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POSITION PAPER

ICT



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ASEAN – EU Business Summit ICT Position Paper with Recommendations

These positions and recommendations are based on the common interests of that voice of business in ASEAN economies which support open markets and fair competition, support foreign investment and service sector liberalisation and recognises ICT as an engine for innovative growth.

The vast differences in state of development and effective use of ICTs across ASEAN are shown in the Networked Readiness Index - see Figure A. But integration forces are reflected in these regional positions and also the aims of the ASEAN ICT Masterplan – see Figure B.

Issues and Recommendations

Structure: The telecoms industry works best for the economies which it serves if well structured. The desired telecoms industry is well reflected in legislation in most ASEAN economies, but the reality is often different. All operators should be on a level playing field with arms'-length licensing from a single NRA, a wholesale market with mandated access pricing, fair interconnect and competition regulation. The protection of incumbent operators and national champions inevitably hurts users and the wider economy which the industry serves. We encourage foreign investment participation in info-comms and avoiding special anti-foreigner rules. There are AFAS targets. This increases investment, diversity and quality of service.

Recommendation 1: Telecoms sector needs the right structure; fair and equal treatment, ideally all operators under the same kind of licence conditions from a single regulator where foreign investment is encouraged, noting the AFAS targets.

Skills, Education and free movement: ICT skills are in short supply. The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation and all participants. National decisions need to go beyond the pace of AEC agreements.

Recommendation 2: Modify laws and rules to support, free movement of skilled people and invest more in education and training in ICT areas.

An **independent National Regulatory Authority**, whether 'merged' or not, is important for investor and operator confidence. Three dimensions: Independent of government direction (even if generally a requirement to comply with overall policy) – can the NRA take action without approval and not be subject to micro-directive from government?; Independent of any operator (sometimes heavily influenced by government-related operators); Integrity: independent board with some independent, non-executive directors.

Recommendation 3: Modify rules and practices to meet the three dimensions of NRA independence

Value in freedom of the internet Over-played national security is often cited as the reason for support of restrictions on internet usage. Cybersecurity & social harmony are important but they do not justify the changes to the ITU Regulations. The internet needs to continue to make positive contributions.

Recommendation 4: Changes to ITU Regulations to allow for intrusion, censorship etc are not conducive to continuation of the positive contributions of the internet. Please consider carefully before finalising votes.

Data Protection In the world of Big Data, investor, consumer and user confidence in the way data is collected, stored and applied is needed. Cross border management regimes need to be workable.

Recommendation 5: Data Management / Data Protection legal regimes are needed; there are benefits in having a regional model which also provides a workable regime for cross border flows.

Individual Economies

Select issues from certain economies are shown which illustrate the regional / multi-local positions and recommendations. Order is alphabetical.

(a) Brunei The existence of two mobile operators illustrates that competition is possible even in a small national market.

(b) Cambodia We ask the Telecommunications Regulator of Cambodia (“TRC”) to continue to support **consolidation** in the industry and thus for the time being, for economic reasons, not issuing additional licenses in the mobile sector or mobile broadband licenses to new operators. We also recommend that TRC initiates a consultation process on technology-neutral unified licensing with a view to migrating towards a new and transparent licensing framework by 2014-2015.

The consultation on Cambodia’s National Broadband Plan (“NBP”) is on-going. There is a need to link the draft **National Broadband Plan** with the **Digital Dividend** and **Digital Switchover Policy** to ensure holistic policies. Currently, no specific consultation has been initiated to discuss these two policies.

Retention of the current **interconnect** MTR at the existing US cents/min should be accompanied by specific reform in other areas, which is critical as it represents Cambodia’s willingness to support the implementation of ASEAN ICT Masterplan 2015 by facilitating transparent and harmonized ICT regulations with other ASEAN members.

We believe **retail pricing caps** are not justified. As the retail market is competitive and maturing, relying on regulated wholesale is preferred.

(c) Indonesia Social media takeup is very high; Indonesia is fast become a mobile nation. Infrastructure investment in a competitive industry has been quite strong. A national focus on broadband is commendable but we would caution against the extent to which certain restrictions on permitted use of infrastructure with regard to content are appropriate.

Type Approvals are a normal part of ensuring that appropriate equipment is connected to networks. But there is no real need to require re-certification of equipment tested in global labs. An ASEAN standard **process** may be a positive step. Various restrictions on import of tested and certified equipment is in effect an NTB, and a review of the tax treatment would be helpful

(d) Laos As in Cambodia, the mobile market has benefited from competition. The need for enhanced fixed line especially for wholesale and backhaul is needed. The possibility of privatisation of Lao Telecommunications would be a major milestone.

(e) Malaysia **Net Neutrality** approach is similar to that described under Singapore ie freedom of internet traffic is essential, lawful content should not be blocked. But some traffic shaping and management by network operators is necessary to ensure a reasonable level of service quality, prioritisation of wholesome content for nation-building and public safety, as well as the commercial viability of service provisioning (“Smart Network” capabilities).

With more countries in Asia and around the globe supporting and aligning with the APT700 band plan (698-806MHz) for **digital spectrum**, ASEAN economies would do well to expedite their decision to align as soon as possible to capitalize early on the potential economic growth associated with broadband proliferation, while managing expectations and needs of broadcasters.

Lifting of **foreign equity caps** is a real precondition to industry stimulation and useful growth. Malaysia has done well to lift them in some other sectors.

The competitive Malaysian mobile market is ripe for more development in **mobile money**.

Malaysia, particularly the public sectors and GLC's, should **increase transparency and competitiveness in sourcing and partners** in major tenders. Instead of the traditional system hardware/software outright purchases focused on price, Malaysia should look for strategic partnership with the EU-ICT companies that will result in skills and knowledge transfer, benefitting Malaysia in the long run.

Cybersecurity technology deployment needs enhancing.

(f) Myanmar The pace of change is fast. The 2012 Foreign Investment Law is a great milestone, but a Telecoms Law (now in Parliament) will provide the sectoral details. MPT is to be corporatised which along with a consortium of local market participants are expected to receive two of four telecoms licences with mobile spectrum. A call for EOIs for two telecoms licences with mobile spectrum has already closed and is now in the second stage – pre-qualification. A major issue is about infrastructure including mobile backhaul. While the mobile licences are planned to include an infra-sharing requirement, there is still a gap. A World Bank supported consultancy is intended to address a plan for overall policy and regulation

Above all else, we urge as our **one over-arching recommendation** that Myanmar finds the right set of rules, regulations, investment incentives and vision for a competitive, attractive and innovative industry, backed by a workable plan. Those economies which have done this have produced innovative, attractive and effective sectors. Those which have not are still seeing sub optimal performance, corruption having a strong effect, and the industry not serving key stakeholders well: business, government, individual users and the overall economy.

(g) Philippines The **Data Privacy Act** is seen as a positive step. The situation with the **Cybercrime Prevention Act** perhaps illustrates the challenge with potential over-reach: balancing the importance of protection from intrusion with maintaining certain freedoms.

Consolidation in the industry through PLDT-Smart acquiring Sun Cellular results in only two major cellcos. **eLearning** systems development has shown some very positive steps.

(h) Singapore The **cost of bandwidth** in Singapore needs continual monitoring. Surveys in 2010 showed an increasing gap of prices for business customer's access solutions in Singapore vs Hong Kong, probably due to lower levels of competition due to timing of liberalization and different ownership. A more recent survey's results when ready will show any movement.

The NGNBN (Nationwide Next Gen Broadband Network) is focused on consumers and SME business customers not corporates. **Facilities-based competition** and regulated wholesale pricing will continued to be needed for these larger groups.

On **Net Neutrality**, the right and need of network operators to dimension, manage and shape networks is important. While we recognise that requirement, we recommend no blocking of legitimate Internet content (and support the iDA's recommendation in this regard). Services and applications and ISPs and telecom network operators should not block legitimate Internet content, services and applications. Broadband providers should not be allowed to favour their own or commercially affiliated content, services and applications over others and it is the end-users who should choose which to access. "Blocking" is not only outright blocking, but also as service degradation so as to render particular content, service, application or unusable (*de facto* blocking) or as an additional tariff for particular packet types (economic blocking).

A related issue is the amount of **bandwidth demanded by broadband mobile**. OTT (Over The Top) providers mean that network operators have a larger load to cope with, and are using WiFi handoff – hence heterogeneous networks (hetnets).

iDA's policy paper issued June 2011 uses a non discriminatory principle and is a reasonable balance of competing requirements.

ICT skills are always in short supply. Our recommendation is to strive for an innovative and entrepreneurial mindset in graduates and other ICT industry participants. This implies a change to education and also to certification for ICT skills in some markets. At the same time, no nation can satisfy demand for ICT skills from its own citizens only. Non cumbersome access to foreign skills is essential for an effective ICT industry.

The **Data Protection** legislation has been widely welcomed by industry and consumers. It deals with cross border use and other important aspects. The operation of the law will be widely watched as a possible model, perhaps without a central DoNotCall register at least initially.

(i) Thailand Long awaited moves in **industry evolution** away from the telecoms concession era are now shown in two major developments: The Frequency Act 2010 will see from late 2013 most concession revenue from private operators channelled to Ministry of Finance rather than to State-Owned Enterprises; the 3G licence issuance means much welcomed direct licensing. A wholesale market, arms'-length licensing on equal terms and enforced competition regulation, will all be needed. Regulation on infra sharing, MVNO and domestic roaming are in the pipeline.

While price based competition has taken hold in 2G markets, there is little service and innovation competition. Further liberalisation to promote this type of competition is needed.

Great cognizance should be taken of international trends in **broadband** development. That an existing State Owned telco Enterprise (and an unevolved one at that) as the centerpiece of the nation's broadband infrastructure is not likely in our view to produce the best result. The re-monopolisation of broadband infrastructure and services is in our view not a healthy trend/ It is well acknowledged in

various reports that the state of broadband infrastructure and services lags many other nations and is an impediment to Thailand's competitiveness.

An effective **wholesale structure and market for broadband services** are needed. Key issues needing attention are how an effective wholesale broadband market will be created, some issues concerning whether existing policy can meet overall objectives, the cost of implementing government policy, the source of the investment needed, making the investment attractive to the private sector with an overall aim of achieving a realistic target of a large percentage of the population for quality broadband services within a reasonable time and ensuring a competitive structure. The JFCCT with EABC has made several submissions on these issues.

We also recommend the raising of **foreign equity limits** for *all* categories of telecoms licences, with a closer review of some possible limitation in those parts of category 3 licences where fixed line services have a domestic national obligation. The exceptional allowance of high foreign equity levels in category 1 licences should be made an overt policy.

The '**Foreign Dominance**' regulation is a scourge on the industry. It is overtly and unreasonably anti-foreigner, and due to its nature, it pre-empts new foreign investment in the sector from both inside ASEAN (70% equity cap) and outside (49% equity cap) and is now subject to examination by the WTO Council for Trade in Services, in an action brought by Norway and supported by the EU, US and Japan.

Moves to extend concessions and delay the 1800MHz refarming should be resisted.

The **work permit and visa regimes** we believe need some major changes to support availability and development of skills. We commend all initiatives to enhance the development of critical thinking skills in the education and training context, but work permit and visa regulation for ICT skills in particular are in dire need of review.

Thailand has made strides in **creativity** measures in IT and other areas, but overall programs have gaps.

Software piracy rates are still high and we recommend improved education, and enforcement.

(j) Vietnam **Thereal competitiveness and future development** of the telecom sector continues to be questionable. The mobile sector is still dominated by three 100% state owned enterprises, which combined account for just under 90% market share. In order for smaller operators to effectively compete, consolidation within the mobile sector will be needed as are policies which promote fair competition. The ISP sector is also dominated by SOEs. The needs of smaller players should be recognized and their growth promoted to stimulate competition which will lead to innovation, efficiency and better service to all user groups. WTO provisions and AFAS do open the door for investment but do not seem to be followed. The development of an EU-Vietnam FTA should bring positive developments. Programmes supporting SOE evolution including at least partial privatization are recommended. Strategic policies are needed to make that work effectively.

Current **competition** in the mobile sector largely focuses on prices, but not on quality of services and innovation. Both prices and service quality in the ISP sector can be greatly improved, as that will have a

positive impact on national competitiveness. We welcome encouragement of competition in service quality, price and encourage innovation in all sectors.

The situation illustrates the benefits which an effective *independent regulator* (NRA) could bring.

Positive moves in eGovernment are welcomed, but the industry does not seem best served with restrictive certifications for IT skills where consultancy and related services are provided. Vietnam has many ingredients to make it an attractive IT and start-up hub. An enhanced **Data Protection** regime is needed.

A **national network development plan** would best focus on the broad availability of connectivity with suitable bandwidth and reliability. The current levels of competition, especially in the mobile sector, though leading to a fast reduction of consumer mobile prices, may fail to secure a market environment to deliver long term investment in network infrastructure and services. The ability to sustain internet usage, high growth rate in the future will particularly depend on the pace of internet infrastructure development in rural parts on the country. Business users and others would welcome a major increase in International bandwidth.

ANNEX

FIGURE A - NRI rankings noting current large differences in ICT situations in the region Networked Readiness Index (2012) published by WEF & INSEAD (Global IT Report). Of 142 :

Brunei	54	Myanmar	NA
Cambodia	108	Philippines	86
Indonesia	80	Singapore	2
Laos	NA	Thailand	77
Malaysia	29	Vietnam	83

FIGURE B- The three Pillars and the three Foundations of the ASEAN ICT Masterplan

