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數碼通
SMARTONE

The Hon. James Tien Pei-chun, JP,
c/o Manhattan Holdings Ltd.,
6/F., Hutchison House,
10 Harcourt Road,
Hong Kong

Dear Mr. Tien,

Subsidiary Legislation for 3G Licensing

I understand that the meeting of the Bills Committee on the *Telecommunications (Amendment) Bill 2001* to be held today (26 April 2001) may also consider the proposed subsidiary legislation.

SmarTone has deep concerns about the detrimental impact which the proposed auction design may have on the long term interests of consumers and the viability of the mobile industry in Hong Kong. Our views are set out in our submission of 9 April 2001 to OFTA's consultation paper of 23 March 2001.

Our primary concerns are with the 4th leaver rule and the Dark Room auction process.

In relation to the 4th leaver rule:

- The most efficient auction outcome will only be determined if the royalty rate is set at the point at which the fifth last bidder withdraws. As in any market, activity should cease when all the lots have been sold, rather than requiring bidders, who do not know they have already won, to continue bidding against each other. If there was only one licence, the 4th leaver principle would mean the successful bidder would be bidding against itself until it dropped out, only to be told when it dropped out that it was the winner;
- The artificially high price which the 4th leaver rule can produce is a tax on future consumers and seems contrary to OFTA's goals in adopting a royalty in the first place; and
- If there is a concern that the economically efficient outcome from the auction process does not match the government's 'public interest' expectations, this concern should be resolved by using approaches adopted elsewhere, such as a reserve price. The Government already has acknowledged that it will have to set a reserve price to deal with the situation if 4 or fewer bidders turn up. This means there is an inconsistent approach between the situation where only 4 bidders turn up to participate in the auction, in which case there is no auction, and where there are 4 bidders left standing in the auction, in which case the auction continues.

In relation to the Dark Room:

- The purpose of any market is to allow buyers and sellers to test their private assumptions about the business value. This is even more important when dealing with 3G spectrum given its technical and commercial uncertainties. It is therefore essential for the operators to have visibility of certain information (e.g. no. of bidders entering and remaining in the auction etc.) before and during auction in order to best estimate the business value for the bidding of the 3G license. The availability of such information does not equate to collusion.
- The Dark Room is an experimental process which has not been tried elsewhere in the world. While no auction process is perfect, the open auction model has the benefit of having been used and continuously improved in more than a dozen countries over the last 15 years; and
- The Government's proposal to conduct a royalty based auction which it says addresses the problem occurred in overseas auctions of high cash prices which overburden operators is threatened by the dark room and diluted by the 4th lever.

The success of 3G spectrum allocation is treated as a bellwether of the health of a jurisdiction's telecommunications market. The current uncertain climate is not the time for Hong Kong to take risky experiments with untried processes.

SmarTone is concerned that there has been insufficient time for parties to present their views to the Bills Committee and for it to properly consider the proposed design. We have not had an adequate opportunity to consider the subsidiary legislation, and its apparent incorporation of the 4th lever rule.

SmarTone is not seeking a delay in the legislative or auction process. We believe that consultation can be undertaken within the current timeframe. The subsidiary legislation is not due to be published in the Gazette until 1 June 2001.

Accordingly, I respectfully suggest that the Bills Committee proceed to consider the amending legislation and the subsidiary legislation at the 26 April and 2 May meetings on the basis that it should reserve its position on the Dark Room and the 4th lever rule to permit further industry consultation. SmarTone also seeks the opportunity to be heard before the Bills Committee on the subsidiary legislation. Indeed looking at the Bills Committee timetable, we did not realize until recently that the subsidiary legislation would be considered and approved before its gazettal in June.

Yours faithfully,

Ian C. Stone
Chief Executive Officer

cc: Ms. Eva Cheng, Assistant Secretary, ITBB
Ms. Gracie Foo, Principal Assistant Secretary, ITBB