Service on written request effective from 1 July 2005. Date of implementation of the other three forms will be notified by the MCMC at a later date.

5. **What is the difference between Bitstream with Network Service and the Bitstream without Network Service?**

The difference between these two services is the point of delivery. The Bitstream with Network Service is delivered at the Access Seeker's premises. The Bitstream without Network Service is delivered at the Access Provider's premises and would require co-location at the Access Provider's premises. The Access Seeker has the choice whether to request Bitstream with or without Network Service.

6. **How are the Bitstream Services different from DSL Resale Service?**

Bitstream Services involve interconnection of two networks, whereas DSL Resale Service is a pure resale service.

The Bitstream Services are Layer 2 Services, which are provided at a point of interconnection. In addition, the Access Seeker assigns the IP addresses to the Customer.

In the case of DSL Resale Service, there is no connection between the Access Provider and Access Seeker networks. The Access Provider would be required to offer billing information and like services to enable the Access Seeker to bill the customer. In this case, the Access Provider assigns the IP addresses to the Customer.

7. **Can Access Seekers separately acquire domestic connectivity services to connect to submarine cables and satellite earth stations?**

Yes. Access Seekers have a range of alternatives to connect to submarine cables or satellite earth stations. An Access Seeker may acquire a backhaul service from an Access Provider or self-provide the backhaul link to the submarine cable landing

station or satellite earth station. Separately, an Access Seeker may individually acquire co-location at the submarine cable landing station or satellite earth station and, if separately required by the Access Seeker, a connection service onto the submarine cable.

8. **What are the services in the Access List Determination which may be relevant to the CASPs?**

The services in the Access List Determination that could be relevant to the CASPs include Infrastructure Sharing, Broadcasting Transmission Service and Digital Terrestrial Broadcasting Multiplexing Service.

9. **What are the services in the Access List Determination which may be relevant to the IASPs?**

The services in the Access List Determination that could be relevant to IASPs include Internet Interconnection Service, Internet Call Origination Service, Bitstream Services and DSL Resale Service.

10. **Does the DTB Multiplexing Service support television and radio, or only television?**

The DTB Multiplexing Service supports both television and radio.

11. **Can wireless broadband operators ('last milers') acquire a service to connect their base stations to one central location?**

Yes. Wireless broadband operators may acquire the Domestic Network Transmission Service for this purpose. This service is on the Access List Determination.

12. **Is Interconnect Link Service meant only for in-span interconnection?**

No, Interconnect Link Service in the Access List is not limited to in-span interconnection.

13. **Are Freephone 1800 number services and 1300 number services and other similar services included under the Fixed Network Origination Service?**

Yes. Paragraph 6 (1) (a) of the Access List on fixed network origination service includes freephone 1800 number services, toll free 1300 number services and other similar services which require Any-to-Any Connectivity.

14. **What is the charging principle for Freephone 1800 and 1300 number services and Equal Access (PSTN) Service?**

An Access Seeker shall pay the Access Provider for the fixed/mobile network origination service charges and no termination charge is applicable. Similarly for Equal Access the Access Seeker shall pay the Access Provider origination service charges.

15. **Can VoIP operators obtain access and interconnection with the fixed and mobile networks?**

VoIP operators may obtain the Fixed Network Termination Service and the Mobile Network Termination Service respectively on the Access List provided that the termination service is for carriage of calls from a POI to customer equipment.

For clarification, transit services are not part of the fixed/mobile termination services in the Access List and should be negotiated commercially.

16. **What price will VoIP operators pay for access to the fixed and mobile networks?**

For termination services, the mandated prices in the MSAP will be applicable, whereas for transit services, as the service is not part of the fixed/mobile termination services, the prices are not regulated.

17. **Can an Access Provider refuse to negotiate with an Access Seeker on the grounds that the Access Provider's new Access Agreement submitted to the Commission has yet to be registered?**

No, an Access Provider may not decline to engage in any discussions or negotiations with Access Seekers solely based on the ground that the Access Provider has Access agreements with other parties pending registration with the Commission. Parties are reminded of their obligation to negotiate (under s 5.4 of the Mandatory Standard on Access) with Access Seekers who wish to seek access. Access Providers may not refuse an access request except when the Access Provider has valid ground(s) of refusal as provided for under s 5.4.11 of the Mandatory Standard on Access.

18. **What is the definition of "end user" as used in defining Private Circuit Completion Service paragraph 6 (7) of the Access List?**

In the context of Private Circuit Completion Service, an end user includes a wholesale or retail customer and includes an Operator and the final recipient of the service.

19. **Does the Access List limit an Access Seeker from providing the PCCS to third parties licensed to provide communications services?**

No, the Access List does not limit an Access Seeker from providing the PCCS to third parties licensed to provide communications services. However, end-to-end resale of the PCCS is not permitted.

20. **In relation to Network Co-Location and Infrastructure Sharing:**

(i) What is the main difference between Network Co-Location Service and Infrastructure Sharing Service?

Network Co-Location Service is a service which comprises of physical co-location, virtual co-location and in-span interconnection for the provision of a Facility or Service on the Access List. Network premises at which co-location is to be provided as specified under paragraph 6(14) (b) of Access List.

Infrastructure Sharing is a service which is meant for provision of physical access to towers and associated tower sites. Infrastructure Sharing allows Access Seekers such as broadcasters to access towers and tower sites owned by Access Providers.

The main difference between Network Co-Location Service and Infrastructure Sharing Service is that Network Co-Location applies to obtaining co-location for the purpose of access with respect to the facilities and/or services on the Access List whereas Infrastructure Sharing applies to obtaining physical access to towers and associated tower sites.

(ii) On acquiring Network Co-location Service from an Access Provider, is an Access Seeker obliged to obtain access to another facility and/ or service on the Access List from the same Access Provider?

No. The Access Seeker is not obliged to acquire any other facility and/or service from the same Access Provider.

(iii) What does Infrastructure Sharing Service cover?

Infrastructure Sharing Service includes towers and associated tower sites.

(iv) What is included under 'associated tower sites'?

Associated tower sites include access to the site of the tower to enable the Access Seeker to physically obtain access and install and maintain its own equipment. Associated tower sites may include space at the base of the tower to put equipments, cabin racks etc.

(v) Does the obligation to provide access to Infrastructure Sharing Service apply irrespective of whether the Access Providers themselves utilise the towers or not?

Yes. Infrastructure sharing applies to tower and associated tower sites, provided by Access Providers irrespective of whether they are utilised by the Access Providers themselves.

21. Can a 2G Operator that is not providing 3G services decline to provide access to 3G-2G Inter-Operator Roaming Service on the ground that it is not providing the service to itself?

No. A 2G Operator that is not providing 3G services cannot decline access to 3G-2G Inter-Operator Roaming Service on the ground that it is not providing the service to itself. The Access List Determination states that 3G-2G Domestic Inter-Operator Roaming Service is a service that enables a customer of a 3G Operator or a 3G MVNO to initiate, receive or otherwise utilise applications on the 2G Mobile Network of a 2G Operator. The Access Provider in this case only needs to be a 2G Operator.

22. Are the following instruments still valid?

(i) Access List Determination 2001;

(ii) Mandatory Standard on Access 2003; and

(iii) Mandatory Standard on Access Pricing 2003

Yes. Access List Determination 2001, Mandatory Standard on Access 2003 and Mandatory Standard on Access Pricing 2003 will continue to apply to access agreements registered with the Commission prior to 1 July 2005.

Access Reference Documents (ARDs)

23. **Who has the obligation to prepare ARDs?**

All Access Providers, who have an obligation to provide the facilities and services on the Access List, are obliged to prepare ARD.

24. **Should companies in the same Group prepare separate ARD or only one to represent the Group?**

As stated in subsection 5.3.2 of the MSA, each Access Provider (who own or provide network facilities or network services) on the Access List must prepare and maintain an ARD. Thus, each licensed entity within the same Group that owns or provides network facilities or network services under the Access List is required to prepare an ARD.

25. **Can the ARDs be prepared on a staggered basis? What is the timeframe for the preparation of the ARDs?**

Yes, the ARDs can be prepared on a staggered basis. However, all ARDs must be prepared and published within 90 days from 1 July 2005 in accordance with the MSA.

26. **Are NFPs and NSPs required to include the following services in their ARDs: DTB Multiplexing Service, Inter-Operator MNP Service, Full Access Service, Line Sharing Service and Sub-Loop Service?**

NFPs and NSPs are not required to include these services in the ARD at this juncture. DTB Multiplexing Service and Inter-Operator MNP Service should be included in the ARD once the services are available. Full Access Service, Line Sharing Service and Sub-Loop Service should be included in the ARD upon notification by the MCMC of the date of coming into force.

27. **When must a new NFP and NSP licensee who provides facilities and services listed on the Access List prepare an ARD?**

According to subsection 6.2.6 of the MSA, each Access Provider must prepare and maintain an ARD no later than 90 days from the Effective Date or any other date stipulated by the Commission.

In the case of new NFP and NSP licensees, this would mean that they have to prepare an ARD no later than 90 days from the date of the launch of their network facilities or services.

Access Agreements

28. **With the coming into force of Access List Determination and MSA:**

(i) Would the existing Access Agreements need to be amended?

Yes. The existing Access Agreements would need to be amended in accordance with the new Determinations and to be registered with the MCMC.

(ii) Alternatively, would a new Access Agreement be required?

The Access Providers and Access Seekers have the option to sign a new Access Agreement, if both parties agree.

(iii) If an Access Seeker requires new services, would a new Access Agreement need to be entered into or can amendments be made to the existing Access Agreement?

The Access Providers and Access Seekers have the option to sign a new Access Agreement or amend the existing agreements if both parties agree.

29. **For commercial agreements signed prior to 1st July 2005:**

(i) What is the status of the existing commercial agreements once the ARD for the Access List services is published?

The commercial agreements would be valid to the extent that both parties negotiate a new Access Agreement based on the ARD. Subsequently, the Access Agreement would need to be registered with the MCMC.

(ii) What if the ARD terms are less favourable than the earlier commercial agreement?

Both parties have the flexibility to re-negotiate terms that are no less favourable than the terms and conditions under MSA.

30. Could unregistered access agreements be enforced under section 150(2) of the CMA 1998?

No, section 150(2) of the CMA 1998 provides that no written access agreement shall be enforceable unless it has been registered with the Commission. Parties to Access Agreements have an obligation to submit their written Access Agreements to the MCMC for registration. In order to enforce the Access Agreement or to seek resolution as provided under the CMA, the pre-requisite is for the Access Agreement to be registered with the MCMC.

31. What is the timeline for negotiation for the Access Agreements?

Within 210 days from 1 July 2005. The Access Agreements must then be submitted to the MCMC for registration.

32. When must a new NFP and NSP licensee who provides facilities and services listed on the Access List execute their Access Agreements?

In the case of new NFP and NSP licensees, according subsection 5.4.1 of the MSA, if an operator wishes to negotiate an Access Agreement with another operator, both parties shall use their endeavours to conclude the Access Agreements within 120 days of a written request to commence negotiation.

33. Should separate Access Agreements be signed with separate entities from the same Group?

Yes. As defined in the MSA, an Access Agreement is an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such an agreement and which shall be registered with the MCMC in accordance with the CMA.

34. **Can one licensed entity be appointed to sign an Access Agreement on behalf of the other licensed entities within the same group of companies?**

No. In line with item 20, each licensee should sign a separate agreement as a separate entity for services listed in the Access List.

35. **Who should register the Access Agreements?**

Parties to the Access Agreements shall jointly-submit their application for registration with the MCMC, accompanied with 5 certified true copies of the Access Agreement. Application for registration must be made by duly completing the application form attached to the Guidelines on the Registration of Access Agreement.

36. **Can Access Agreements which contain non-Access List items be registered?**

Under section 150 of the CMA, registration of Access Agreements is only limited to items contained in the Access List. However, parties to the Access Agreements may include other non-Access List items which are related to the provision of the Access List services rendered.

However, registration of such Access Agreement will only be applicable to the Access List items.

37. **Is it a pre-requisite for an Access Seeker to have a prior approval from the Commission for number allocation and spectrum assignment for an access negotiation to commence?**

No. Availability of number allocation and spectrum assignment is not a pre-requisite for an access negotiation to commence. Application for number allocation and spectrum assignment shall commence in parallel with access negotiation. Pursuant to subsection 5.4 of the MSA for negotiation obligations, Access Providers are obliged to enter into negotiations for an Access Agreement.

Non-Discrimination Provisions

38. **Is an Access Provider or an Access Seeker permitted to exclude the obligation for equitable and non-discrimination provisions under section 149 (2) (b) of the CMA for facilities and services not on the Access List?**

Pursuant to Chapter 3, Part VI of the CMA, the Access Regime is only applicable to facilities and services on the Access List.

However, as mentioned under subsection 3.2.3 of the MSA, the Commission encourages all Operators to treat the provisions in the MSA, where relevant, as a guideline for any other wholesale access arrangements that may be entered into.

39. **How does the MCMC view the equitable and non-discriminatory provision of Access pursuant to section 149 (2) (b) of the CMA?**

Section 149 (2) (b) of the CMA states that:

"S.149 the Access provided by one Provider ("the first provider") to another provider under subsection (1) shall be:

a) on an equitable and a non-discriminatory basis."

As stated under subsection 4.1.6 of the MSA, the term "non-discriminatory" requires comparison of:

- a) the basis on which a thing is provided by the Access Provider to an Access Seeker; with
- b) the basis on which that thing is provided by the Access Provider to itself and to other Access Seekers who are similarly situated.

Forecasting, Ordering and Provisioning

40. **Can an Access Provider require a compensation formula for cancelled orders and over forecasting or impose a penalty clause for early cancellation?**

Yes. Pursuant to subsection 5.6.14 of the MSA, an Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
- (b) the Access Provider reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- (c) the Access Provider only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under subsection 5.6.14(b) of the MSA.

In addition, subsection 5.7.26 of the MSA also provides that cancellation is to be at no penalty, an Access Provider shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by the

Access Provider in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had the Access Provider used its best endeavours to do so), mitigated over a six (6) month period after the date of cancellation or variation.

41. **Can an Access Provider impose minimum charges over and above mitigation and resource charges as part of the penalty for cancellation orders?**

No. As stated under subsection 5.7.26 of the MSA, except where the MSA provides, cancellation is to be at no penalty, an Access Provider shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by the Access Provider in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had the Access Provider used its best endeavours to do so), mitigated over a six month period after the date of cancellation or variation.

42. **Can an Access Provider impose a non refundable processing fee upon submission of a new service requested by the Access Seeker during the forecast submission?**

No. As the provision in the MSA allows for recovery for over-forecasting (subsection 5.6.14 of the MSA) and the security requirements imposed by the Access Provider under subsection 5.3.8 of the MSA is adequate to protect the Access Provider's interest.

Yes. Once the forecast has been confirmed, it shall be deemed as an Order, thus, subsection 5.7 of the MSA for Ordering and Provisioning shall apply, subsection 5.7.13 (b) of the MSA allows charges to be imposed for the fulfillment of the Order.

43. **Can forecast be requested for a period beyond one year?**

No. As provided under subsection 5.6.5 (b) (ii) of the MSA, forecast shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant facilities or services.

44. **Once forecast is confirmed by both parties, can the Access Provider insist that the Access Seeker pay the Access Provider in advance for the services forecasted irrespective of use?**

This condition is not covered under the MSA, thus, it is subject to commercial negotiation.

45. **Can parties agree that in cases of constrained capacity, the Access Seeker shall be allowed to take up capacity unwanted by another Access Seeker?**

Yes. Pursuant to subsection 5.7.31 of the MSA, an Access Provider reasonably believes that the capacity in any facilities or services required by:

- (a) the Access Seeker pursuant to the relevant Forecast;
- (b) other Access Seekers, pursuant to their relevant Forecasts; and
- (c) the Access Provider, for its own purposes

would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:

- i. notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- ii. allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

46. **Are parties to the agreement required to provide queuing policies?**

Yes. As outlined under subsection 5.7.29 of the MSA, an Access Provider shall establish and demonstrate and maintain a queuing policy system which:

- (a) shall be non-discriminatory;
- (b) shall treat the Orders of Access Seekers on an equivalent basis to that which the Access Provider treats its own Orders for similar Services; and
- (c) shall seek to maximise the efficiency of its Ordering and provisioning process.

Termination and Suspension

47. **Must approval be sought prior to any termination and/or suspension of an Access Agreement by an Access Provider?**

Yes. Pursuant to subsection 5.17.6 of the MSA, prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any facilities or services provided under it, an Access Provider must inform the MCMC in writing of the action it proposes to take and the reasons why such action is appropriate. The Access Provider shall not terminate or suspend or seek to materially vary the Access Agreement or access to any facilities or services provided under it until such time and on such conditions as the MCMC may specify.

48. **Can the Access Provider still charge the fixed charges even after suspension of a service?**

No, subsection 5.17.8 of the MSA stipulates that an Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any facilities or services provided under it except for charges invoiced in arrears and not yet paid and/or charges arising during an applicable minimum contractual period.

49. **Can the Access Provider outright terminate an Access Agreement prior to the MCMC' approval after notifying MCMC of the intention to terminate the agreement with the Access Seeker?**

No, subsection 5.17.6 of the MSA stipulates that the Access Provider shall not terminate or suspend or seek to materially vary the Access Agreement or access to any network facilities or network services provided under it until such time and on such conditions as the MCMC may specify.

50. **Must the Access Provider refund any sum to the Access Seeker on any payment made in advance if the Access Agreement is terminated with MCMC approval?**

Yes, subsection 5.17.9 of the MSA provides for upfront charges to be refunded on termination of an Access Agreement or access to any facilities or services provided under it, the Access Provider shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

This must be read together with subsection 5.7.26 of the MSA on ordering and provisioning.

Confidentiality Information

51. **Can an Access Seeker impose an obligation to an Access Provider to maintain confidentiality of the Access Seeker's customers' information?**

Yes. Subsection 5.3.7(c) of the MSA provides that an Access Provider's confidentiality agreement to be provided to an Access Seeker on request under subsection 5.3.4 or subsection 5.3.6 of the MSA, or both:

- (c) shall include provisions prohibiting the Party receiving the Confidential Information (the receiving Party) from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access.

Invoice Settlement

52. **In the event of non-payment by an Access Seeker, can service tax be offset or deducted from the invoice?**

No. Subsection 5.14.10 of the MSA states that unless otherwise agreed, an Access Provider may not set-off Invoices, except where the Access Seeker is in liquidation.

Security Requirement

53. **Is security deposit a necessary requirement under the MSA?**

No. The MSA does not mandate the need to have a security deposit however, if both parties agree to provide, it has to be provided in accordance with subsection 5.3.8 of the MSA on the security requirement. Whereby, an Access Provider shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker in the Access Provider's security policy is commensurate with:

- (a) an estimate of the value of the access to services and facilities to be provided to the Access Seeker by the Access Provider over a ninety (90) day period;
- (b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
- (c) security previously reasonably required by the Access Provider.

54. **Is the Access Provider allowed to deduct the security deposit sum if the Access Seeker fails to meet payment apart from liquidation?**

As the MSA does not mandate the need to have a security deposit, the terms and conditions of the security deposit is subject to commercial negotiation.

Fast Track Process

55. What is the Fast Track Application Process (FTAP)?

Fast Track application process shortens the negotiation process from 120 days to 10 business days after receipt of the application form.

It applies to the facilities and / or services under subsection 5.4.20 (c) of the MSA.

(i) How can an 'application form' be made available?

The application form may be a part of the ARD. Alternatively, if the application form is not part of an ARD, as per subsection 5.3.6 (b) of the MSA, the form must be made available on written request within 10 business days.

(ii) When is ARD executed?

The term 'ARD executed' appears under subsections 5.4.8 and 5.4.19 (e) of the MSA. When an Access Seeker accepts the terms and conditions of the ARD, the Access Provider will execute the ARD within 10 days. The Access Provider then provides this ARD to the Access Seeker for their execution. Upon execution of the ARD by both parties, it can then be submitted to the MCMC as an Access Agreement for purpose of registration.

(iii) Can different Access Providers have different criteria for FTAP?

Yes, subject to principles under subsection 5.4.20 of the MSA.

(iv) What are the delivery time frames for the facilities/ services under subsection 5.4.20 (c) of the MSA?

The indicative delivery time frames specified under subsection 5.7.14 of the MSA would apply.

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