

Letterhead of New World Mobility

BY FAX AND MAIL

26th April 2001

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

Dear Mr Tien,

It has come to our attention that the bills committee your are chairing on the *Telecommunications (Amendment) Bill* (the "Committee") will consider the proposed subsidiary legislation simultaneously with the primary legislation as suggested to the administration by the Committee on March 26, 2001.

Although New World PCS Limited ("New World Mobility") believes the consumers and the Hong Kong telecommunication market would be best served by a swift and expedite licensing process, this should not be done without adequate industry consultation on, *inter alia*, the details of the proposed auction design.

New World Mobility is concerned with a number of principles eluded to (the details of which are yet to be communicated to the industry) by the Telecommunication Authority ("TA") in recent weeks and inferred in the subsidiary legislation. We have expressed our concerns on the auction design in our response to the TA's consultation paper published for comments on 23 March 2001 (a copy of our response to the TA is attached for your reference).

Like most of the industry participants, our initial main concerns on the auction design relate to the "4th last out rule" and the blind auction process.

As exposed in the attached discussion paper, the "4th last out rule" could bring about inflammatory prices for the licenses, which could translate into a handicapped mobile industry, and higher consumer prices.

As for the "blind auction process", we believe it is important for the bidders to know the number and the identity of the bidders that are to participate. The TA's approach, based on the premise that the value a bidder attributes to a license is something to be determined in absolute terms in a vacuum without reference to the identity and credentials of the other bidders, fails to consider some additional strategic elements that bidders should legitimately have access to.

Even if the auction design is an important aspect of the licensing process, one should not lose sight of the even more important aspects of the licensing process, which will far outlast the pure auction. Fundamental aspects relating, *inter alia*, to the open network requirements and detailed accounting principles for calculation of the royalty have yet to be detailed by the TA and remain an industry concern.

We would be happy to provide the Committee with detailed comments on the subsidiary legislation should it so require but we believe the fundamental industry concerns should be addressed first and a revised subsidiary legislation should be tabled accordingly.

Please do not hesitate to contact the undersigned should you have any questions or comments on the foregoing.

Regards,

Francois Gaudet
Vice President, Legal Affairs
and Company Secretary

Letterhead of New World Mobility

New World Mobility

**Submission to the
Hong Kong Telecommunications Authority**

On

**Auctioning of Spectrum for Third
Generation Mobile Services (3G)**

9 April 2001
Hong Kong

**New World Mobility Submission to the Hong Kong
Telecommunications Authority
On
Auctioning of Spectrum for Third Generation Mobile Services (3G)**

A. Preliminary Remarks

New World PCS Limited ("New World Mobility") is happy to submit its views on (a) the proposed rules on "Connected Bidders" published on March 23, 2001 for consultation (the "Consultation Paper") by Telecommunication Authority ("TA") and (b) on related matters reported in some ancillary documents tabled by the TA with LegCo's bill committee and remarks made by the TA and its consultants on the auctioning process.

As it was the case in numerous European jurisdictions, New World Mobility believes the TA should publish for comments the detailed auction rules and methodology before the rules become final. Although a number of issues on the 3G auctioning process remain to be made public in details by the TA and commented upon by the industry before those detailed rules become final, New World Mobility believes this can be achieved rather rapidly through short industry consultations and should not be a cause for long delays of the 3G auction process provided the TA publishes the comprehensive details of the rules.

New World Mobility is a strong believer that the 3G auction process must be completed as soon as practical and should not be unduly delayed in order not to jeopardize Hong Kong's role as a communication hub in Asia.

B. "Connected Bidders" Detailed Rules

In relation to the detailed rules on connected bidder contained in Annex 2 to the Consultation Paper, New World Mobility has the following comments:

i. Definitions of "Indirect Interest" and "Participation"

The TA should not include in its definitions of "Indirect Interest" and "Participation" a subjective test as is suggested in the footnotes to the definitions (please refer to footnotes 2 and 3 of Annex 2 to the Consultation Paper) but should rather leave the 15% objective test as the rule for assessing Indirect Interests and Participations.

Minority shareholder protection rights embedded in articles, shareholders agreements or voting trusts should not be caught by these definitions nor influence in any way the deemed ownership interest for the purpose of the rules. The subjective test would create uncertainty in the interpretation of the rules and clarification by the TA on a case by case basis would not be practical in these circumstances

given the potential number of "ruling" that could be involved and on the confidential nature of some of these arrangements.

The TA does not need to go this far to achieve its objective. The subjective test the TA is considering using would be extremely difficult for bidders and their Indirect Interested parties and Participant to apply bring about an unwarranted uncertainty in the application and compliance with the rules.

ii. Section 4 on Qualified Bidders

As provided under Section 3(c) and as a matter of transparency and policy, the TA should communicate to all Bidders any permission given under Section 4(b) as this aspect relates to competition issues, which are of public interest.

C. Auction Design Issues

New World Mobility would like to take this opportunity to make some comments on the auction design summarily referred to by TA in recent weeks. The remarks are preliminary in nature, as New World Mobility needs the complete framework of the auction before reaching a final position.

i. Tie Bids

On the issue of withdrawal of the last two bidders from the auction and the resulting tie bids, New World Mobility believes the 4th option highlighted in the Consultation Paper where all bidders continue to bid should be used for dealing with tie bids.

In any event, any solution which incorporates the selection by drawing lots or the time of withdrawal should definitely not be used as they bring an element randomness which is unwarranted in the circumstances.

ii. Identity and number of Bidders

The TA has indicated that the number and identity of the bidders will be kept confidential until the end of the auction. New World Mobility believes it is important for the bidders to know the number and the identity of the bidders that are to participate. The TA's approach based on the premise that the value a bidder attributes to a license is something to be determined in absolute terms in a vacuum without reference to the identity and credentials of the other bidders fails to consider some additional strategic elements that bidders should legitimately have access to.

The New World Mobility is not opposed to not revealing the identity of the bidders during the auction process provided the identity of all bidders is made public prior to the auction.

iii. Timing for ending the Auction

The TA has indicated recently that the auction for 3G licenses would, in addition to being a blind auction, continue until the 4th last bidder would withdraw and that the royalty payable would be equal to the bid of the 4th last bidder at the time of its withdrawal.

New World Mobility argues that the auction should not continue once the 5th last bidder withdraws and that the licenses should be awarded to the last four standing bidders at the then current price being offered by the 4th bidder. The auction process would ensure the public interest is preserved by raising an appropriate amount for the spectrum usage but at the same time the TA would not adversely tax the industry by forcing the four last winners to outbid themselves.

New World Mobility believes the TA's position on this aspect is somewhat contradictory to its stated objective that it was not trying to maximize the return for the Hong Kong government. This approach may cause great harm to the Hong Kong mobile industry as it would force the provisional licensees to keep on raising the stakes unnecessarily once there are only four bidders left.

To support this recommendation, we refer to the TA's indication that should only 4 bidders submit an application, it would not proceed with the auction and would grant provisional licenses to the four applicants. New World Mobility agrees with this approach and submits that if the TA believes that the auction should not start with only four bidders, by the same rational, the auction should not continue when there is only four bidders left.

Although the current financial market conditions are likely to discipline the bidders, should the last four bidders be left outbidding each other, this could lead to excessive bidding which would be detrimental to the industry and the consumers as New World Mobility believes the license costs will ultimately be born by the consumers. To the effect, the TA should note that, although some economists have argued that the license fee is a sunk cost for the operators, prices for mobile airtime in the UK have started to raise since the UK auction which some industry analysts believe is a sign that 2G users are already paying for the license prices paid at the UK 3G auction.

iv. Accounting Principles for Calculating the Royalty

Since the TA announced on February 13, 2001 that the license fee was going to be levied by way of royalties, very little has been communicated to the industry as to how the royalty was going to be

calculated. New World Mobility believes the TA should publish for comments the accounting principles to be used for establishing the based upon which the Royalty would be applied.

D. Remaining MVNO Issues

In the industry responses to the 2nd industry consultation paper on the licensing framework for third generation (3G) mobile services (2nd Consultation Paper) publish last October, the industry has raised a number of issues regarding the licensing framework, especially as it related to the "openness of network" obligations which has since then been officially confirmed as being part of the framework. The Industry is still awaiting for, *inter alia*, some specifics on the detailed pricing principles to be applied by the TA when intervening on the MVNO pricing issues, the determination of capacity allocation and the detailed MVNO commitment guidelines to be used by the TA when adjudicating on MVNO issues.

New World Mobility again strongly believes the TA should publish the proposed detailed rules, guidelines and policies (including the proposed wording of the 3G license) for industry comments before the information memorandum is finalized.