

立法會
Legislative Council

LC Paper No. CB(3)603/00-01

(These minutes have been
seen by the Administration)

Ref: CB(3)/BC/1/00/2

Bills Committee on Telecommunications (Amendment) Bill 2001

**Minutes of meeting
held on Monday, 26 March 2001 at 4:30 pm
in the Chamber 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 CHAN Kwok-keung
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
- Public Officers attending** : Ms Eva CHENG
Deputy Secretary for Information Technology and
Broadcasting
- Mr Anthony WONG
Director-General of Telecommunications
- 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

Attendance by Invitation : 3G Consultants
Mr James VAUX, Executive Director, Rothschild
Mr Richard FORGAN, Assistant Director, Rothschild
Mr Callum BEVERIDGE, Assistant Director, Rothschild

New World PCS Ltd.
Mr Pierre FITZGIBBON, Managing Director

Peoples Telephone Company Ltd.
Mr Ali BAIREKTAR,
Group General Manager, Engineering

Hong Kong CSL Ltd.
Mr Hubert NG, Chief Executive Officer
Mr Mike ROBEY, Chief Operation Officer

Hutchison Telecommunications (HK) Ltd.
Ms Agnes K NARDI, Managing Director
Mr Conrad J.H. CHAN, Legal Counsel
Mr Canan WONG, Senior Manager,
Commercial Finance & Administration Division
Miss Max WONG, Assistant Manager,
Public Relations, Sales & Marketing Division

SmarTone Mobile Communications Ltd.
Mr Stephen CHAU, Chief Technology Officer
Mr Patrick MAK, Senior Manager

SUNDAY
Mr Craig EHRLICH, Group Managing Director

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. Confirmation of minutes of last meeting

(LC Paper No.CB(3)522/00-01)

The minutes were confirmed.

II. Presentation by the Administration and 3G consultants

2. Mr James VAUX, Executive Director, Rothschild (3G consultant) and Principal Assistant Secretary for Information Technology and Broadcasting gave powerpoint presentations respectively on the auction process and design and connected bidders and bidding by 2G operators, and on the subsidiary legislation specific to 3G licensing (hard copy of the presentations had been tabled at the meeting).

III. Receiving representations from members of the trade

3. Mr Ali BAIREKTAR, Group General Manager, Engineering of the Peoples Telephone Company Ltd. (Peoples) informed the meeting that he was concerned about the process and procedure for re-allocating a 3G licence when the winner was disqualified on a substantiated complaint lodged within the three months period after the outcome of the auction was publicly declared. He was also concerned about the terms and conditions of the auction for the 3G licences.

4. Mr Hubert NG, Chief Executive Officer of Hong Kong CSL Ltd (CSL) went over CSL's submission (LC Paper No. CB(3) 547/00-01).

5. Mr Pierre FITZGIBBON, Managing Director of New World PCS Ltd (New World) said that New World supported the Bill and hoped that the licensing process could be proceeded with as quickly as possible. New World would respond to the Administration's consultation paper on the proposed rules on connected bidders and other ownership issues by the deadline of 9 April 2001.

6. Ms Agnes K NARDI, Managing Director of Hutchison Telecommunications (HK) Ltd (Hutchison) went over Hutchison's submission tabled at the meeting.

7. Mr Stephen CHAU, Chief Technology Officer of SmarTone Mobile Communications Ltd (SmarTone) had the following views in relation to

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the 3G licensing exercise:

- (a) The proposal to set the licence price at the fourth winner's last bid before he left the auction would result in an unnecessarily high licence price which ran contrary to the policy objectives of issuing 3G licences. SmarTone believed that the licence price should be the price offered by the fifth bidder before he left the auction. Such view was shared by Hutchison.
- (b) The secret bid approach to preserve confidentiality of the bidders' identities in the auction might not be in the best interest of the potential bidders and the public. The approach was based on the assumption that the market was static and the bidders only needed to consider their own business portfolio to work out their proposed licence prices. In fact, bidders might also need to take into account other information such as the identities and background of other bidders in determining the proposed prices.

SmarTone considered that the Administration should at least conduct a thorough consultation on the issues of auction design and connected bidders before making any decision thereon.

8. Mr Craig EHRLICH, Group Managing Director of SUNDAY (SUNDAY) said that SUNDAY considered that the auction should not result in winners having to pay a lot of money to the Government, and was of the view that a considerable sum of money should be assigned to develop Hong Kong as one of the best 3G markets in the world.

9. At the invitation of the Chairman, the Administration responded to these representations (including written representations) and the response is summarised below:

- (a) On Peoples' enquiry about the re-allocation of a licence arising from a substantiated complaint, Director-General of Telecommunications (DG Tel) said that from the date of issue of information memorandum on 3G licence applications, potential bidders would be given eight weeks to make applications. The Administration would process the applications received and complete the pre-qualification exercise expeditiously. The spectrum auction would then be conducted and might end within one day. The whole process was unlikely to last for more than a few days. The Administration would then announce

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provisional winners and seek comments on whether they were connected. If there were two provisional winners who were connected but would not make arrangements to disconnect, the licence would be granted to the fifth bidder at a licence price which was his last bid before leaving the auction and was also applicable to the other three winners.

- (b) As regards the issue of public consultation on 3G licensing exercise raised by CSL, Hutchison and SmarTone, Deputy Secretary for Information Technology and Broadcasting (DSITB) said that two rounds of consultations on the licensing and regulatory framework of 3G had been conducted. The Administration had considered views collected therein before adopting the royalty payment option. The Administration had also conducted consultation exercise on the open network requirement. Another consultation exercise was in progress to collect views on the Administration's proposed rules on connected bidders and other ownership issues. The Administration would take account of the views collected in finalizing the proposed rules which would be incorporated into the information memorandum.
- (c) On the issue of licence price raised by Hutchison and SmarTone, DSITB said that the price offered by the fourth winner before he left the auction was the highest licence price which all the four winners were willing to pay. As such, this price, rather than the last bid of the fifth bidder before he left, was the market price for the licence. It was fair to the four winners to pay such market price.
- (d) Regarding SmarTone's concern on the secret bid approach, DSITB pointed out that it was adopted having regard to overseas experience. Such approach could promote entry by small companies and prevent collusion. It would be in the public interest to adopt such an approach as the collusion might result in potential bidders jointly lowering the licence price.
- (e) Regarding SUNDAY's concern that the licensees had to pay a high licence price at the expense of developing 3G services, DSITB said that the royalty payment method aimed at an early grant of 3G licences and minimising bidders' funding requirement for the licences, so that they could deploy funds to develop 3G services.

Discussion

Auction design

10. Miss Emily LAU supported the method of a pre-qualification exercise followed by spectrum auctioning in the issue of 3G licences. She hoped that members of the trade and other interested parties such as the Consumer Council could offer views on the Administration's consultation paper by the deadline of 9 April 2001.

11. Mr Eric LI declared interest as an independent, non-executive director of SmarTone Telecommunications Holdings Ltd. He asked about the requirements set in the pre-qualification exercise. In reply, DG Tel said that the requirements would be light which could be met by companies which had genuine interest in 3G services provision. In response to the Chairman's question of the requirement of network coverage set in the exercise, DG Tel said that the Administration was in consultation with 3G consultants on the requirement which would be set out in the information memorandum.

12. Regarding the concern about transparency on spectrum auction raised by Mr Eric LI and Miss Emily LAU, DSITB said that the Independent Commission Against Corruption would be invited to the auction as an observer. The whole auction process, which was expected to last for only a few hours, would be recorded and replayed. The media would also be briefed on the outcome of the auction immediately after the auction. The Administration would consider Miss Emily LAU's suggestion of media's presence in the auction who could report on the auction only after the end thereof. It would also consider webcasting the bids on royalty percentage.

13. Mr Eric LI asked the Administration about its policy on the minimum guaranteed payment for the auction. In response, DSITB said that the minimum guaranteed payment should be set at a reasonable level which would promote entry by companies with genuine interest in 3G services provision but preclude those which were not serious in the 3G network investment. As in other auctions, the level of minimum guaranteed payment, which was equivalent to the lowest bid price, would not be disclosed for public consultation. Details of the auction design and the bidding schedule would be set out in the information memorandum.

14. On the Chairman's question of using percentage of turnover rather than that of profits in computing the royalty payment, DSITB responded that computing payment based on percentage of turnover was an objective and simple method which was adopted by the Administration in computing other royalty payments. On the other hand, it was difficult to ascertain the amount of

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profits as there might be disputes thereon in relation to the amount of deductible expenses etc. DG Tel added that the licensees could provide 3G services in areas such as network operations and content provision but the royalty payment was only on network operations. It would be difficult to ascertain the portion of profits on network operations from the entire profits on 3G services in computing royalty payment.

15. Mr Howard YOUNG enquired about the selection of the fourth licence winner if the fourth and fifth bidders left the auction at the same time. 3G consultant responded that the ascending auction was designed to provide small bidding increments to minimise the chance of two bidders leaving the auction at the same time. Work was still underway on the best mechanism to deal with such tied bid. Examples of options under consideration to deal with such bid were selection by time of withdrawal and inviting tied bidders to bid again up to a single extra bidding increment. The Administration noted the concern of the Chairman and Miss Emily LAU about the transparency on the timing of leaving the auction in the event of selection by time of withdrawal in a tied bid.

16. On the Chairman's question of setting the level of threshold for connected bidders at 15% of interest in another bidder, 3G consultant responded that whilst holding 15% interest in another bidder was not in control of another bidder, it was deemed to have influence over another bidder. While determining a threshold would inevitably involve a degree of judgement, it was important to provide certainty on the application of the rules to bidders, which was why a specified figure was being proposed. The 3G consultants had discussed with the Administration on different levels of threshold and they agreed that 15% was a sensible one. 15% was generally regarded as a level at which the influence that one party could exert over another would become significant, and was widely used in European competition regulatory regimes.

17. In reply to Mr Howard YOUNG, 3G consultant pointed out that there would be a sub-auction to allocate the four specific 3G licences to winners in the main auction who would be required to bid cash sums in determining priority to different frequency bands. It would be an economically efficient way to allocate the four sets of spectrum to the four licensees although the amount of spectrum utilisation fee that could be raised was not expected to be substantial.

18. On Mr Howard YOUNG's question of the technical capabilities of the four sets of frequency bands of the four specific 3G licences, 3G consultant responded that their technical capabilities were affected by the spectrum placed next to each of them and might therefore be slightly different from each other.

Legislative timeframe

19. Mr SIN Chung-kai said that the Administration should consult the Bills Committee and the industry on the information memorandum or, if it had yet to be finalized, the main points thereof. More time might therefore be needed for the Bills Committee to consider the information memorandum and the views thereon. As such, the legislative process of the Bill and its subsidiary legislation might only be completed by late June or the end of the session in mid July this year. He was inclined to support such legislative timeframe rather than an early passage of the Bill proposed by the Administration.

20. CSL considered it important to strike a balance between maintaining Hong Kong's leading position in mobile communications in the region and the need for clear details on issues relating to 3G licensing. On balance, a delay of two or three months for clarifying the issues was justified.

21. Hutchison said that further details on the auction should be given to facilitate industry's understanding. A delay of one or two months for such purpose was justified. Nevertheless, a late issue of 3G licences was not desirable in view of its adverse effect on Hong Kong's leading position in mobile communications in the region and saturation of existing mobile communications with a mobile penetration rate of over 76%.

22. New World considered that the auction should be conducted as quickly as possible. Its views on the Administration's paper were only limited to a few points and would be communicated to the Bills Committee within one or two weeks. There was no need to delay the legislative process.

23. Whilst supporting an early introduction of 3G services into Hong Kong, SmarTone was of the view that a delay of one or two months to sort out important issues on 3G licensing was justified.

24. In response, DSITB pointed out that there were two separate pieces of legislation in relation to 3G licensing, which were the Telecommunications (Amendment) Bill 2001 and its subsidiary legislation. The subsidiary legislation could only be made and presented to the Legislative Council after enactment of the Bill. As a minimum period of 28 days was needed for scrutiny of the subsidiary legislation by the Council, the Bill had to be passed by May 2001 for completion of the legislative process for the subsidiary legislation within this legislative session. While the Administration would take into account views from members and industry on the auction design and ownership rules in finalizing the information memorandum, the document was outside the scope of the Bill and its subsidiary legislation.

25. Miss Emily LAU considered that there should not be any delay in the legislative process for 3G licensing. While the Bills Committee could discuss with the Administration and industry on the result of the Administration's consultation exercise which would end on 9 April 2001, the Bills Committee should proceed with study of the Bill with a view to its passage in late April or early May 2001.

26. SUNDAY suggested that all potential bidders meet with the Administration to resolve problems on 3G licensing to avoid delay in the legislative process.

Other issues

27. In response to Mr Eric LI's concerns on upgrading of 2G licences to 3G licences, assignment of additional spectrum for 3G services and open network requirement, DG Tel said that the Administration would conduct a consultation exercise in 2004 on the upgrading. An industry consultation would also be conducted on the assignment of additional spectrum for 3G services. The Administration had also taken into account views from the industry and the general public in drawing up the framework for the implementation of the open network requirement. The Administration would address these issues in the information memorandum.

28. Miss Emily LAU shared the concern of PCCW-HKT Ltd (its written submission to the Bills Committee in LC Paper No.CB(3) 529/00-01(01)) which, inter alia, commented on the treatment of the spectrum utilisation fee when the Chief Executive in Council might cancel or suspend a licence on public interest grounds in accordance with section 34(4) of the Telecommunications Ordinance. DSITB responded that the Administration would revert to the Bills Committee on the PCCW-HKT's concern.

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29. The Chairman thanked the deputations for their submissions and views expressed at the meeting. He urged them to give written submissions and make oral representations to the Administration on its proposals relating to the Bill and 3G licensing.

IV. Date of next meeting

30. The Chairman reminded members of the following arrangement for the next meeting:

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	<u>Date</u>	<u>Time</u>	<u>Venue</u>	<u>Purpose</u>
Fourth meeting	3 April 2001 (Tuesday)	8:30 am	Conference Room B	Meeting with the Administration

(Post-meeting note: The meeting scheduled for 3 April 2001 had been cancelled and the next two meetings would be held on 6 and 26 April 2001.)

31. There being no other business, the meeting ended at 6:18 pm.

Legislative Council Secretariat

18 April 2001

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