

立法會
Legislative Council

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Bills Committee on Telecommunications (Amendment) Bill 2001

Minutes of meeting
held on Tuesday, 6 March 2001 at 10:45 am
in Conference Room B of the Legislative Council Building

- Members present** : Hon James TIEN Pei-chun, JP (Chairman)
Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon CHAN Kwok-keung
Hon YEUNG Yiu-chung
- Public Officers attending** : Ms Eva CHENG
Deputy Secretary for Information Technology and
Broadcasting
- Mr M H AU
Senior Assistant Director (Regulatory), Office of the
Telecommunications Authority
- Ms Gracie FOO
Principal Assistant Secretary for Information
Technology and Broadcasting
- Miss Linda SO
Assistant Secretary for Information Technology and
Broadcasting
- Mr Geoffrey FOX
Senior Assistant Law Draftsman

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Miss Shirley WONG
Government Counsel

Clerk in attendance : Mrs Betty LEUNG
Chief Assistant Secretary (3)1

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Mr Colin CHUI
Senior Assistant Secretary (3)2

I. Meeting with the Administration

Deputy Secretary for Information Technology and Broadcasting (DSITB) briefed members on the background and objectives of the Telecommunications (Amendment) Bill 2001 (the Bill). She informed the meeting that the Administration had decided to issue carrier licences for third generation mobile services (3G) by a pre-qualification exercise followed by spectrum auctioning. The method of spectrum auctioning was based on royalty payment, subject to a minimum guaranteed payment. The Administration had consulted the industry and the public, briefed the Information Technology and Broadcasting Panel on this licensing method, and reviewed the existing Telecommunications Ordinance (the Ordinance) to see if the Secretary for Information Technology and Broadcasting (SITB) and the Telecommunications Authority (TA) were sufficiently empowered to conduct the 3G licensing exercise and any future licensing exercises involving the payment of spectrum utilization fees. In order to provide firm legal basis for the licensing exercise, SITB, with the advice of the Department of Justice, proposed to make technical amendments to the Ordinance to achieve the following :

- (i) To remove any uncertainty on whether TA had the power, in issuing licences and allocating spectrum, to take into account considerations such as payment of the spectrum utilization fees by qualified bidders in a spectrum auction; and
- (ii) To establish clearly the respective roles of the SITB and the TA.

2. On the respective roles of TA and SITB on the issue of telecommunications licences, DSITB said that TA was empowered to issue various telecommunications licences and allocate frequencies of the radio spectrum under sections 7 and 32H of the Ordinance respectively. SITB was empowered to prescribe by regulation the level of, or the method of

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determining, the spectrum utilization fee. There was however no express provision to empower TA to consider the payment of spectrum utilization fees in issuing telecommunications licences and in allocating spectrum, as would be required in a licensing exercise where spectrum auctioning was involved. In the absence of such an express provision, TA might be subject to legal challenge if he did so. Clause 2 of the Bill would therefore put it beyond doubt that TA had the statutory power to do so.

3. DSITB further pointed out that the method of spectrum auctioning for the grant of 3G licenses was proposed to be prescribed by regulation to be made by SITB under the new section 32I(2) in clause 4 of the Bill. The regulation was proposed to be subsidiary legislation which was subject to the negative vetting procedure of the Council, and the draft regulation would be forwarded to the Bills Committee for consideration in conjunction with the Bill as soon as it was drawn up. As requested by members, DSITB undertook to provide the Bills Committee with the draft regulation in the week beginning on 19 March 2001.

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Determining factors for the issue of telecommunications licences

4. Mr Eric LI declared interest as an independent, non-executive director of SmarTone Telecommunications Holdings Ltd. Noting that clause 2 of the Bill sought to require TA to regard the fees arising or resulting from auction or tender or a combination of both as a determining factor in issuing telecommunications licences which related to the use of spectrum which under the proposed section 32I were subject to the payment of spectrum utilization fees, he asked the Administration about the other determining factors. DSITB responded that the existing determining factors for the issue of telecommunications licences were set out in section 7 of the Ordinance. Senior Assistant Director (Regulatory), Office of the Telecommunications Authority (SAD(R)) added that in previous licensing exercises, TA took into account factors like nature and quality of an applicant's service, the fees offered by the applicants, financial capability, experience, timeframe for delivery of service and implementation plan in issuing telecommunications licences.

5. Miss Emily LAU requested the Administration to provide members with a comparison, in table form, of the current factors adopted for determining the issue of licences for second generation mobile services (2G) and the factors proposed to be adopted for 3G licences. SAD(R) pointed out that in the 2G licensing exercise, selection based on merits was adopted for determining the applications and weightings of individual determining factors were also set out in the guidance note for 2G licence applicants. DSITB added that in 3G licensing exercise, a hybrid method of pre-qualification followed by spectrum auctioning was adopted. Applicants who met the minimum requirements in the

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pre-qualification exercise could enter the auction in which the four highest bidders would win.

6. Miss Emily LAU considered it important to have transparency in telecommunications licensing exercises and enquired whether the determining factors for issuing telecommunications licences would be set out in the regulation made under the Bill. DSITB responded that as in previous licensing exercises, the determining factors would be set out in the guidance note for applicants for telecommunications licences.

7. In response to members' concerns, DSITB confirmed that the policy intention of clause 2 was that in relation to a licence, e.g. 3G licence, which was subject to the payment of spectrum utilization fee, TA would regard the fees arising or resulting from the method for determining the spectrum utilization fee as the only determining factor in the final selection of the licencees. She undertook to consider amending the clause to reflect such policy intention.

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Spectrum auctioning

8. In reply to Mr Howard YOUNG, DSITB said that the method for determining the spectrum utilization fees proposed under the Bill included auction, tender or a combination of both or any other method as SITB thought fit.

9. The Chairman asked how the Administration selected the four successful bidders in spectrum auctioning for the 3G licences if some bidders offered high guaranteed minimum payment but low royalty percentages while others did otherwise. DSITB said that in the guidance note for 3G licence applicants, the Administration would stipulate, inter alia, a minimum criterion on investment and a bidding schedule which set out the linkage between the royalty and the minimum payment, e.g. 1% and 2% royalty would require a minimum payment of \$10 and \$20 respectively. The auction would start with low royalty bids followed by higher ones until four bidders were left in the auction. On the question raised by Mr Howard YOUNG on whether the auction would cater for the situation when less than four bidders remained therein, DSITB said that the Administration was working out the auction design which would deal with the situation.

10. The Chairman enquired on how the Administration would deal with the situation when a 3G licensee failed to honour the undertakings made in applying for the licence. DSITB responded that the minimum requirements set in the pre-qualification exercise and the royalty payment would be included in the terms and conditions of the 3G licences. Financial penalties would be

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imposed on the licensee if he failed to comply with the terms and conditions of the licence. If he failed to pay the financial penalty, his licence would be cancelled.

11. In response to the Chairman's enquiry about overseas market soundings, DSITB said that the Administration had taken market soundings in Europe and Asia on 3G services in Hong Kong. Some companies there had expressed interest to be Mobile Virtual Network Operators (MVNOs), some others were considering partnering with local mobile services operators in applying for 3G licences while others had yet to decide whether to make the application.

12. Noting that successful 3G services bidders were required to open up at least 30% of their 3G network capacity for use by non-affiliated companies to operate as MVNOs and/or content providers, the Chairman asked whether such requirement was included in the Bill or subsidiary legislation. DSITB responded that the requirement was outside the scope of the Bill. It would be imposed on the licence applicants in the form of an undertaking by the applicant and would be included in the terms and conditions of the 3G licences.

13. Miss Emily LAU asked how "2 or more persons who are qualified ... to participate in the auction or tender are connected", which was stipulated in proposed section 32I(5)(b) in clause 4 of the Bill, should be interpreted and determined. DSTIB said that the provision sought to preclude connected bidders from entering the auction as separate bidders and obtaining 2 or more licences. Such provision could therefore facilitate market competition. The Administration was drawing up the suggested criteria for determining whether these persons were connected. These criteria would be included in the terms and conditions of the auction, which would be specified in a notice published in the Gazette. The notice was not subsidiary legislation under the Bill. Nevertheless, the Administration would consult the industry on these suggested criteria. As requested by members, DSITB undertook to provide the Bills Committee with these suggested criteria in the week beginning on 19 March 2001.

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14. On the question raised by the Chairman regarding the merger of successful bidders before or after the auction for 3G licences, DSITB said that in overseas countries merger of licence applicants at a specified period before the auction was not allowed. In Hong Kong merger of licensees after auction would be governed by the licence's terms and conditions on prohibiting unfair market practice. On the Chairman's other question regarding the regulation of tariffs for 3G services, DSITB said that they would be determined by the market as the issue of four 3G licences should facilitate sufficient competition in the market.

Renewal of 2G licences

15. On Miss Emily LAU's question on whether there would be more than four licencees providing 3G services in view of the availability of additional 3G services spectrum which was currently used by existing 2G operators, DSITB pointed out that under the Administration's technology-neutral regime, the existing operators were free to use any technology, regardless of whether it was 2G or 3G, in the spectrum under their licences. In line with this regime, existing 2G operators would be allowed to re-farm the spectrum for 3G services, if they so wished, under the current terms and conditions of their existing licences for the remaining period of validity. Nevertheless, the equipment to allow for re-farming of the spectrum for 3G services was not available in the market at present. The Administration would take into account the development in the 3G market in considering renewal or grant of licences operating in the spectrum for 2G services.

16. Mr SIN Chung-kai pointed out that the existing 2G licences operating in the 800/900 MHz bands would expire in 2002 or 2003, while those in the 1,800 MHz bands would expire in 2006. The former licences would be renewed for three years. The renewed licences would therefore expire in 2005 or 2006. On the other hand, the additional spectrum for 3G services in the 2.5/2.6 GHz bands would not be made available before 2005. He asked whether all 2G licences could be renewed up to the same specified date, so that they could all tie in with the assignment of the additional spectrum for 3G services on the same date. DSITB responded that the renewal of the 2G licences would enable a review and industry consultation before 2005, in the light of the development of the 3G market, on the terms and conditions of the grant of licences for operation in the 800/900 MHz bands, or renewal or grant of licences for operation in the 1,800 MHz bands, beyond 2005 or 2006. The Administration would consider the arrangements for the renewal of the 2G licences to tie in with the assignment of the additional spectrum for 3G services.

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II. Dates of next meetings

17. Members decided that :

- (a) the meeting originally scheduled for 14 March 2001 at 8:30 am be cancelled; and
- (b) the next two Bills Committee meetings be re-arranged as follows:

<u>Date</u>	<u>Time</u>	<u>Purpose</u>	<u>Remarks</u>
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Third meeting	26 March 2001 (Monday)	4:30 pm	Receiving representations from members of the trade	The Administration should also be invited to the meeting
Fourth meeting	3 April 2001 (Tuesday)	8:30 am	Meeting with the Administration	

18. There being no other business, the meeting ended at 12:28 pm.

Legislative Council Secretariat

21 March 2001

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