

立法會
Legislative Council

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by the Administration and
cleared with the Chairman)

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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 Saturday, 19 May 2001, at 9:00 am
in Conference Room A 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 Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon David CHU Yu-lin
Hon Albert CHAN Wai-yip
- 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
Director-General of the Telecommunications (Acting)

**Attendance by
invitation**

: Hong Kong CSL Limited

Mr Hubert NG
Chief Executive Director

Mr Richard MIDGETT
Director of International Development

Hutchison Telephone Company Limited

Mrs Agnes NARDI
Managing Director

Miss Patricia HUI
Legal Counsel

New World PCS Limited

Mr Pierre FITZGIBBON
Managing Director

Mr Francois GAUDET
Vice President-Legal Affairs and Company Secretary

Peoples Telephone Company Limited

Mr Charles HENSHAW
Chief Executive Officer

Mr Ali BAIREKTAR
Group General Manager, Engineering

SmarTone Mobile Communications Limited

Mr Ian C STONE
Chief Executive Officer

Mr Stephen CHAU
Chief Technology Officer

Sunday Communications Limited

Mr Craig EHRLICH
Group Managing Director

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 Confirmation of minutes of meeting
(LC Paper No. CB(1)1258/00-01)

The minutes of the meeting held on 15 May 2001 were confirmed.

II Meeting with mobile services operators and the Administration

Meeting with mobile services operators

2. At the invitation of the Chairman, representatives of the six mobile services operators presented their views on the draft 3G-specific subsidiary legislation, i.e. the 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 and other issues relating to the 3G licensing and regulatory framework. Members noted that the written submissions from the mobile services operators had been circulated to members before and after the meeting vide the following papers-

<u>Mobile services operator</u>	<u>Paper reference</u>
Hong Kong CSL Limited (CSL)	LC Papers No. CB(1)1269/00-01(01) and 1294/00-01(01)
Hutchison Telephone Company Limited (HTCL)	LC Papers No. CB(1)1269/00-01(02) and 1294/00-01(04)
New World PCS Limited (PCS)	LC Paper No. CB(1)1269/00-01(03)

Peoples Telephone Company
Limited (Peoples)

LC Paper No. CB(1)1269/00-01(04)

SmarTone Mobile
Communications Limited
(SmarTone)

LC Papers No. CB(1)1242/00-01(01)
and 1294/00-01(02)

Sunday Communications Limited
(Sunday)

LC Paper No. CB(1)1294/00-01(03)

3. Miss Emily LAU said that she would not object to an auction design which would enable the Government to obtain higher revenue as spectrum was a scarce public resource and therefore should only be awarded at a good price. Taking note of the unanimous objection of the six mobile services operators to the "4th leaver" rule, she enquired about the implications, as envisaged by the deputations, on the future development of 3G services if the "4th leaver" rule, instead of the "5th leaver" rule as counter proposed by the deputations, was adopted for the 3G auction.

4. In response, Mr Hubert NG of CSL said that if at the 3G auction, after the 5th last bidder withdrew, the four remaining bidders had to continue to bid against one another, the outturn price could be some 100% above the price at which the 5th last bidder withdrew. By artificially pushing up the price of the 3G licences, the "4th leaver" rule would result in reduced capital available for network investment and might cause delay in the launch of 3G services. The additional financial burden on future 3G operators would likely translate into high tariffs and thus hamper the penetration of 3G services. The experience in the spectrum auctions in some European countries revealed that the high outturn prices of the 3G licences had caused credit downgrades for successful bidder companies and delay in the roll-out of 3G services.

5. While the representatives of the other mobile services operators considered it difficult to make a precise estimate on the price increment resulting from the "4th leaver" rule in lieu of the "5th leaver" rule, they echoed the views of Mr Hurbert NG on the impact of a high spectrum fee on the future development of 3G services. Mr Pierre FITZGIBBON of PCS pointed out that there would not be any auction for the 3G licences at all if there were not more than four bidders. That being the case, there was no good reason to continue the auction after the 5th last bidder had left the auction. He opined that the auction price at which the 5th last bidder withdrew from the auction was the fair market price. Mr Ian C STONE of SmarTone commented that the price increment extracted from the 4th leaver rule was analogical to an added tax on operators since it would serve no purpose other than driving up the price artificially to increase government revenue. Mr Charles HENSHAW stressed that there were still a lot of uncertainties about the future development of 3G services. The adoption of the 4th leaver rule would compound the uncertainties and place an extra burden on 3G operators in capital financing.

6. Miss Emily LAU said that given the downturn of the global information-technology market, investors were inclined to be more cautious and therefore it was unlikely that they would offer excessively high prices for the Hong Kong 3G licences. She was therefore not fully convinced of the argument that the 4th leaver rule would artificially push up the price of the licences to an excessively high level.

7. Mr Craig ERHLICH of Sunday said that in the realm of 3G, what were regarded as prudent and rational commercial decisions at a time might turn out to be highly risky and irrational ones after a short period of time as experienced by the telecommunications companies in the European 3G auctions.

8. Mr SIN Chung-kai enquired about the anticipated timeframe for the roll-out of 3G services in Hong Kong, the estimated level of capital investment required of a 3G licensee during the initial few years after the award of licences, as well as the number of new jobs that would be created in the 3G market.

9. Mr Hubert NG said that while there were still many uncertainties about 3G, the current estimate within the telecommunications industry was that 3G services in Hong Kong could be launched in nine to 12 months after the award of the 3G licences. As regards the level of capital investment, he advised that for a 3G licensee which was already operating a 2G network, the capital investment for the first three years would be around \$2 billion. This however could vary considerably depending on the prices of the equipment for the 3G network and the market strategies of individual operators. On the creation of new job opportunities, he envisaged that some new jobs arising from the 3G business would be absorbed by the existing 2G manpower. However, given the open network access requirement on 3G licensees, he envisaged that a number of 3G value-added service and content providers would emerge and this development would generate further new job opportunities.

10. Miss Emily LAU invited the deputations to elaborate their views on the "dark room" approach of the 3G auction proposed by the Administration. Mr Ian C STONE said that SmarTone considered that basic auction information, including the number and identities of bidders, were critical input for bidders to assess the fair market price. The "dark room" approach proposed by the Administration would deprive bidders of such important information and would complicate the bidding process unnecessarily. Moreover, the lack of transparency of the bidding process would increase the potentials for subsequent disputes or litigation against the decisions made during the auction process.

11. Mrs Agnes NARDI opined that investors needed to know the number and identities of their competitors to make sound and informed commercial decisions. The "dark room" approach would serve little purpose other than to create uncertainties and drive up the auction price. She also pointed out that adoption of the "4th leaver" rule would necessitate the "dark room" approach, as the last four bidders would definitely refuse to bid against each other if they knew that they were already the four remaining successful bidders.

12. Mr YEUNG Yiu-chung requested the representatives of Peoples to elaborate its view on the definition of "network turnover" in relation to the spectrum utilization fee payable by the future 3G licensees. Mr Charles HENSHAW said that the definition of "network turnover" in the draft Regulation was not clear and precise enough. Peoples was of the view that the term should only apply to the revenue generated by the transmission of voice and data services and not any revenue associated with the content applied to such transmission.

13. Mr Ian S STONE concurred with Mr HENSHAW's view that a more precise definition of the term was required. He remarked that due to the uncertainties about 3G, there was a lot of speculation on the sources and amount of revenues that could be generated from the 3G spectrum. It was envisaged that a significant portion of the revenue of the future 3G licensees would be derived from the premium for provision of content and value-added services. Although the Administration had made clear that it would not collect royalty from 3G licensees on the revenue generated from content provision, potential bidders should be provided with more details in this regard.

14. Mrs Agnes NARDI pointed out that 3G mobile services were akin to the Internet. The 3G spectrum would serve as a portal for subscribers to access the "sites" of other value-added services and content providers. It was therefore necessary to define precisely the scope of the revenue that would be subject to royalty payment.

15. Pointing out that there was a good chance of tie bids under the proposed auction design, Mr YEUNG Yiu-chung noted from the speech of Mrs Agnes NARDI that HTCL strongly objected to drawing lots as the mechanism to resolve tie bids, and the company also considered the other options of "selection by time of withdrawal" and "tied bidders to bid again" suggested by the Administration not desirable. Mr YEUNG then invite the deputations to give views on the appropriate arrangement for resolution of tie bids.

16. Mrs Agnes NARDI said that HTCL strongly objected to the option of selection by drawing lots" as this was an arbitrary arrangement with no justification or reference to anything other than luck. The company did not object to the other two options as such but found that they had certain shortcomings. She suggested that further options such as issuing three licences, instead of four licences, in the case of tie bids be examined.

17. Mr SIN Chung-kai said that he objected to issuing three 3G licences in the case of tie bids as reducing the number of the licences would adversely affect the competition state of the future 3G market.

18. The Chairman thanked the deputations for attending the meeting and exchanging views with members. He said that they were welcome to provide further written views to the Subcommittee.

Meeting with the Administration

19. As a general response to the depositions' views, the Deputy Secretary for Information Technology and Broadcasting (DS(ITB)) advised that it was necessary for the Administration to balance the interests of future 3G consumers, the general public and potential bidders in drawing up the 3G auction design. She acknowledged that the proposed auction design included some new features but stressed that these new elements were introduced on account of the significant changes that had taken place in the market. To alleviate the financial burden on successful 3G bidders, the Administration had introduced the royalty-based payment method for the spectrum utilization fee instead of requiring successful bidders to pay an up-front cash payment. Moreover, the 3G licensees would only be required to provide a 5-year rolling guarantee for each of their guaranteed minimum payment, as opposed to a full 15-year guarantee for the 15-year licence period. These arrangements were accepted by the industry at large. The Administration considered that against this background, the "4th leaver" rule for determination of the royalty percentage would strike a balance between the objectives of minimizing the burden on licensees and obtaining a fair price for a scarce public resource. DS(ITB) further said that under the proposed "4th leaver" rule, the outturn auction price would be the highest price willing to be paid by the weakest successful bidder, and the Administration considered that this was the fair market price.

20. On the confidentiality of the auctioning process, DS(ITB) advised that given the risk of collusion, confidentiality was necessary to guard against collusion and to promote entry by new or weaker bidders. The proposed auction design was similar to sealed-bid tenders which were widely adopted.

21. On the definition of the term "network turnover" in relation to the spectrum utilization fee, the Director-General of Telecommunications (Acting) (DG/Tel(Atg.)) referred to the definition in the draft Regulation -

"network turnover"(網絡營業額), in relation to a licensee, means the revenue arising from or attributable to the provision of any telecommunications services over any telecommunications network using the frequency bands assigned to the licensee'

and confirmed that only the network turnover arising from the provision of telecommunications services using the frequency bands assigned to the 3G licensees would be taken into account when calculating the spectrum utilization fee. The revenue from the provision of the value-added component of content, applications or services would not be subject to royalty payment.

22. Mr SIN Chung-kai stated his position that he objected to the "4th leaver" rule and urged the Administration to re-consider the proposal to adopt the "5th leaver" rule. He also urged the Administration to consider disclosing the number of remaining bidders, if not the identities of the bidders as well, in each round of the bidding.

23. Miss Emily LAU referred to the submission of SmarTone which highlighted that most of the details of the 3G auction had not yet been released for public consultation. She opined that the Administration should conduct thorough consultation on the major auction arrangements. The auction details should also be released as early as possible so as to allow potential bidders sufficient time to prepare for the auction.

24. Mr SIN Chung-kai expressed dissatisfaction that although the Administration planned to gazette the 3G-specific subsidiary legislation on 1 June 2001, it had not yet promulgated the major details of the auction. The lack of information on the auction had given rise to further anxiety among potential bidders. He suggested that if the full version of the Information Memorandum (IM) on the 3G auction could not be ready for this Subcommittee's scrutiny, the Administration should at least provide an executive summary of the IM for the Subcommittee's information.

25. The Chairman recalled that during the deliberation of the Bills Committee on Telecommunications (Amendment) Bill 2001, both the deputations and Bills Committee members had called for the early release of the detailed arrangements for the 3G auction.

26. In response, DS(ITB) said that since March 2000, the Administration had been undertaking consultations on the major issues relating to the 3G auction such as the issue of "connected bidders". While she agreed to consider members' request for early release of the major auction arrangements, she pointed out that it might not be desirable to release the IM if some parts of it were not yet finalized within the Administration. She further recalled that as undertaken at the Bills Committee on Telecommunications (Amendment) Bill 2001, the Administration would provide the following for the Subcommittee's information in due course -

- (a) a general overview of the auction mechanics; and
- (b) the arrangements for the disclosure of information to the public on the progress of the auction.

27. The Chairman reminded members that the next two meetings would be held on 29 May 2001 and 4 June 2001.

28. There being no other business, the meeting ended at 10:45 am.