

**Administration's Responses to Bills Committee's Concerns
at the Meeting of 6 March 2001**

Summary

This note contains the Administration's responses to the three questions raised by the Bills Committee on 6 March. We have issued the draft subsidiary legislation and the "Explanatory Note on Auction Design and Rules on Connected Bidders" under separate covers. We have provided to the Bills Committee all the information it sought on 6 March to facilitate its deliberations.

Responses to the three questions raised

Q1: Clause 2 of the Bill – Please consider amending proposed section 7(12) of the Telecommunications Ordinance to reflect the policy intention that the Authority must regard the fees arising or resulting from auction or tender or a combination of both as a determining factor for the issue of 3G licences.

A1: We have carefully considered Members' suggestion. As we explained at the meeting of 6 March 2001, there are three types of instruments which govern the collection of spectrum utilization fees. Details of the instruments and their respective purview are set out at Annex 1.

Members may note from Annex 1 that sections 32I and 7(12) of the Telecommunications Ordinance as will be amended by the Telecommunications (Amendment) Bill 2001 are general empowering provisions for the 3G exercise and future licensing exercises where spectrum utilization fees are levied. Therefore these provisions need to cater for all licensing exercises, not just 3G. For future licensing exercises, it is possible that the method chosen may be by auction, tender, a combination of auction or tender or some other methods.

As a result, in case of a tender where the successful applicant will be selected on the basis of both their technical proposals and fees offered, the Telecommunications Authority (TA) cannot regard only the fees offered as the determining factor in granting the licences. He also needs to assess the technical proposals and grant the licences according to the combined score. Mandating TA to regard the fees as the determining factor in all scenarios under the primary legislation is therefore inappropriate. The use of the word ‘may’ in primary legislation is appropriate.

In the case of the 3G exercise, the draft subsidiary legislation will clearly stipulate that the 4 bidders whose bids will produce the highest common royalty percentage as determined in accordance with the terms and conditions of the auction shall be the successful bidders (section 3(a) of the draft subsidiary legislation issued to Members on 23 March). The certainty that the highest bidders will be the successful bidders in this 3G auction is provided in the subsidiary legislation which is 3G-specific.

Q2: Please compare in table form the current factors adopted for determining the issue of 2G licences and the factors proposed to be adopted for 3G licences.

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A2: Please see the attached table at Annex 2.

Q3: Please advise if all 2G licences will be renewed up to the same specified date and on the arrangements for their upgrading to 3G licences.

A3: At present, there are two batches of a total of eleven 2G licences with different expiry dates (Annex 3). The first batch of five licences for systems operating in the 800/900 MHz bands have expiry dates ranging from July 2002 to January 2003. The second batch of six licences for systems operating in the 1,800 MHz bands have expiry dates all at the end of September 2006.

Members may wish to note that the TA is empowered under the Telecommunications Ordinance to renew or extend these 2G licences up to a maximum period of three years. In other words, TA has the discretion to renew or extend the licences up to three years but not beyond. Therefore the TA is empowered to renew or extend the first batch of licences up to July 2005 to January 2006 only, which is still earlier than the expiry date of the second batch licences at September 2006. It is therefore not possible to have all the 2G licences expired at the same specified date.

Members may however note that by extending the validity period of the first batch of 2G licences for three years, the expiry dates of all eleven 2G licences will be brought within a close range, being from July 2005 to September 2006. The TA intends to conduct an industry consultation in the second half of 2004 or the first half of 2005 on the terms and conditions for the renewal of the 2G licences, e.g. whether the spectrum in the 800/900 MHz and 1,800 MHz bands should be subject to the payment of spectrum utilization fees. At that time, there would be more information on the development of the 3G market and the availability in the market of 3G equipment operating in the 800/900 MHz and 1,800 MHz bands for a meaningful industry consultation to be conducted. It is our current policy intention that the renewed licences beyond 2005 or 2006 for mobile services will be technology neutral and therefore there would be no restriction on whether 2G or 3G technology will be operated within the bands authorized (i.e. 800/900 MHz or 1,800 MHz bands).

Instruments which Govern the Collection of Spectrum Utilization Fees under the Telecommunication Ordinance

	<u>Authority</u>	<u>Applicability</u>	<u>Description</u>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Primary Legislation</div> <div style="text-align: center; margin: 10px 0;">↓</div>	Section 32I, 7(12) and 32H(6) of the Telecommunication Ordinance as will be amended by the Telecommunications (Amendment) Bill 2001 (“the amended Ordinance”)	<u>General</u> to All licensing exercise where spectrum utilization fee is to be levied (including 3G and future exercises)	General empowering legislation to- (a) empower SITB to set the level of, or the method for determining, the spectrum utilization fees (section 32I(2)); (b) empower SITB to specify minimum amount of the fees and TA to specify terms and conditions (section 32I(4)); (c) set out the types of the terms and conditions that TA may set (section 32I(5)); (d) to empower TA to regard the fees as determining factor in licensing (sections 7(12) and 32J(6)).
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Subsidiary Legislation to be made for 3G</div> <div style="text-align: center; margin: 10px 0;">↓</div>	(i) Section 32I(1) of the amended Ordinance: Order made by the TA (ii) Section 32I(2)(b) of the amended Ordinance: Regulation made by SITB;	<u>Specific</u> to 3G exercise	Specific legislation to designate - (a) by TA the frequency band of 3G; and (b) by SITB auctions as the method for determining the spectrum utilization fee for 3G.
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Terms and Conditions of the auction to be made in a notice by TA for the 3G exercise</div>	Section 32I(5) of the amended Ordinance, and section 8(b) of the regulation made by SITB in (ii)	<u>Specific</u> to 3G exercise	Set out detailed matters for running the auction, including - procedure and criteria of pre-qualification for entering into the auction; - rules on connected bidders; - the manner deposits should be submitted (e.g. acceptable instruments to be issued by banks of certain rating, the amount of deposit and the deadline for giving the deposit); and - the manner the rolling guarantee should be submitted (e.g. acceptable instruments to be issued by banks of certain rating).

Factors for Determining the Issue of Licences for Public Mobile Services

Notes: (1) The last time the Telecommunications Authority (TA) invited applications for 2G licences was in November 1994 in the licensing exercise for the systems operating in the 1,800 MHz bands. It was conducted using the well established "selection by merit" approach. The factors used in that particular licensing exercise are given in the table below in the column headed "2G".

(2) For the licensing of 3G services, we have decided to use a hybrid method to select the four licensees. The hybrid method will consist of a pre-qualification exercise followed by spectrum auctioning.

2G	3G
<p><u>Shortlisting Criteria</u></p> <ul style="list-style-type: none"> • financial capability • technical capability • management and technical expertise • corporate structure <p><u>Ranking Criteria</u></p> <ul style="list-style-type: none"> • customer services and charges • technical quality • investment and finance • corporate structure • implementation schedule • level of performance bond • other benefits to the local telecommunications industry and economy • research and quality of proposals 	<p><u>Pre-qualification Criteria</u></p> <ul style="list-style-type: none"> • submitting specified cash deposit or letter of credit • undertaking to comply with rules on connected bidders under terms and conditions of auction • acceptance of "open network" requirement • (in the case of 2G licensee) acceptance of mandatory roaming onto the 2G network by customers of 3G new entrant • acceptance of minimum rollout requirements • undertaking to abide by terms and conditions of auction (The above illustrates the key criteria being drawn up. Details are being finalised at present.)

2G	3G
<p><u>No auctioning</u></p> <p>Shortlisted applicants would be ranked and given scores. Those with the highest scores would be offered the licences.</p>	<p><u>Auctioning</u></p> <p>Royalty-based spectrum auction with minimum guaranteed payment to select the applicants with the best business case.</p>

Expiry Date of 2G Licences

First Batch (800/900 MHz)	Second Batch (1800 MHz)
<i>Hong Kong CSL</i> 23 July 2002	<i>Hutchison Telephone</i> 30 September 2006
<i>Hutchison Telephone</i> 20 November 2002	<i>Hong Kong CSL</i> 30 September 2006
<i>Hutchison Telephone</i> 20 November 2002	<i>SmarTone Mobile Communications</i> 30 September 2006
<i>SmarTone Mobile Communications</i> 4 January 2003	<i>New World PCS</i> 30 September 2006
<i>Hong Kong CSL</i> 12 January 2003	<i>Peoples Telephone Company</i> 30 September 2006
	<i>Mandarin Communications (Sunday)</i> 30 September 2006