

Thailand Feature

Wholesale Telecommunications in Thailand

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I. WHAT ARE WHOLESAL TELECOMMUNICATIONS?

If you were to think of “telecommunications”, what would be the first thought that pops up? Probably, mobile phones or the internet, right? Normally, to call someone or to use Wi-Fi, you must subscribe to a package plan with your mobile/internet service provider. In Thailand, the most well-known providers include True or AIS. However, to be able to use the internet or call someone, in some circumstances, these telecommunication providers must connect their networks to provide smooth services to end-consumers.

In Thailand, wholesale interactions between the telecom operators are carefully regulated. The regulatory authority responsible for such regulation is the Office of the National Broadcasting and Telecommunications Commission (Office of NBTC). This article will discuss two types of wholesale services called interconnection and access, how these services are regulated in Thailand, and their current legal challenges.

II. THE RELEVANT REGULATION

Telecommunication is an industry that is essential for economic growth, social development, and global connectivity, especially in the 21st century. However, because of the nature of the telecommunications business, the market is vulnerable to monopolization as each company can restrict or allow access to its services and/or networks. Thus, the regulation of the telecommunications industry is to ensure fair, reasonable, and non-discriminatory treatment amongst companies as well as towards consumers.

The relevant regulation that will be discussed in this article is NBTC’s Notification Re Interconnection and Access B.E. 2556 (2013) (IC Notification). The IC Notification regulates two wholesale services, which include the Interconnection

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Service and Access Service. The IC Notifications intends to govern wholesale interactions, the notification applies to telecommunications licensees with their own networks.¹ The procedures of entering Interconnection Contracts or Access Contracts are stipulated in this IC Notification to ensure fair, reasonable, and non-discriminatory treatment.

A. Interconnection

Interconnection is the connection of networks between telecom operators to ensure that users from both ends can communicate² via telephone on either fixed-line or mobile. To use a telephone, you subscribe to a telephone package plan whether that be fixed-line or mobile. Sometimes the plan would allow for free calls to users within the same mobile network operator. However, if you were to call someone who was using a different mobile network operator, then only a limited number of minutes are prescribed, or extra costs can be incurred. When two users from different mobile network operators call each other there is an interaction between the operators on a wholesale level.

To paint a clearer picture, the signal from the Calling User goes through the network of the Calling Provider to connect to the network of the Receiving Provider at a *point of interconnection*. Then the calls “go through” to which the Receiving User can then pick up the call. However, for signals to connect, the Calling Provider will use the network resources of the Receiving Provider, and thus the Calling Provider shall pay the interconnection charges to the Receiving Provider. Where the network connects or where the signal changes from one operator to another is called interconnection.

As a general principle, a telecommunications licensee (licensee) who owns a network shall allow another licensee to interconnect with their network under the guidelines provided in the IC Notification.³ As the interconnection of networks allows for connectivity and communication between consumers, there are no exceptions to this general principle.

A licensee shall submit a Reference Interconnection Offer (RIO) for NBTC’s approval. The RIO is the document that expresses the intentions to provide interconnect service and must, at least, of the details in Clause 14 of the IC Notification.⁴ Furthermore, the RIO’s appendix shall include calculations and the interconnection charges.⁵ The interconnection rate shall be on a cost basis and according to the IC Notification⁶. This was affirmed in the NBTC’s Notification re Standard of Calculation of Reference Rates, which set forth the standard of calculation to use the Pure Long

¹ NBTC’s Notification Re Interconnection and Access B.E. 2556 (IC Notification), cl 5.

² *ibid.*

³ IC Notification, cl 6.

⁴ IC Notification, cl 14.

⁵ IC Notification, cl 13.

⁶ IC Notification, cl 10.

Run Incremental Cost (Pure LRIC) method.⁷ The NBTC may consider prescribing a reference rate to be used for each type of service.⁸ For the service of interconnection, the reference rate is prescribed in NBTC's Notification re Interconnection Reference Rate (IC Rate Notification). The reference rate is for the years 2022-2025.⁹ Therefore, the licensees are free to determine their own IC rates, however, the calculation of how the IC rates were derived must be shown to prove that is calculated upon the method of Pure LRIC. The calculations must be shown in the appendix of the RIO or licensees can use the reference rates prescribed in the IC Rate Notification. In practice, all telecom licensees choose to use the IC reference rate prescribed by the regulations as it may be simpler than calculating the rates on their own.

After the approval of the RIO, the telecom licensee shall publish the RIO on their website.¹⁰ Furthermore, the RIO can be found on the NBTC Telecommunications Access Bureau's website (<https://ic.nbtc.go.th/RIORAO.aspx>).

Once the RIO has been approved, the licensees can commercially negotiate Interconnection Contracts (IC Contracts). The IC contract shall be in accordance with the framework set out in the RIO.¹¹ If contracting parties cannot reach an agreement regarding the IC charges and a dispute arises, then the IC Rate stipulated in the IC Rate Notification will be imposed upon the parties. The IC Contract shall be submitted to NBTC for approval. The IC Contract shall be published on the IC Providers' website within 15 days of both parties signing such IC Contract.¹²

B. Access

Access means access to a telecommunication network by licensees under technical and commercial agreements to provide telecommunications services or to provide telecommunications services through the use of telecommunications networks.¹³ The term "access", however, is much broader than interconnection as it encompasses many different types of services. These services include although are not limited to, fiber optical networks, international private leased circuits, and undersea submarine cable.

One of the most common examples of access services is fiber optical network services. To use the internet or Wi-Fi at your home/office, a communication cable must physically be installed in your building and/or from any other designated place to your residence. The communication cable is a network called a fiber optical network. The owner of the fiber optical network can allow access of the fiber optical network to other

⁷ NBTC's Notification re Standard of Calculation of Reference Rates, app.

⁸ IC Notification, cl 10.

⁹ NBTC's Notification re Interconnection Reference Rate (Reference Rate Notification), app.

¹⁰ IC Notification, cl 18.

¹¹ IC Notification, cl 12.

¹² Reference Rate Notification, cl 6.

¹³ IC Notification, cl 5.

internet service providers, to allow the internet service provider to bring internet to consumers.

The regulation on access is more lenient than interconnection, however, the access service is still closely monitored. The telecom licenses can prohibit entry or access into their network, subject to the following conditions:

1. the network does not have enough capacity for other telecom licensees;
2. technical problems with access to the network which may disrupt telecommunication operations or obstruct telecommunications;
3. other circumstances prescribed in the NBTC Notification.¹⁴

Nevertheless, apart from the exemption explained, the provision for access is like the provision of interconnection. A licensee with its own network shall submit a Reference Access Offer (RAO) for approval by the NBTC.¹⁵ The RAO shall consist of an appendix which shows the calculation for the access service fee.¹⁶ Further, the RAO shall at least have the details as provided under Clause 45 of the IC Notification. NBTC may consider prescribing a reference rate for each type of service¹⁷, however, currently, no reference rates are imposed for any type of access services under the IC Notification. The approved RAO shall be published on the website of the telecom licensees.¹⁸ RAOs can also be found on the NBTC Access Bureau's website.

Once the RAO is approved, the licensees can enter commercially negotiated agreements or the Access Contract. Provisions governing IC Contracts apply *mutatis mutandis* to Access Contracts.

III. CURRENT ISSUES

The intent of this IC Notification, or any telecommunications regulation, is to encourage market competition as well as ensure fair, reasonable, and nondiscriminatory treatment of licensees. This is evident from the overall procedure governed in the IC Notification, *inter alia*, submission of offers, contract, as well as the dispute resolution mechanism. The obligation of the licensees is to submit reference offers for NBTC's approvals. This allows the competent authority to get a grasp of the wholesale market price of each type of service. For the service which can easily be susceptible to market manipulation due to its monopolistic nature such as the interconnection service, the regulation addresses and prevents this issue by prescribing a reference rate for the licensees to easily follow. Moreover, the regulation requires for publication of the offers to safeguard nondiscriminatory behaviors as the fee for services shall be made public. Another layer of protection that is added to prevent unfair behavior is that contracts will be reviewed by NBTC to ensure that it is within the framework of the offers.

¹⁴ IC Notification, cl 48.

¹⁵ IC Notification, cl 44.

¹⁶ *ibid.*

¹⁷ IC Notification, cl 42.

¹⁸ IC Notification, cls 18,42.

However, the issue with the IC Notification is that it has become outdated. Due to the fast-paced nature of technology, the telecommunication market has come a long way within these couple of years. Because this IC Notification was implemented a decade ago, it does not match the current context of the telecommunications market as different access services have achieved different levels of market competition, but it is still all regulated in the same manner.

The regulation aims to prevent unfair, unreasonable, or discriminatory conduct, however, this issue still arises especially in private areas such as condominiums or industrial estates. There are two dimensions to this issue. First, the owner of the private property grants sole entry to install the network in that area, which enables the network owner to monopolize that area. Second, as network owners have full autonomy over the network, they can essentially pick and choose who they allow into their networks. The service providers that have been chosen by the network owner, under an exclusive agreement, can then monopolize the network becoming the sole service provider to end-consumers. This means that consumers do not have a choice as to whom they want to obtain their services from and at which price point. Thus, there is no competition for the service prices. Issues of monopolization present themselves in the underwater submarine cable services as well. These examples are a testament to services that may need more regulatory involvement to ultimately ensure that this price will not affect end-consumers.

Nonetheless, some services such as dark fiber in public places have already achieved market saturation. The market and price of service are already competitive. This can be seen from the abundance of communication cables on the side of the road throughout Thailand. Therefore, regulation of this service became a regulatory burden for licensees, especially for the smaller players and market newcomers. The smaller players seem to have a hard time complying with the procedures set out in the IC Notification. This can potentially dissuade newer players from entering the market later.

To address these challenges, NBTC is planning to update its IC Notification in the upcoming years. It is the author's opinion that the term access is too broad as it encompasses all types of services that fall under the definition of access. Although it is a general definition, the services that should be regulated under the umbrella of "access" should be specified and defined. Moreover, a market analysis is necessary to identify the levels of market competition in each service. This will ensure that only necessary markets or markets that are susceptible to monopolies and market manipulation are under watchful regulation. Further, the IC Notification allows NBTC to consider prescribing the reference rates for relevant services within IC Notification. Thus, the author believes NTCB should set reference rates for services in uncompetitive markets such as fiber optical service in private areas to guard against potential increases in service prices. Moreover, services that have achieved market competition should be deregulated. In conclusion, the author is hopeful that the revised IC Notification will incorporate innovation and creative solutions to respond to the current issues.

