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Legislative Council

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LC Paper No. CB(3) 592/00-01(01)

**Summary of views on
the Telecommunications (Method for Determining Spectrum Utilization fees)(Third Generation Mobile Services) Regulation
and the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order
presented to the Bills Committee on the Telecommunications (Amendment) Bill 2001(as at 10 April 2001),
the Legal Service Division's comments and the Administration's response**

The Telecommunications (Method for Determining Spectrum Utilization fees)(Third Generation Mobile Services) Regulation

Submission	Comments on Particular Issues	Legal Service Division's comments on legal issues	Administration's Response
Hutchison Telephone Company Ltd (HTCL)	<u><i>Network turnover and fees</i></u> (sections. 1 & 3(b)(ii)(A) of the Regulation refer) Since spectrum utilization fee will	The submission relates entirely to policy rather than legal issues.	

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<p>(tabled at the Bills Committee meeting held on 6.4.2001 and circulated to absent members vide LC Paper No. CB(3) 584/00-01 on 9.4.2001)</p>	<p>be charged based on the relevant minimum fee (for the first 5 years) and thereafter on the network turnover, the following <i>fees</i> (from (a) to (c)) should <i>not be charged</i> and <i>item</i> (d) should <i>not be included</i> within the scope of network turnover:</p> <p>(a) fees based on the number of <i>base stations</i> for the carrier (mobile) licence, because that would constitute double counting and penalization of performing mobile operators for maintaining and operating extensive mobile network coverage;</p> <p>(b) fees based on the number of <i>mobile stations</i> for carrier (mobile) licence, because that would constitute double counting and penalization of performing mobile operators</p>		<p>(a) to (c)</p> <p>The fee components referred to in (a) to (c) comprise the different bases for charging the <u>licence fees</u> of mobile carrier licences, which is devised on a cost-recovery basis, as stipulated in Schedule 3 to the Telecommunications (Carrier Licences) Regulation. As Office of the Telecommunications Authority (OFTA) incurs administration costs in issuing licences and ensuring compliance with licence conditions, it is necessary for OFTA to recover such cost from the licence fees.</p> <p>The spectrum utilization fees, on the other hand, is charged on a different basis, i.e., network turnover,</p>

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	<p>with wide coverage and better service which attracts a large number of customer base;</p> <p>(c) fees based on the <i>frequency spectrum assigned</i> for the carrier (mobile) licence should not be charged, because that would constitute a duplication of charges;</p> <p>(d) <i>turnover</i> arising from or attributable to content and/or service provisioning, if MVNOs/NSPs, whose obligations are unclear and undefined at the moment, are not liable to pay any royalty /fee based on its turnover; otherwise it would create an unfair disadvantage against the 3G operators.</p>		<p>(subject to the minimum guaranteed payments as specified by the SITB) for the <u>use of spectrum</u> which is a scarce public resource.</p> <p>(d)</p> <p>i) Network turnover of a 3G licensee (MNO) arising from provision of all telecommunications services over any telecommunications network using the frequency bands assigned to the 3G licensee will be subject to royalty.</p> <p>ii) MVNOs and content providers are customers of MNOs, and their payments to MNOs are part of the network turnover which should be subject to royalty payment.</p> <p>iii) It should be noted that royalty will be levied on</p>

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			<p>network turnover only. Revenues from content and/or value added service provision will not be subject to royalty payment. We envisage that MNOs will have separate accounts for the network and content/value-added service parts of the business, if they choose not to set up a separate legal entity to carry out the different parts of business. Revenues from the content/value-added service part of the business, which is equivalent to the business of an MVNO or content provider without a 3G network licence, is not subject to royalty payment.</p> <p>iv) MVNOs and content providers which do not have a 3G network licence therefore do not enjoy any unfair advantage. The MVNOs and content providers will need to pay the 3G network licensee charges for the use of the 3G networks. These charges are expected to include the cost of spectrum utilization fee. In this manner, MVNOs and content providers are in the same position as the service/content provision arm of the network operator as far as the cost of conveyance is concerned.</p>

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	<p>In the case of open network, the spectrum utilization fee including the royalty based on the network turnover should be included in determining the cost element for the purpose of calculating the wholesale pricing charged to the MVNOs/NSPs.</p>		<p>The basis of determining the wholesale pricing to be charged by an MNO to MVNOs/NSPs who seek intervention by the TA when commercial negotiations is a regulatory issue and falls outside of the Draft Regulation. TA intends to include the spectrum utilisation fee, which is a cost to the MNO, in the computation in his determination.</p>
<p>HTCL (tabled at the Bills Committee meeting held on 6.4.2001 and circulated to absent members vide LC Paper No. CB(3) 584/00-01</p>	<p><u>Auction Process</u> TA's suggestion that the bidders' identities and numbers be kept confidential to achieve the overall objectives of promoting entry contradicts the principles of auction and defeats the purpose of open auction and cannot be justified in the light that land auctions etc. in Hong Kong for many years do not seem to have deterred players from participating.</p>	<p>The submission relates entirely to policy rather than legal issues.</p>	<p>Our views are different from Hutchison Telephone Company Ltd. Preservation of confidentiality of number of bidders and their identities during the Auction is very important in our auction design, not only for achieving the objective of entry promotion, but also to prevent collusion and to determine the “fair market” price for the 3G licences, which is the highest common price which all the 3G Licensees are willing to pay. We have arrived at the present arrangement having considered recent precedents of spectrum auctions. The auction design should achieve the objectives set. In this case, our objectives are to :</p>

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on 9.4.2001)	<p>The other suggestion is that the bids made by the various bidders in the ascending auction shall be kept confidential. HTCL maintains its strong support for the principles of an open auction and contention that the auction process should be highly transparent, fair, objective and economically efficient.</p> <p>SITB has stated that treasury benefit is not the priority or emphasis of the Government in the 3G auction. HTCL notes that the underlying principle and purpose of any auction is to eliminate the bidders in excess of the number of successful bidder(s) intended to be achieved and accordingly the process should stop at the point where that principle and purpose is achieved.</p>		<ul style="list-style-type: none"> ● promote entry ● enhance/preserve market competition ● prevent collusion ● minimise market distortion ● allocate frequency bands efficiently <p>We believe that our design meets these objectives AND is in the public interest.</p> <p>The design is aimed to achieve the objective of determining the fair market price for the 3G licences. To stop the auction when the fifth bidder drops out does not provide the fair market price.</p> <p>We maintain that our prime objective is <u>not</u> to maximise revenues. We appreciate that potential bidders may not entirely agree with certain features of our design from their viewpoint. However, the proposal must be assessed in its entirety to arrive at a balanced view. Our proposal includes a royalty-based fee, which compares to an upfront cash fee, will be more entry-promoting given the changing market environment. We will require a 5-year</p>

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	<p>However the auction as presently proposed is designed to continue beyond that point to where the fourth winner decides to leave, in order to determine the fair market price for 3G licences. HTCL is of the view that the same purpose can still be achieved, by using the price offered by the four remaining bidders immediately after the fifth bidder leaves the auction as the fair market price for the 3G licences.</p> <p>HTCL also suggests that the resolution of connected bidders process should be moved forward to the pre-qualification stage to select out of connected bidders those bidders who shall go forward to the main auction stage.</p>		<p>rolling guarantee, as opposed to a full 15-year guarantee, during the 15-year licence period. We propose in our Draft Regulation that there would be an auction if there are five or more qualified bidders after the Pre-qualification Phase, and to award the spectrum at reserve price four or less qualified bidders after the Pre-qualification Phase. We firmly believe that the arrangement now formulated is balanced, best meet our policy objectives, and is in the interest of the public and consumers.</p> <p>OFTA has completed its consultation on the rules on connected bidders. We will publicise the detailed rules in the Information Memorandum. It is in bidders' interest to sort out their connection before the auction. Experience in Europe indeed shows that bidders will sort out their connection beforehand. That said, we must design our auction rules in a comprehensive manner if there are indeed connected bidders. In our present auction design, connected bidders, who are successful in their bidding, will be given another chance to disconnect after the Main Auction. It is only when they fail to disconnect will</p>

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			<p>they enter in a sub-auction by cash bidding. To summarise, the rules on connected bidders are made to achieve the objective that the same economic group will not have substantial interests in, or otherwise control, the 3G licences. The rules incentivise the sorting out of the connection before the auction, rather than the conduct of the sub-auction. The merits of the overall auction design are better assessed on the whole.</p>

The Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order

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<p>HTCL (tabled at the Bills Committee meeting held on 6.4.2001 and circulated to absent members vide LC Paper No. CB(3) 584/00-01 on 9.4.2001)</p>	<p><i>Frequency bands</i> (a)HTCL recommends that the unpaired TDD band 1914.9-1919.9 be moved to 2014.7-2019.7 due to the expected TDD high interference on the FDD uplink, which the 400KHz guard band may not be sufficient for safeguarding the spectrum purity.</p>		<p>(a) The band 2014.7 - 2019.7 MHz will be used in other countries for apparatus which requires no individual licensing. Such apparatus would potentially be of use in Hong Kong, particularly if the equipment is widely available in the market. If Hong Kong uses this band for licensed public service, it would restrict the use of such apparatus in Hong Kong. Furthermore, there would be serious risk of interference to the licensed public service from such apparatus brought back from overseas markets. We therefore consider it undesirable to move the TDD band 1914.9 - 1919.9 MHz to the band 2014.7 - 2019.7 MHz recommended by HCTL.</p> <p>The proximity between the TDD band and FDD band is also present in the band plans of other countries. The advice from our consultant is that the 400 kHz guard band between the TDD band and FDD band should be sufficient to prevent</p>

			<p>unacceptable interference, particularly when the two bands are operated by the same company.</p>
	<p>(b)The 1964.9-1979.7 spectrum is adjacent to the frequency allocated for the mobile satellite service. According to HTCL's technical findings, there are evidences of such interference. HTCL therefore strongly requests the TA to take actions prior to the commencement of the auction to control and free such frequency band from interference.</p>	<p>The submission relates entirely to policy rather than legal issues.</p>	<p>(b) The band 1980 - 2010 MHz has been allocated in other countries to the satellite component of the 3G services. The proximity of the 1964.9 - 1979.7 MHz band to the band allocated to mobile-satellite service is therefore a characteristic present in the band plans for 3G services in other countries. The TA will adopt the best practice in preventing mutual interference between the terrestrial part and the satellite part of the 3G services. Any further information from HTCL on the interference prevention measures required will be carefully considered by the TA, but no modification of the band plan is required.</p>

	<p>(c) On the basis of the recommendation in para (a) above, HTCL recommends that the spectrum allocated to each of the four successful bidders should be of the same size of 14.8 MHz paired plus 5 MHz unpaired to ensure fairness and equal treatment to all successful licensees.</p>		<p>(c) The present band plan allocates 14.8 MHz x 2 of FDD spectrum to each of the four 3G network licensees.</p>
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Legislative Council Secretariat

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