

**立法會**  
***Legislative Council***

LC Paper No. CB(1)2117/00-01  
(These minutes have been seen  
by the Administration and  
cleared with the Chairman)

Ref: CB1/HS/2/00

**Subcommittee on draft Telecommunications (Method for Determining  
Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation  
and draft Telecommunications (Designation of Frequency Bands Subject  
to Payment of Spectrum Utilization Fees) Order**

**Minutes of meeting  
held on Monday, 4 June 2001, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, JP (Chairman)  
Hon David CHU Yu-lin  
Hon SIN Chung-kai  
Hon Howard YOUNG, JP  
Hon YEUNG Yiu-chung  
Hon Emily LAU Wai-hing, JP  
Hon Albert CHAN Wai-yip
- Members absent** : Hon Eric LI Ka-cheung, JP  
Hon CHAN Kwok-keung
- Public officers  
Attending** : Ms Eva CHENG  
Deputy Secretary for Information Technology  
and Broadcasting
- Ms Gracie FOO  
Principal Assistant Secretary for Information  
Technology and Broadcasting
- Miss Linda SO  
Assistant Secretary for Information Technology  
and Broadcasting

Mr M H AU  
Senior Assistant Director (Regulatory), Office  
of the Telecommunications Authority

Mr Geoffrey FOX  
Senior Assistant Law Draftsman

Miss Shirley WONG  
Government Counsel

**Clerk in attendance** : Miss Polly YEUNG  
Chief Assistant Secretary (1)3

**Staff in attendance** : Miss Connie FUNG  
Assistant Legal Adviser 3

Ms Anita SIT  
Senior Assistant Secretary (1)8

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### **Meeting with the Administration**

In reply to the Chairman's enquiry about the legislative schedule for the 3G-specific subsidiary legislation, the Assistant Legal Advisor (3) (ALA3) advised that the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (the Regulation) and the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fees) Order (the Order) had been gazetted on 1 June 2001 and would be tabled in the Legislative Council on 6 June 2001. Both the Regulation and the Order were subject to section 34 of Cap. 1. Amendments to the subsidiary legislation, if any, should be made by 4 July 2001 or 11 July 2001 if extended by resolution and the deadline for giving notice of amendments would be 26 June and 4 July 2001 respectively. Section 1 of the Regulation provided that the Regulation would come into operation on 4 July 2001 and section 1 of the Order provided the same.

2. The Subcommittee then examined the views submitted by mobile services operators in conjunction with the comments of the Legal Service Division (LSD) of the Legislative Council Secretariat on the relevant legal issues and the Administration's response as summarized in LC Paper No. CB(1)1345/00-01(01).

The “4<sup>th</sup> leaver” rule

3. Miss Emily LAU referred to the submission of SmarTone Mobile Communications Ltd. (SmarTone) dated 1 June 2001 (CB(1)1421/00-01(01)) in which SmarTone highlighted that in Singapore, the government would set aside up to S\$200 million from the 3G auction to support a programme aimed at stimulating the development of the telecommunications industry. SmarTone commented that while the Hong Kong SAR Government proposed to adopt the “4<sup>th</sup> leaver” rule in the 3G licence auction which would serve to push up the licence price, it did not have a similar policy to plough back the additional proceeds from the auction to the industry and the economy. Miss LAU invited the Administration to respond to this point.

4. The Deputy Secretary for Information Technology and Broadcasting (DS(ITB)) advised that the objective of the Hong Kong 3G auction was to issue the four licences in a fair and efficient manner. Currently, there was no Government policy to use the proceeds from the issuance of licences for the research and development of the industry/sector concerned. She also remarked that the government in Singapore adopted the up-front cash payment approach while the Hong Kong SAR Government adopted the royalty-based payment approach for the 3G licences. The very purpose of adopting the royalty-based payment approach was to promote entry and to lower the financial burden of successful 3G licensees.

5. The Chairman consulted members on their views on the “4<sup>th</sup> leaver” rule vis-à-vis the “5<sup>th</sup> leaver” rule counter-proposed by the mobile services operators.

6. Mr SIN Chung-kai opined that the “5<sup>th</sup> leaver” rule could also serve to meet the policy objectives of the Government for the 3G auction. On the Administration's argument that the “5<sup>th</sup> leaver” rule might result in a price lower than the fair market price and thus provide an opportunity for successful 3G licensees to make a profit by re-selling their licences, he considered that depending on the market conditions, such a situation might also occur if the “4<sup>th</sup> leaver” rule was adopted. On the other hand, a lower price for the 3G licences would provide an edge for the licensees to develop the infrastructure for 3G services and thus would benefit the longer-term growth of the telecommunications industry. Mr SIN suggested that the Subcommittee move amendments to the Regulation to the effect that the “5<sup>th</sup> leaver” rule instead of the “4<sup>th</sup> leaver” be adopted.

7. Miss Emily LAU agreed that the 3G licences should be allocated by auction to ensure fairness. She considered it acceptable for the Government to seek to obtain greater revenue from the 3G auction as the 3G spectrum was a scarce public resource, and she had gathered similar views from some members of the public. Given the current market conditions and sentiments, she did not

consider that the “4<sup>th</sup> leaver” rule on its own would bring about unreasonably high auction prices or investors were prone to make irrational bidding offers. As regards the suggestion of the Subcommittee moving amendments to the subsidiary legislation to adopt the “5<sup>th</sup> leaver” rule, she said that she did not have any strong view on the matter.

8. Mr YEUNG Yiu-chung said that Members of the Democratic Alliance for Betterment of Hong Kong supported the “5<sup>th</sup> leaver” rule. He considered that given the uncertainties of the future 3G market, this approach would lower the financial burden of the successful 3G licensees and thus would provide an edge for the industry to develop 3G services in Hong Kong. Consumers would also be benefit from a lower price for the 3G licences.

9. Mr Howard YOUNG said that Members of the Liberal Party supported the “5<sup>th</sup> leaver” rule but were not inclined to support an open auction approach. He did not have any strong view on whether the Subcommittee or individual Subcommittee members should move amendments for the adoption of the “5<sup>th</sup> leaver” rule in lieu of the “4<sup>th</sup> leaver” rule.

10. Mr Albert CHAN said that the 3G licensing exercise should pave the way for the development of a healthy, fair and competitive 3G market. The auction should be so designed to prevent market domination and to avoid stifling the development of the market. In this connection, he asked whether the Administration would consider setting aside part of the revenue from the auction, say the estimated difference between the total revenue generated under the respective scenarios of the “4<sup>th</sup> leaver” rule and the “5<sup>th</sup> leaver” rule, for worthwhile uses which would benefit the general public and 3G service users.

11. The Chairman said that he would further consult Mr Eric LI and Mr David CHU (who were not present at this juncture) on their views on the “4<sup>th</sup> leaver” and “5<sup>th</sup> leaver” rules. He said that if Mr LI and Mr CHU also supported the “5<sup>th</sup> leaver” rule, the Subcommittee would move amendments to the subsidiary legislation to the effect that the “5<sup>th</sup> leaver” rule would be adopted for the 3G auction.

12. Mr SIN Chung-kai expressed support for the Chairman's suggestion. He also urged the Administration to take heed of the Subcommittee's view and consider moving amendments by itself to the subsidiary legislation to adopt the “5<sup>th</sup> leaver” rule.

13. DS(ITB) stated the Administration's position that the proposed 3G auction approach was a balanced one. Maximizing revenue was not a prime objective of the auction. Had the Government chosen to maximize revenue, it would have elected for an up-front cash payment auction instead of the royalty percentage payment auction as currently proposed. The best way to safeguard consumers' interest was to ensure effective competition and this would be

achieved through the issuance of four 3G licences and other features of the licensing framework including the "Open Network Access" requirement. She also reiterated that there was no Government policy to set aside funds from the proceeds of licence issuance for the development of a particular industry/sector. As regards the suggestion that the Administration propose amendments to the subsidiary legislation to adopt the "5<sup>th</sup> leaver" rule, she said that the Administration would provide a response on this matter at the next meeting of the Subcommittee.

14. The Chairman suggested that he would make a verbal report to House Committee (HC) on 8 June 2001 regarding the position of the Subcommittee on the "4<sup>th</sup> leaver" and "5<sup>th</sup> leaver" rules so as to gauge the views of other Members on this key policy issue before the Subcommittee proceeded to scrutinize the subsidiary legislation clause by clause.

15. Miss Emily LAU said that as other Members had not taken part in the scrutiny of the subsidiary legislation, they might not be in a position to express views on the subsidiary legislation at the HC meeting on 8 June 2001.

16. On the procedural aspect, the Clerk advised that the subsidiary legislation would be tabled in the Legislative Council on 6 June 2001 and would then be referred to HC for consideration on 8 June 2001. HC would decide whether this Subcommittee should continue to scrutinize the gazetted subsidiary legislation. Mr SIN Chung-kai suggested that the Chairman might take the opportunity to briefly report to the House Committee the views of the Subcommittee on the issue of the "4<sup>th</sup> leaver" rule.

17. ALA3 advised that LSD would provide a written report on the subsidiary legislation. She undertook to reflect the view(s) of Subcommittee members on the "4<sup>th</sup> leaver" rule in the report. Members agreed. Miss Emily LAU said that as she had not taken a firm position on the issue, it should not be stated in the report that all Subcommittee members had expressed support for the "5<sup>th</sup> leaver" rule.

18. As to how the subsidiary legislation should be amended to enable the adoption of the "5<sup>th</sup> leaver" rule in lieu of the "4<sup>th</sup> leaver" rule, ALA(3) advised one of the ways to achieve this was to amend the term "highest common royalty percentage" in section 2 and section 4(a) of the Regulation to the effect that the auction should stop when the fifth highest bidder withdrew from the auction and the relevant royalty percentage for the 3G licences should be determined by the current bid offered by the remaining four bidders when the fifth highest bidder withdrew from the auction.

19. In reply to Mr Howard YOUNG's enquiry, DS(ITB) advised that if the "5<sup>th</sup> leaver" rule instead of the "4<sup>th</sup> leaver" rule was adopted for the auction, the timetable of the auction would not be affected.

20. Noting from the Administration's response in LC Paper No. CB(1)1345/00-01(01) that bidders would be given about eight weeks to prepare for the 3G auction after the publication of the Information Memorandum (IM) for the auction, Mr SIN Chung-kai urged the Administration to publish the IM as soon as possible and sought clarification on whether the Administration would publish a draft IM for public consultation.

21. In response, DS(ITB) advised that it was the Administration's intention to publish the IM as early as possible. At present, there were still some drafting matters and sample documents needed to be finalized for the IM. The Administration anticipated that the IM could be finalized in early/mid-July 2001. She stressed that the Telecommunications Authority had already carried out two rounds of consultation on the licensing and regulatory framework for 3G and on the key issues relating to the auction including the issue of "connected bidders" and the "open network access" requirement.

22. Miss Emily LAU referred to the submission of SmarTone dated 1 June 2001 (LC Paper No. CB(1)1421/00-01(01)) which stated that the governments of the United Kingdom, Australia and Singapore had published a draft IM for public consultation before the final IM was published to invite applications. In response, DS(ITB) reiterated that the Administration had consulted the public on the major issues involved and released all information on the key features of the auction. She confirmed that as the IM sought to set out the details of the 3G auctioning exercise, the Administration considered that there was no need to publish a draft IM for public consultation.

23. Miss Emily LAU stated her view that the auction should be conducted in a fair and efficient manner. Potential bidders should be given sufficient time to prepare for the auction and all the arrangements for the auction should be crystal clear in the future IM.

#### Definition of "network turnover"

24. Members noted the concerns expressed by mobile services operators on the definition of "network turnover" in relation to the royalty-based spectrum utilization fee, the comments of LSD on the relevant legal issues and the Administration's response as summarized in LC Paper No.1345/00-01(01).

25. In this regard, the Principal Assistant Secretary for Information Technology and Broadcasting affirmed the Administration's legislative intent that the royalty-based spectrum utilization fee should be levied on network turnover only. Revenue from content and/or value-added service provision should not be subject to royalty payment. The Administration agreed with LSD's analysis of the term "network turnover" in the Regulation.

26. In reply to the Chairman's enquiry, the Senior Assistant Director, Office of the Telecommunication Authority (SAD/OFTA) advised that the lists of revenue sources that would be/would not be counted as "network turnover" as set out in the Administration's response in LC Paper No.1345/00-01(01) were quoted as examples and were not intended to be exhaustive. The Administration considered that the definition of "network turnover" in the Regulation was sufficiently precise and clear in defining the scope of its application.

27. Mr SIN Chung-kai considered that the application of the term "network turnover" in the Regulation in turn hinged on the definition of "telecommunications services" and he thus enquired whether there was a definition of "telecommunications services" at common law. SAD/OFTA advised that there was a definition of "telecommunications service" in the Telecommunications Ordinance (Cap. 106), which should be applied in interpreting the term "network turnover" in the Regulation.

28. In reply to Mr SIN Chung-kai's enquiry, SAD/OFTA advised that as advised by the technical consultant of OFTA, it was technically feasible for 3G licensees to distinguish the use of the 2G spectrum or other frequencies from the use of 3G spectrum in the course of providing 3G services. He also confirmed that revenue arising from or attributable to the use of the 2G spectrum or any other frequencies (even if they were used for services similar to 3G or in conjunction with the 3G spectrum) would not be counted as "network turnover" for calculating the royalty-based spectrum utilization fee.

29. In reply to the Chairman, ALA3 advised that the term "network turnover" was defined in the Regulation to mean the revenue arising from or attributable to the provision of any telecommunications services over any telecommunications using the 3G spectrum. When the definitions of "telecommunications services" and "telecommunications network" in the Telecommunications Ordinance were applied to interpret "network turnover", it was quite clear that the term was intended to apply only to revenue generated from a service for the carrying or transmission of communications over a telecommunications network. Any revenue generated from the provision of content or other value-added services should not be taken into account in calculating the network turnover even if those services were provided in conjunction with 3G services. For example, the revenue generated from the provision of the telecommunications service to enable a 3G service subscriber to access the Internet through the 3G spectrum would be counted as "network turnover" but any revenue received in connection with the content of the websites so accessed by the subscriber would not be counted.

Licence fees payable by mobile carrier licensees vis-à-vis the spectrum utilization fee

30. Regarding the views of mobile services operators on the licence fees other than the spectrum utilization fee payable by 3G licensees, SAD/OFTA explained that the licence fees of mobile carrier licences were charged for the recovery of the administrative costs incurred by OFTA in issuing the licences and in ensuring compliance with licence conditions. The spectrum utilization fee, on the other hand, was charged on a different basis, i.e. network turnover, for the use of the spectrum which was a scarce public resource. As these licence fees would form part of the operating costs of the future 3G licensees, bidders should take them into account in deciding their offers in the 3G auction.

31. SAD/OFTA also advised that the current annual licence fees payable by mobile carrier licensees included a fee charged at a rate of \$30 per service subscriber, a spectrum-width dependent licence fee for recovery of the administration costs for the management of the spectrum and a fee based on the number of base stations. He agreed to provide detailed figures for these fees after the meeting.

*(Post-meeting note: OFTA has provided the following information after the meeting -*

The spectrum-width dependent component of the licence fee under a Mobile Carrier Licence is \$50 per kHz per annum. A 3G mobile network operator will have initially 35,000 kHz of spectrum assigned. This component of the licence fee will then be \$1,750,000 per annum.

The other two components of the licence fee are as follows:

- (1) \$30 per annum per mobile station used by customer; and
- (2) \$1,000 per annum per base station for the first 50 base stations, \$500 per annum per base station for the next 50 base stations, and \$100 per annum per base station for additional base stations beyond 100.)

32. In reply to Mr SIN Chung-kai's enquiry, SAD/OFTA advised that in principle, if the same person subscribed to both the 2G and 3G services of a 2G-cum-3G licensee, the licensee would need to pay the aforementioned \$30 annual licence fee in respect of the subscriber for its 2G licence as well as 3G licence. He however remarked that in practice, the same person would unlikely subscribe to both the 2G and 3G services of the same mobile services operator, as the 3G services to be offered by a 3G licensee would probably be inclusive of its 2G services. He added that OFTA would review the mobile



carrier licence fees from time to time and adjust them to reflect more closely the prevailing administrative costs of OFTA.

33. In reply to Mr SIN Chung-kai's enquiry, SAD/OFTA confirmed that there was/would be no provision under the Telecommunications Ordinance and the 3G licences to prohibit 3G licensees from using the 2G spectrum allocated to them under their 2G licences for provision of 3G services.

#### Connected bidders

34. On the issue of “connected bidders”, DS(ITB) clarified that bidders would be encouraged to sort out and remove connection, if any, with other bidders before they submit applications. Bidders would be required to provide a declaration on connections at the pre-qualification phase. If there were indeed connected bidders among the provisional successful bidders, they would still be given another chance to disconnect after the main (first phase) auction. It was only when they failed to disconnect would they be required to enter into a cash auction to select the winner. Hence, the provision in the Regulation for a cash auction to resolve connections in fact was a “back-stop” measure to cater for all eventualities.

35. The Chairman enquired how any connections between provisional successful bidders would be identified and how the royalty percentage would be determined after the cash auction, if held at all, to resolve connections. DS(ITB) advised that after the end of the first phase auction, the auctioneer would issue a notice to all provisional successful bidders containing information on the identity of other provisional successful bidders and their shareholding structures as provided by the bidders in their application forms. If indeed there were connections and the provisional successful bidders refused to disconnect, there would be a cash auction to resolve the connection. If as a result, the number of provisional successful bidders would be reduced to less than four, the next highest losing bidder from the first phase would be reactivated and brought into the second phase auction. Once the second phase had established which four un-connected bidders were provisionally entitled to a licence, the royalty percentage applicable to all licensees would be determined by the new highest loser from the first phase or the first phase reserve price, whichever was applicable.

36. Mr YEUNG Yiu-chung expressed support for the proposed arrangements to resolve connections, as he considered that it was possible that shareholders of the bidding companies might not be aware of connections at the pre-qualification stage and the proposed arrangements could accommodate such a possible situation and were fair to bidders.

37. Members noted that the Subcommittee had not received further views from deputations on this issue.

Reserve price for spectrum utilization fee

38. On the view of some mobile services operators that the Administration should conduct consultation before specifying the reserve price for the spectrum utilization fee, DS(ITB) advised that the Administration had taken note of the industry's preference to have a low reserve price. In determining the minimum spectrum utilization fee, the Administration would take into account the interests of the public and the development of the telecommunications market. The Administration would also make reference to the reserve prices adopted in overseas 3G auctions.

Views on Telecommunications (Designation of Frequency Bands Subject To Payment of Spectrum Utilization Fee) Order

39. Members referred to the views of mobile services operators on the Order and the comments of LSD on the relevant legal issues and the Administration's response as set out in LC Paper No. CB(1)1345/00-01(02).

40. Members noted from the Administration's response that as the only available band for Time Division Duplex (TDD) (2014.7 -2019.7 MHz) would be used in other countries for apparatus which required no individual licensing, it was considered undesirable to move the TDD band 1914.9 -1919.9 MHz to the band 2014.7 -2019.7 MHz as suggested by Hong Kong CSL Limited. In reply to the Chairman's enquiry, SAD/OFTA advised that the aforementioned apparatus would include telecommunications devices for private uses. Such apparatus was not yet available in the market but in anticipation of its introduction in the market, other countries had reserved the TDD band 2014.7 - 2019.7 MHz for the apparatus.

41. Mr Howard YOUNG sought clarification on the circumstances under which the use of frequency bands would or would not require individual licensing. In response, SAD/OFTA advised that under the current policy, individual licensing would generally not be required for the use of frequency bands for private purposes but would be required if provision of services to the general public was involved.

42. Mr SIN Chung-kai enquired whether it was technically feasible to ascertain the extent of potential interference for each of the four sets of frequencies assigned for 3G services under the Order. In reply, SAD/OFTA advised that while OFTA had not carried out actual interference tests, one could work out the extent of potential interference based on the current usage and locations of other frequency bands that might cause interference.

43. Mr SIN Chung-kai asked whether TA had the power to adjust/amend the frequency bands assigned to 3G licensees after the award of the licences and allocation of the frequency bands. In reply, SAD/OFTA advised that as the frequency bands that were subject to the spectrum utilization fee had been stipulated in the Order, changes to the frequency bands would have legal implications.

44. On the frequency plan counter-proposed by CSL Hong Kong Limited, SAD/OFTA advised that if CSL's proposed frequency plan was adopted, the last carrier frequency of the Frequency Division Duplex block D would not conform to the band plan decided by the European Radiocommunications Committee which had been widely adopted by other countries including the United Kingdom, Germany and Singapore. The adoption of such a band plan in Hong Kong would have the advantage of enabling users to enjoy international roaming services and a wider choice of equipment.

45. The Chairman concluded that except for the "4<sup>th</sup> leaver" rule, the Subcommittee in principle supported the Administration's policy intent in respect of various sections of the Regulation and the Order.

46. Members agreed that the next meeting should be held on 18 June 2001 at 2:30 pm.

47. There being no other business, the meeting ended at 4:20 pm.