

立法會
Legislative Council

LC Paper No. CB(1)2180/00-01
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref: CB1/SS/3/00

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

**Minutes of meeting
held on Monday, 18 June 2001, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, JP (Chairman)
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Hon SIN Chung-kai
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
- Members absent** : Hon David CHU Yu-lin
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
- 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

I Meeting with the Administration

The "4th leaver" vis-à-vis the "5th leaver" rule

Referring to the Administration's paper LC Paper No. CB(1)1557/00-01(02), the Deputy Secretary (Information Technology and Broadcasting) (DS(ITB)) stated that the Administration considered that the overall approach of the auction based on royalty percentages and minimum guarantee payments already met the objective of a fair and efficient licence allocation exercise. However, taking note of members' concern about providing an attractive environment for 3G services by adopting the "5th leaver" rule in lieu of the "4th leaver" rule and having considered very carefully the implications of the "5th leaver" rule, the Administration had agreed to adopt the "5th leaver" rule and move amendments to the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (the Regulation) to this effect.

2. The Chairman asked the Administration to respond to Mr SIN Chung-kai's suggestion made at the meeting on 29 May 2001 that if the Administration agreed to adopt the "5th leaver" rule, it should consider making an announcement every time a bidder withdrew from the auction until there remained the last four bidders. In response, DS(ITB) said that the Administration had not made a decision on the issue at this stage. The Administration's main concern was that any disclosure of information during the auction should not increase the chance for collusion among

bidders.

3. Mr SIN Chung-kai said that he did not have a very strong view on this issue. In principle, he agreed that a certain degree of confidentiality was necessary to guard against collusion. He was however concerned that as there was a high possibility of tie bids if the number and identity of bidders were not disclosed during the auction, the Administration should devise a fair and non-arbitrary method to resolve tie bids. He therefore would not agree to the method of drawing lots to resolve tie bids.

Quality of frequency spectrum

4. The Chairman invited the Administration to respond to the submission from Hutchison Telephone Company Ltd. (Hutchison) dated 16 June 2001 (LC Paper No. CB(1)1567/00-01). The Senior Assistant Director, Office of the Telecommunications Authority (SAD/OFTA) advised that the two issues raised in the submission had already been covered in Hutchison's earlier submission dated 6 April 2001 (LC Paper No. CB(1)1269/00-01(02)). On Hutchison's claim that the guard band of 0.4 MHz between the 5MHz Time Division Duplex (TDD) band and the 14.8 MHz Frequency Division Duplex (FDD) band was insufficient to safeguard the spectrum purity due to the expected high interference of the TDD band on the FDD band, SAD/OFTA advised that the distance between the TDD band and the FDD band was 0.4 MHz or less in the band plans of the United Kingdom, Germany and Singapore. The Office of the Telecommunications Authority (OFTA) agreed to its technical consultant's advice that the 0.4 MHz guard band should be sufficient to prevent unacceptable interference, particularly when the two bands were operated by the same company. If the unpaired 5MHz TDD band 1914.9 - 1919.9 MHz was moved to 2014.7 - 2019.7 MHz as suggested by Hutchison, the TDD band 1914.9 - 1919.9 MHz would be left idle resulting in wastage of the spectrum. The band 2014.7 - 2019.7 MHz had been reserved in other countries for apparatus which did not require individual licensing, such as domestic telecommunications devices. Using this band for licensed public services would restrict the use of such apparatus in Hong Kong and give rise to serious risk of interference with the licensed public service from such apparatus brought from overseas for use in Hong Kong.

5. On Hutchison's claim that there existed interference from the mobile satellite service (MSS) band with the 1964.9 - 1979.7 MHz FDD band, SAD/OFTA advised that as the 60 MHz FDD spectrum would be fully utilized for 3G services, there would not be any free FDD band available to replace the 1964.9 - 1979.7 MHz band. OFTA would continue to liaise with Hutchison for further data with a view to identifying the source of the interference recorded. If the source of interference was found in Hong Kong, OFTA would take action to eliminate the interference since OFTA had not authorized the use of this band for other purposes. If the interference was caused by an overseas source, OFTA would enlist the assistance of the relevant overseas authority to eliminate the

interference. He remarked that since the MSS band plan was a standard band plan adopted worldwide, if there was any interference from the MSS band with the band plans for 3G services in Hong Kong, the same problem would also be experienced in other countries.

- Admin 6. Miss Emily LAU suggested and the Administration agreed to report to this Subcommittee the results of the investigation into the alleged interference with the 1964.9 - 1979.7 MHz band.

Clause-by-clause examination of the Regulation in conjunction with the draft resolution to amend the Regulation

Section 2 Interpretation

Section 4 Auction to determine annual spectrum utilization fee payable

7. DS(ITB) explained the proposed amendments to sections 2 and 4 of the Regulation pursuant to the adoption of the "5th leaver" rule in lieu of the "4th leaver" rule. She advised that the royalty percentage payable would be the lowest common royalty percentage bid offered by all the successful bidders. It should not be less than the royalty percentage bid offered by the fifth highest bidder. In the event that an auction had been held but there was no fifth highest bidder, which might be due to one of the provisional winners ceasing to be qualified, the royalty percentage payable would be the reserve price set by the Secretary for Information Technology and Broadcasting (SITB). She also confirmed that section 4(c) as amended would also apply if less than four bidders turned out to be qualified after the auction. The Assistant Legal Adviser 3 (ALA3) agreed that the sections as amended would provide a clear legal basis to facilitate the adoption of the "5th leaver" rule.

Section 3 Application

8. In response to the Chairman's enquiry, SAD/OFTA advised that the band plan stipulated in the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fees) Order (the Order) conformed to the band plan standards developed by the European Radiocommunications Committee. As the same standards were widely adopted in other countries, users of 3G services in Hong Kong would be able to enjoy international roaming services.

Sections 5 to 7

9. Members did not raise any query on these sections.

Section 8 Secretary may specify minimum fee of spectrum utilization fee

10. ALA3 advised that section 8 empowered the SITB to specify the minimum fees of the spectrum utilization fee. Section 8(b) set out the means by which SITB might formulate the minimum fees. In fact, section 8(b) restated the provision under section 32I(4)(a)(ii) of the Telecommunications Ordinance (Cap. 106).

11. Members noted that Peoples Telephone Company Limited had requested explanation on section 8(b). DS(ITB) explained that section 8(b)(i) to (vii) sought to set out all possible permutations for the minimum fees of the spectrum utilization fee referred to in various sections of the Regulation. She also advised that to address the concern of the Bills Committee on Telecommunications (Amendment) Bill 2001 on the same issue, the Administration had provided a paper to the Bills Committee to explain section 32I(4)(a)(ii) of the Telecommunications Ordinance.

12. The Senior Assistant Law Draftsman added that the permutations provided under section 32I(4)(a)(ii) were proposed as Committee Stage Amendments to the Telecommunications (Amendment) Bill 2001 in response to the suggestion of the legal adviser of OFTA that all possible permutations for determining the minimum fee should be spelt out in the Ordinance to remove possible doubts in this regard.

13. As regards the timing of the announcement of the minimum fees, DS(ITB) advised that SITB would announce the minimum fees at the same time when the Information Memorandum (IM) for the 3G auction was published. She also confirmed that the Administration would publish the terms and conditions of auction and the minimum fees by notice in the Gazette.

Section 9 Authority may promote, etc. an auction to which method referred to in section 3 relates

14. Members did not raise any query on this section.

Section 10 Action that may be taken by Authority if licensee fails to keep proper accounts for purposes of determining spectrum utilization fees

15. In reply to the Chairman's enquiry, DS(ITB) advised that the future 3G licensees would be consulted on the accounting practices which they would be required to follow in maintaining their accounting records.

16. Members noted that the Subcommittee had not received any view from deputations on this matter.

Examination of the Order

17. Members did not raise any query on the drafting of the Order.
18. The Chairman said that the Subcommittee had completed scrutiny of the subsidiary legislation. He concluded that the Subcommittee supported the Regulation as amended by the draft resolution to be moved by the Administration, and the Order.
19. The Clerk advised that subject to members' agreement, the Subcommittee would report to the House Committee on its deliberation of the Regulation and the Order on 22 June 2001. On the legislative timetable, if the resolution to amend the subsidiary legislation was to be moved at the Council meeting on 4 July 2001, the deadline for giving notice of the motion to amend the Regulation would be 26 June 2001.
20. The Chairman requested Mr SIN Chung-kai to report to the House Committee on his behalf on 22 June 2001 as he would be out of town on that day. Mr SIN agreed.
21. DS(ITB) thanked the Subcommittee for its thorough and efficient scrutiny of the subsidiary legislation such that the subsidiary legislation could commence operation as scheduled.
22. Noting that the IM was scheduled for publication in mid-July 2001, Miss Emily LAU requested the Administration to notify the Chairman of the Panel on Information Technology and Broadcasting when the IM was published so that the Chairman would decide the appropriate follow-up action. Members and the Administration agreed.

(Post-meeting note: The IM was published on 18 July 2001. The Panel on Information Technology and Broadcasting held a meeting on 27 July 2001 for the Administration to brief the Panel on the IM.)
23. The meeting ended at 3:25 pm.