The Hon James Tien Pei-chun, JP
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Date: 26 April 2001

Re: Telecommunications (Amendment) Bill 2001 - 3G Licensing

Dear Mr Tien,

It has come to my attention that today's meeting of the Bills Committee on the *Telecommunications (Amendment) Bill 2001* may also consider some aspects of the proposed 3G auction framework.

I would like to express that CSL continues to have significant concerns about the negative impact which the proposed auction design may have on the viability of the mobile industry and the long term interests of consumers in Hong Kong. Previously, our views have been set out in our submission of 9 April 2001 to OFTA's consultation paper issued on 23 March 2001. In this respect, our comments have focused on the two-stage screening process and on the method for establishing the royalty percentage.

In relation to the two-stage screening:

CSL believes it is illogical to have bidders who are potentially and/or likely ineligible to be awarded a license participating in the auction. CSL is confident that Government is fully capable of determining and resolving issues associated with controlling interests prior to the start of an auction. Connected bidders should resolve their consortium arrangements prior to the bidding process.

It is CSL's view that the two-stage process has been introduced to deal with the complexity of "Dark Room" auction structure. The Dark Room structure is untried process which has not been introduced elsewhere in the world. The prevailing open auction model has the benefit of having been used and continuously improved over time. In the United Kingdom, OFTEL publicly announced on 12th January 2000 names of applicants which was followed by another public announcement on 18th February 2000 showing the list of the thirteen applicants who had successfully passed the pre-qualification requirements and were allowed to enter the auction.

Other jurisdictions throughout the world have successfully dealt with competition and collusion concerns without having to resort to the unusual license auction practices which are currently proposed by OFTA. It is CSL's view that the present proposal does less to dissuade collusion than it does to promote unnecessarily high and/or irrational bidding prices.

In relation to the royalty percentage:

CSL submits that OFTA's proposal to determine the auction price based on the highest price to be paid by the weakest successful licensee is questionable and not consistent with OFTA's stated intention to conduct the auction in the simplest and most expedient manner. CSL is of the view that the most fair, reasonable, and efficient methodology is for the auction to end when the fifth weakest bidder drops out and only four bidders remain. The auction should end 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.

The royalty percentage should be determined by the price willing to be paid by the fourth weakest successful licensee at the time when the fifth weakest bidder drops out. Any other methodology will inflate license fees to an unnecessarily high level, both increasing the licensee operational costs and increasing the consumer tariff. Furthermore, while strong operators can be expected to sustain these costs, the higher levels will unfairly disadvantage the smaller players, particularly in the most vulnerable first five years after license award, when revenues will fall far short of minimum license costs.

Should there be a concern that the outcome from the auction process does not match the Government's 'public interest' expectations, this concern should be resolved by using the Government's already stated intention to set a reserve price, which also deals with the situation if four or fewer bidders turn up. This provides a consistent approach between the situation where only four bidders turn up to participate in the auction - in which case there is no auction - and where there are only four bidders remaining in the auction, in which case the auction ends.

CSL is concerned that it has not had an adequate opportunity to consider the subsidiary legislation, and its apparent incorporation of the rule guiding the royalty percentage. Furthermore, there has been insufficient time for interested parties to present their views to the Bills Committee and for it to properly consider the proposed design.

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 aforementioned auction rules to permit further industry consultation. To grant the industry a proper right of audience is the established practice in other developed jurisdictions, such as Singapore and Australia (within Asia). Regulators in other jurisdictions have found it useful and indeed valuable comments from the industry have resulted in changes to the licensing framework. CSL also seeks the opportunity to be heard before the Bills Committee on the subsidiary legislation.

Yours faithfully

Hubert Ng
Chief Executive Officer

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