

**Administration's Responses to Bills Committee's
Request for Follow-up Action
at the Meeting of 6 April 2001**

Introduction

The Bills Committee on Telecommunications (Amendment) Bill 2001 requested the Administration to take four follow-up actions at the meeting of 6 April.* We will take action as requested. Two items however require explanation and our responses are set out below.

(* Note by Clerk to Bills Committee: the list of follow up actions is attached at Appendix 1)

Administration's Responses

Q1: Clauses 2 and 3 of the Bill – Please consider drafting Committee Stage amendments to these clauses to the effect that the Authority or the Secretary must regard the relevant fees as a determining factor, where and when it is so provided for in the relevant regulation.

A1: We have carefully considered Members' suggestion again. As we have explained, the primary legislation should be general empowering provisions while the subsidiary legislation and notice to be specified by the Telecommunications Authority (TA) under the new section 32I in the Telecommunications (Amendment) Bill 2001 would be specific to individual licensing exercise. The primary legislation should therefore be applicable to all licensing exercises involving the levy of spectrum utilization fees, which may be an auction, tender, a combination of auction or tender or any other methods. It is therefore not appropriate to mandate TA to regard the fees as a determining factor in all licensing exercises, such as a tender where successful licensees are selected on the basis of both their technical proposals and fees offered. For the 3G licensing exercise, the certainty that the highest bidders will be the successful bidders will be provided for in the subsidiary legislation. We maintain that the proposed arrangement (i.e. primary legislation to be general empowering provisions, with subsidiary legislation and notice made by TA to provide details specific to individual licensing exercises) is appropriate.

On Member's suggestion to expressly provide that TA must regard the fees as a determining factor where and when it is so provided for in the relevant regulation, we do not think that a CSA is necessary. In carrying out its functions under the Telecommunications Ordinance, including issuing of

licences, TA is obliged to follow all the provisions in the Ordinance as well as the subsidiary legislation. It is therefore not necessary to expressly subject TA to the provisions of the subsidiary legislation.

In this connection, Members may wish to note that in granting the 3G licences, TA is obliged to follow other subsidiary legislation as well. For example, it must follow the validity period, fees and general conditions prescribed by the Secretary for Information Technology and Broadcasting in the regulation for carrier licences under section 7(2). The Telecommunications Ordinance does not expressly provide under section 7 that TA must follow the requirements prescribed in the afore-mentioned regulation.

Q2: Clause 5 – Please explain the procedures for the Chief Executive in Council to exercise the power to cancel or suspend a licence on grounds of public interest, and the means of appeal against that decision by the relevant licensee.

A2: Under common law principles, the Chief Executive in Council is required to act fairly and follow the common law principles of natural justice before making his decision. The licensee whose licence is revoked or cancelled will be given an opportunity to make representations for consideration by the Chief Executive in Council and the Chief Executive in Council will act impartially in the exercise of its discretion.

As with decisions made by the TA, the Chief Executive in Council's decisions to revoke or suspend a licence are subject to judicial review and will need to justify his decision in any legal challenge.

**Bills Committee on
Telecommunications (Amendment) Bill 2001
Fourth Meeting on 6 April 2001
Concerns raised by members at the meeting which require
follow-up actions by the Administration**

1. Clauses 2 and 3 of the Bill - Please consider drafting Committee Stage amendments to these clauses to the effect that the Authority or the Secretary **must** regard the relevant fees as a determining factor, where and when it is so provided for in the relevant regulation .
2. Clause 4(4)(b)(ii) - Please consider giving an undertaking in the Council when the Bill resumes second reading debate on that the Authority will **consult** the industry before it specifies the terms and conditions of an auction or tender.
3. Clause 5 - Please explain the *procedures* for Chief Executive in Council to exercise the power to cancel or suspend a licence on grounds of **public interest**, and the *means of appeal* against that decision by the relevant licensee.
4. Information Memorandum in respect of issuing of 3G licence - Please brief the Panel on Information Technology and Broadcasting in May/June on the **important points** and principles of the auction, including providing a bidder with information of other bidders and bids made and arrangement for media presence during the auction.

Legislative Council Secretariat
9 April 2001