



Response by Cable & Wireless Global Pte Limited
and Cable & Wireless (Regional Businesses)
Singapore Pte Limited to the Telecommunications Act
Amendment Bill Consultation Document, issued by
the Ministry of Information, Communications and the
Arts

6 August 2004

Table of Contents

	Page
Summary of major points	3
Statement of interest	3
Comments	
Section 8	4
Section 17	4
Section 26	5
Section 69	5
Conclusion	7

Response dated 6 August 2004 by Cable & Wireless to the Telecommunications Act Amendment Bill Consultation Document

Cable & Wireless welcomes the opportunity to respond to the Ministry of Information, Communications and the Arts (“MITA”) in relation to the draft Telecommunications Act Amendment Bill (the “Bill”). Cable & Wireless’s response is limited to a small number of key provisions within the proposed Bill and their impact on the current Telecommunications Act 1999 (the “Act”).

Summary of major points

- All powers for the IDA to suspend or cancel telecommunications licences should be based on objective criteria.
- The provisions of section 17 should specifically exempt telecommunications equipment located in the buildings of other public telecommunications licensees.
- All licensees should be obliged to comply with codes of practice. Any specific exceptions to the obligation to comply should be published, together with objective reasons for the exemption.
- The inclusion of timeframes within the appeal procedures, particularly in light of the new “reconsideration” phase, will greatly assist regulatory certainty.

Statement of interest

Cable & Wireless is a leading supplier of global voice, data and IP services, operating networks in major business centres throughout the world. C&W has significant investments and presence in Singapore and the Asia-Pacific region, and is committed to serving customers by enhancing choice, quality, value and global reach of the communications services which it provides.

Cable & Wireless holds two licences in Singapore. Cable & Wireless Global Pte Limited holds a facilities-based operator licence, issued on 2 February 2002. Cable & Wireless (Regional Businesses) Singapore Pte Limited holds a services-based operator (individual) licence, issued on 10 December 2001. These two companies are together referred to as Cable & Wireless or C&W in this response.

Comments

1. Amendment of section 8

C&W notes the terms of the new proposed subsection 8(2). The suspension or cancellation of a licence is one of the most significant actions which the IDA can take against a licensee. C&W is confident that the IDA will only use such measure in the most extreme circumstances. C&W, however, believes that the measures set out in the law should be reserved for the most significant breaches of the relevant law or licence. In addition, the circumstances in which this power is available to the IDA should be able to be judged in an objective manner. C&W respectfully submits that the proposed section 8(2)(a) is essentially a subjective trigger which leaves substantial discretion to the IDA.

C&W proposes that, in relation to compliance with conditions, provisions, directions and sections, the powers of the IDA to suspend or cancel a licence should apply only when, as a matter of fact, a licensee is contravening or has contravened the relevant condition, provision, direction or section. C&W submits that whether a licensee is likely to contravene a condition, provision, direction or section is a subjective decision which should not constitute a situation giving rise to an IDA power to suspend or cancel a licence. C&W suggests that the proposed subsection 8(2)(a) is deleted.

C&W also has concerns over the proposed new subsection 8(2)(c). Again, this leaves a subjective decision to the IDA to determine whether a licensee is “no longer in a position to comply with this Act or the terms or conditions of its licence”. It is unclear how the IDA would decide whether subsection 8(2)(c) applies and the criteria upon which the IDA will judge whether a licensee cannot comply with the law or its licence. This proposed subsection appears to introduce greater uncertainty for licensees in relation to the possible cancellation or suspension of its licence(s).

2. Amendment of section 17

Section 17 of the current Act relates only to installation or plant placed or erected pursuant to section 13 or 14 of the Act. In other words section 17 only applies to telecommunications plant installed by a licensee using specific powers to enter onto State or privately owned land under these sections of the Act. C&W notes that this limitation has been lifted in the draft amended section 17 as set out in the Bill. C&W is unclear why it is proposed that this restriction is lifted.

C&W suggests that deleting the references to sections 13 and 14 creates uncertainty regarding the wider circumstances in which section 17 may be applied. For example, it is possible that the provisions of the new section 17 under the Bill would cover telecommunications equipment located in the building of another public telecommunications licensee, where such licensee is the owner or occupier of that building. The current drafting of the proposed section 17 may cover facilities located in a telecommunications exchange. Relationships between public telecommunications licensees are governed by other legislative and contractual provisions. C&W respectfully submits that the installation of plant in the building or on the land of another telecommunications licensee should not be covered within the scope of section 17 and that this should be clarified within the drafting in the Bill.

3. Amendment of section 26

C&W welcomes the majority of the proposed amendments to section 26 of the Act. C&W believes that codes of practice are often useful tools for both regulators and licensed operators in competitive communications markets.

C&W does, however, have a concern over the proposed sections 26(5), 26(6) and 26(7). C&W believes that, as a principle, all operators should comply with the relevant telecommunications codes of practice unless there are specific objectively justified reasons why an exemption should be made. C&W encourages MITA, therefore, to retain the provisions currently set out in section 26(4) of the Act within the amended version of section 26.

In addition, C&W believes that, in order to encourage and enhance transparency, any exemption granted pursuant to the proposed section 26(5) set out in the Bill, should be published. It is important that all licensed operators are aware of their respective obligations. C&W therefore suggests the deletion of proposed section 26(6) of the Bill. In addition, C&W proposes that it is specifically stated in section 26 that any exemption from all or part of a code of practice must be published by the IDA, together with the reasons for granting the relevant exemption.

4. Amendment of section 69

C&W notes the changes proposed in relation to the appeal process set out in section 69 of the Act. C&W believes that two key elements of a suitable appeal process are (a) independence of the appeal body; and (b) certainty over the timeframe for appeals.

The revised appeal process introduces an additional step in the appeal process – reconsideration by the IDA. As MITA will be aware, this form of review is used in

other international telecommunications markets. Reconsideration by the decision-making body is often, however, limited to certain specific circumstances such as (a) reliance by the applicant upon material new facts or new circumstances; or (b) an allegation by the applicant that the first IDA decision was based on a material error of fact or law.

Setting out some limitation on the scope of the reconsideration process ensures that a licensee does not delay the implementation of a decision by simply forcing the IDA to repeat the same decision process. In addition, it ensures that the regulator and relevant licensees and third parties do not invest valuable time and resources into unnecessary reconsideration procedures. C&W suggests that consideration is given to whether any such criteria should be included within the new section 69.

The proposal in the Bill does not in any way limit the circumstances in which reconsideration can be requested. In addition, the Bill specifically states in the proposed section 69(5) that an appeal cannot be made to the Minister until the IDA has made a reconsideration decision. In light of this, C&W submits that it is essential that some timeframes are inserted to clarify the requirements on the IDA to make a reconsideration determination as promptly as possible. As both MITA and the IDA are aware, regulatory certainty is critical to the efficient development of a communications market and this will be greatly enhanced in Singapore by defining timeframes for regulatory decisions, including a maximum timeframe for certain appeal processes.

In relation to a reconsideration process, the IDA will have already reviewed the facts relevant to the case in making its original decision. C&W therefore suggests that a reconsideration process should, in the vast majority of cases, take place within a 28 day period. It is possible that there may be some very limited exceptions to this timeframe, for example where substantial material new facts come to light after the original decision which require a detailed review. C&W believes that an extension of the timeframe for reconsideration would only be required in exceptional circumstances. C&W respectfully submits that a 28 day timeframe (subject to limited exceptions) should be included within the amended section 69(3). This, C&W submits, will enhance certainty for all operators in the communications market.

C&W's proposals in relation to introducing timeframes for the reconsideration process apply equally whether or not the scope of potential reconsiderations is limited, as discussed above.

C&W welcomes the proposals set out in the new draft section 69(13). C&W believes that the IDA's robust enforcement of compliance with this section will be of great assistance to the development of the competitive telecommunications market in Singapore.

Conclusion

C&W welcomes the opportunity to comment on the Bill. C&W submits that a number of areas in the Bill would benefit from clarification or amendment. C&W's comments are primarily designed to ensure that:

- objective criteria are used in all regulatory decision-making;
- a clear division is created between “owners and occupiers of land” and public telecommunications licences who are also land owners or occupiers;
- there is a presumption that all licensees are required to comply with codes of practices;
- there are timeframes included within the appeal process to enhance regulatory certainty.

Contact details

Any clarification or correspondence in connection with this submission should be addressed to:

Helen Watson
Regulatory Lawyer
Cable & Wireless plc
124 Theobalds Road
London
England. WC1X 8RX

Tel: +44 207 315 6791
Cell: +44 7786 748305

e-mail: helen.r.watson@cw.com