

ON/REG/1010/0114

8 October 2010

MINISTRY OF INFORMATION, COMMUNICATIONS AND THE ARTS

140 Hill Street #02-02

MICA Building

Singapore 179369

Fax: 6837 9444

Attention: Mr Muhd Hanafiah
Director (Industry Division)

Dear Mr Hanafiah

CONSULTATION OF THE TELECOMMUNICATIONS ACT

We refer to the Consultation Paper issued by the Ministry of Information, Communications and the Arts ("MICA") on 27 August 2010, in regard to MICA's review of the Telecommunications Act (Cap. 323).

OpenNet welcomes the opportunity to comment on the Consultation Paper. Please find enclosed herein OpenNet's submission detailing our views and comments on MICA's proposed amendments to the Telecommunications Act (as set out in the Consultation Paper).

Please do not hesitate to contact the undersigned should MICA require any clarification on our submission.

Yours sincerely,



Lee Khoon Aik
Head (Regulatory & Interconnect)
OpenNet Pte Ltd

Encl.

Submission by OpenNet Pte Ltd

In response to

The Ministry of Information, Communications and the Arts'
Consultation Paper on

**REVIEW OF THE TELECOMMUNICATIONS ACT
(CAP. 323)**

8 October 2010

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A. EXECUTIVE SUMMARY

OpenNet welcomes the opportunity to comment on the Consultation Paper issued by the Ministry of Information, Communication and the Arts (“MICA”) on 27 August 2010, in regard to MICA’s review of the Telecommunications Act (Cap. 323).

OpenNet has studied the proposals set out in the Consultation Paper. We are pleased to provide in this submission OpenNet’s views and comments on Part II of the Consultation Paper for MICA’s consideration.

In summary, OpenNet believes that the existing cap on maximum financial penalty for breach of licence conditions, codes of practice, standards of performance, or directions is sufficient and has proven to be effective in checking errant behaviour among licensees. The infocomm sector is vibrant and highly competitive, thereby providing the appropriate commercial incentives (and disincentives) for market participants to ensure compliance with the regulatory regime in their day-to-day operations.

On MICA’s proposed administrative action for failure to pay financial penalties, OpenNet would like to request that MICA consider an alternative approach that is, in our view, more aligned with the principle of proportionate regulation. OpenNet is not in favour of the proposed approach to, on a case-by-case basis, suspend or cancel the whole or part of a licence, or to reduce the period for which the licence is to be in force. It is OpenNet’s view that the proposed enforcement action would not commensurate with the severity of the issue it is targeted to address i.e. where the amount owed by a licensee is not very significant.

Please refer to OpenNet’s detailed comments set out in Section C of this submission (with respect to Part II of the Consultation Paper).

B. STATEMENT OF INTEREST

- OpenNet was established in 2008 as a joint venture between four partners – Axia NetMedia Corporation, Singapore Telecommunications Limited, Singapore Press Holdings Ltd and SP Telecommunications Pte Ltd.
- In September 2008, OpenNet was appointed by the Infocomm Development Authority of Singapore (“IDA”) as the Network Company to design, build and operate the passive infrastructure of the Next Generation National Broadband Network.
- OpenNet received its Facilities-Based Operator (“FBO”) Licence from IDA on 1 April 2009, and was designated a Public Telecommunication Licensee under Section 6 of the Telecommunications Act (Cap. 323) on the same day.

C. SPECIFIC COMMENTS

(1) Revision of Maximum Penalty Cap

Question 1: MICA invites views and comments on the proposal to revise the ceiling for the maximum financial penalty that may be imposed by IDA under section 8 of the Telecommunications Act, for breach of licence conditions, code of practice or standards of performance, or directions, to 10% of the annual business turnover of licensable services, or \$1 million, whichever is the higher.

- i. OpenNet provides herein our comments on the proposal by MICA to revise upwards the cap on maximum financial penalty that IDA can impose under section 8 of the Telecommunications Act.
- ii. MICA has proposed to revise the maximum financial penalty to 10% of the annual business turnover for licensable services, or \$1 million, whichever is higher. OpenNet hereby requests that MICA reconsider its proposal, for the reasons set out below.
- iii. The infocomm sector is highly competitive with a vibrant mix of infrastructure operators and service providers¹. Mobile telephony population penetration is currently in excess of 140%, and broadband access household penetration has reached 80% in 2009² and is expected to accelerate with the advent of the Next Generation Nationwide Broadband Network (“Next Gen NBN”) services.
- iv. Competition in the mobile services market is intense with consumers having a wide array of service providers and products to choose from. The introduction of Full Mobile Number Portability in 2008 further empowers consumers with the ability to retain their mobile numbers when they change service providers, thereby facilitating choice and competition on market-oriented attributes such as service/price innovation and customer support services.
- v. The level of competition among retail broadband access service providers is expected to intensify further with the rollout of new optical fibre-based broadband access

¹ There are currently 50 Facilities-Based Operator (“FBO”) Licensees and the number of Service-Based Operator (“SBO”) Licensees far exceeds their FBO counterparts. Refer to IDA’s website <http://www.ida.gov.sg> for details.

² Refer to the publication – “Statics on Telecom Services for 2010 (July to December)” on IDA’s website.

services. The commercial launch of Next Gen NBN services is expected to level the playing field among existing market participants and at the same time attract new market entrants. Consumers will have the added choice of technologically advanced optical fibre-based services other than broadband access via existing copper and coaxial cable technologies.

- vi. The prevalence of highly competitive market forces (as described above) will compel service providers to be vigilant in their commercial and technical operations, and to ensure good service experience and customer satisfaction.
- vii. OpenNet therefore submits that there already exist adequate commercial incentives (and disincentives) to ensure market participants in the infocomm sector operate in compliance with the regulatory regime IDA has put in place, and that additional regulatory measures (such as higher ceiling for financial penalties for contravention of the Telecommunications Act) would not be necessary.
- viii. The existing cap of \$1 million on maximum financial penalty, combined with competitive market forces and reputational risks that may arise from regulatory intervention and/or enforcement action by IDA, have proven to be effective and adequate in checking errant behaviour among market participants in the infocomm sector.

(2) Administrative Action for Failure to Pay Financial Penalty

Question 2: MICA also invites views and comments on the proposal for IDA to be empowered to suspend or revoke a licence, or to reduce the period for which a licence is to be in force, on a case-by-case basis, in the event of a licensee's failure or refusal to pay a financial penalty under section 8 of the Telecommunications Act.

- i. MICA has proposed to empower IDA to suspend or cancel the whole or part of a licence, or to reduce the period for which a licence is to be in force, on a case-by-case basis, in the event of a licensee's failure or refusal to pay a financial penalty within a specified period.
- ii. MICA has commented that the current process, whereby debt owed to IDA are recoverable through civil proceedings in court, is both inefficient and uneconomical, especially for small amounts.
- iii. OpenNet respectfully submits that MICA's proposal is too onerous and does not appear commensurate with the severity of the issue that it is targeted to address (i.e. perceived shortcomings of existing process in particular with respect to small outstanding amounts owed to IDA).
- iv. A licensee's ability to offer services to its customers is critically dependent on the licence awarded to the licensee. If and when that licence is suspended or cancelled in part or in whole, the licensee will lose the right to offer certain or all its services, either for an interim period or permanently.
- v. MICA's proposal therefore will affect the day-to-day business and operations of licensees (and hence their commercial viability), should they fail to pay the financial penalties IDA has imposed on them and are consequently abstained from providing the services they are licensed to offer.
- vi. Currently, for late payment of licence fee, IDA imposes a penalty fee in the form of an interest charge based on the average of the prevailing prime lending rates of the banks and finance companies quoted and published by the Monetary Authority of Singapore.
- vii. OpenNet recommends that, as an alternative to MICA's proposal, a late payment charge be similarly applied to instances where licensees fail or refuse to pay a financial penalty imposed by IDA within a specified period.

- viii. We believe a late payment charge would be more appropriate for addressing non-payment of financial penalties. This approach, in our view, is consistent with the principle of proportionate regulation, where the regulatory measure should not be disproportionate relative to the contravening act.