

立法會
Legislative Council

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(These minutes have been seen
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 Tuesday, 29 May 2001, at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, JP
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
- Members absent** : Hon David CHU Yu-lin
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
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 Anthony WONG
Director-General of Telecommunications

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

Mr James VAUX
Executive Director, Rothschild (3G Consultant)

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

As a general response to the views raised by deputations and members at the last meeting on 19 May 2001, the Deputy Secretary for Information Technology and Broadcasting (DS(ITB)) made the following points -

- (a) Pursuant to the objectives of promoting entry, achieving a fair market price for the 3G spectrum and minimizing opportunities for collusion the Administration considered it appropriate to preserve a degree of confidentiality in the auction process and to adopt the "4th leaver" rule for determination of the spectrum utilization fee.
- (b) The Administration concurred that information on the 3G auction design and mechanics should be released to the public as soon as practicable. The Administration had already disclosed the key features of the 3G licensing and regulatory framework. Together with the information to be disclosed at this meeting, the Administration

considered that there would be sufficient information for interested parties to decide whether they would position for the Hong Kong 3G auction.

- (c) As regards the disclosure of information during the auction process, the Administration's goal was to provide maximum transparency while preserving the necessary level of confidentiality to minimize opportunities for collusion.

Overall auction design and mechanics

2. Mr James VAUX, the 3G consultant engaged by the Administration, gave a powerpoint presentation on the auction design and auction mechanics. (The presentation notes were issued to members after the meeting vide LC Paper No. CB(1)1387/00-01(01).)

3. The Chairman sought elaboration on the pre-qualification criterion whereby existing 2G operators would be required to express commitment that if they were successful in obtaining a 3G licence, they would provide domestic roaming to new entrants. Mr James VAUX and DS(ITB) explained that an existing 2G operator with a 3G licence would have significant advantage over new entrants, since it would be able to offer voice and some mobile data telecommunications services across Hong Kong through its existing 2G network whilst a new entrant was still rolling out its network. The mandatory domestic roaming requirement sought to provide a fair environment for new entrants to establish themselves in the market. The requirement had not been a controversial issue during the public consultations on the 3G licensing framework. In fact, similar arrangements had been adopted in the United Kingdom and some other European countries.

4. In reply to the Chairman's enquiry about the key considerations of the Telecommunications Authority (TA) in approving joint bids by 2G operators, the Director-General of Telecommunications (DG/Tel) advised that TA's primary consideration would be the effect of such cooperation between 2G operators on the competition state of the 2G and 3G markets. TA would consider each request on its own merits having regard to the relevant competition factors such as the respective market share of the operators concerned.

5. The Chairman sought elaboration on the licence condition under which the future 3G licensees would be required to provide network coverage in terms of percentage of population in 5-years' time after licensing. DG/Tel advised that the requirement was to ensure a satisfactory coverage of the 3G networks in Hong Kong within a reasonable period of time. As the extent of network coverage would basically be market-driven, TA would not specify the geographical areas to be covered by a licensee's network, but would specify a minimum network coverage in terms of population to ensure quality services. He further advised that as certain issues relating to the 3G technology still needed to be resolved, the Administration

would not impose a deadline for launch of 3G services. It was also envisaged that the demand for 3G services would be clearer within the next few years. Hence, five years should be a sufficiently long period for licensees to build up the required 3G network coverage. Mr James VAUX added that the network coverage requirement was a back-stop measure and similar requirements were adopted in Europe. The Administration had consulted relevant equipment manufacturers and technical consultants which also agreed that the 5-year roll-out period was technically feasible.

6. Miss Emily LAU conveyed the concern of Mr Albert CHAN (who had taken leave of the meeting) that if an existing 2G operator with a significant market share was successful in obtaining a 3G licence, domination in the 2G/3G markets by the operator might result. In response, DG/Tel advised that in terms of both technology and clientele, 2G would expectedly cross over to 3G and therefore 2G operators bidding for 3G licences was a normal business strategy. One major reason for issuing four, but not fewer, 3G licences was to ensure a reasonable level of competition in the future 3G market.

7. In reply to the Chairman's enquiry about the future licensing arrangements for existing 2G licences, DG/Tel advised that under the technology-neutral regime adopted by the TA, the existing 2G operators were free to use any technology, regardless of whether it was 2G or 3G, in the spectrum under their 2G licences. The current intention of TA was to extend the validity of all the existing 2G licences to 2005/06, if the licensees so wished. TA would conduct an industry consultation around 2004/05 on the future arrangements for the allocation of the 2G licences after their expiry.

8. In reply to the Chairman's enquiry about the number of companies which had indicated interest in bidding for the 3G licences, DS(ITB) advised that all along, the Administration together with its 3G consultant had maintained dialogue with both overseas and local prospective 3G investors to ascertain their concerns and solicit their views on the 3G licensing framework in Hong Kong. The Administration understood that at this stage, quite a number of investors were keeping a close watch on the development of the global 3G market and the Hong Kong 3G auction with a view to positioning themselves for the latter.

9. The Chairman expressed concern on whether the proposed 3G auction package was suitable for Hong Kong and whether the various pre-qualification and licensing requirements would discourage prospective investors. Miss Emily LAU shared the Chairman's concern and enquired about relevant experience overseas.

10. DS(ITB) advised that the Administration had undertaken two rounds of consultation on the key features of the 3G auctioning exercise. While the telecommunications industry objected to the "4th leaver" rule, they were generally supportive of the other key features including the royalty-based fee approach and the 5-year rolling guarantee arrangement. The Administration considered that assessed in its entirety, the proposed 3G auction package did not lack appeal to potential

investors. She also cautioned that if the “5th leaver” rule was adopted resulting in a much lower bid, any of the successful licensees might choose to make a profit by re-selling its licence instead of investing in launching 3G services. Such a possible situation would not be fair to the general public.

11. Mr James VAUX affirmed that the proposed 3G auction package had been designed specifically for Hong Kong having regard to the Government's policy objectives and the prevailing market conditions. He remarked that criticisms from the industry on the proposed 3G auction package were expected as every telecommunications company had its duty to its shareholders to ask for the lowest possible price for the 3G licences. He said that if the Administration's objective was to maximize revenue, the auction could have been designed so that all the winning bidders were required to pay the respective highest price each of them had offered. However, in the proposed auction, the winning bidders would only be required to pay the highest price offered by the fourth strongest bidder. As regards the approaches for determining the licence price in overseas 3G auctions, he advised that in the United Kingdom, five licences had been awarded by way of an open auction at the price of the highest loser, and there had been enormous criticisms over the open auction design. In Denmark, four 3G licences would be awarded by way of a sealed-bid tender and the spectrum fee would be the price offered by the fourth highest bidder.

12. Miss Emily LAU said that she did not object to the “4th leaver” rule as she considered it acceptable for the Government to obtain a good price for the scarce public resource of 3G spectrum. She however expressed concern that the "dark room" approach whereby the bidders would be deprived of the information on its competitors during the auction process might not be conducive to sound business decisions. Besides, the concealed process might be vulnerable to post-auction challenge by unsuccessful bidders.

13. In response, Mr James VAUX said that there would be a high degree of transparency with regard to the disclosure of information on the auction process to the media and the public. It was however necessary to preserve a degree of confidentiality to guard against collusion and to promote entry by weaker bidders and new entrants. He remarked that recent experience in Europe showed that open auctions could be vulnerable to manipulation.

14. Mr SIN Chung-kai concurred that prevention of collusion should be a major concern. He pointed out that unlike an open land auction where there would be only one winner, an open 3G auction for the award of four licences would be vulnerable to manipulation. He would therefore support the “dark room” approach. He however considered that if the “5th leaver” rule was adopted, the Administration should examine the feasibility of disclosing the number of bidders remaining at the end of each round of bidding.

15. Mr SIN Chung-kai further said that if the Administration maintained its position on the "4th leaver" rule and gazetted the 3G-specific subsidiary legislation accordingly, he would propose amendment(s) to the subsidiary legislation to the effect that the "5th leaver" rule would be adopted instead. He then sought advice on whether and how any proposed section(s) in the Regulation (which was currently in draft form and would be gazetted on 1 June 2001) should be amended if the "5th leaver" rule was to be adopted in lieu of the "4th leaver" rule. The Assistant Legal Advisor (3) said that she would study the matter and would revert to this Subcommittee at the next meeting.

16. The Chairman suggested that if there was consensus among Subcommittee members that the "5th leaver" rule should be adopted instead, it would be more appropriate for the Subcommittee to propose relevant amendment(s) to the Regulation.

17. DS(ITB) said that while the Administration maintained that the "4th leaver" rule was the appropriate approach to arrive at a fair market price, if the Subcommittee had arrived at a consensus view that the "5th leaver" rule should be adopted instead, the Administration would consider taking heed of the Subcommittee's view.

Open network access

18. DG/Tel made a powerpoint presentation on the "Open Network Access" (ONA) requirement for 3G mobile services. (The presentation notes were tabled and issued after the meeting vide LC Paper No. CB(1)1387/00-01(02).)

19. The Chairman enquired about the ONA arrangements for 3G services in other places. In reply, DG/Tel advised that in Singapore, an ONA requirement had also been imposed on the three 3G licensees but the percentage of network capacity required to be opened up was not specified in the 3G licences. The regulatory authority would intervene if disputes on the ONA requirement could not be resolved between a licensee and a non-affiliated service provider (NSP) seeking to access the licensee's network. For the Hong Kong 3G market, the Administration considered it necessary to provide a very clear and comprehensive framework for implementation of the ONA requirement. It was because the circumstances in Hong Kong were peculiar; there were six 2G operators but only four 3G licences would be issued. There were no other places in the world where the number of 2G licences was greater than the number of 3G licences. The ONA requirement would provide opportunities for the existing 2G licensees who did not have the resources or had failed to obtain a 3G licence to participate in the 3G market as mobile virtual network operators (MVNO) or content or service providers.

20. Mr SIN Chung-kai enquired whether the ONA requirement would apply to the entire 15-year validity period of the 3G licences. In reply, DG/Tel advised that the ONA requirement would be a licence condition. As there would be additional 3G spectrum available in 2005, the Administration would conduct consultation on the use

of this additional spectrum in due course. In connection with this development, the Administration would review the various aspects relating to the ONA requirement, such as the basis for determining the interconnection charges and the commitment required of the NSP concerned on the duration and level of network usage.

21. Mr Howard YOUNG expressed concern about possible wastage of the required 30% "open-up" network capacity if there was a low demand for this network capacity. In response, DG/Tel advised that the licensees would be allowed to make use of the network capacity that was subject to the 30% ONA requirement if this network capacity was not fully subscribed by NSPs. He confirmed that the 3G spectrum designated for the 3G licences should be sufficient to allow the licensees to enlarge their network capacity as and when required.

22. While members did not raise objection to the ONA requirement, they expressed concern that the requirement might be susceptible to abuse. For example, a NSP might seek to buy up all the 30% "open-up" network capacity of all the 3G licensees in order to establish a dominant position in the market. In response, DG/Tel advised that if a NSP, having already bought up 30% open network capacity of one 3G licensee, sought to negotiate for additional network capacity of another 3G licensee but failed to reach interconnection agreement, TA would not intervene upon request for a determination for additional network capacity.

23. Members however noted that theoretically, it was possible for a NSP to buy up the entire open network capacity of all the four 3G licensees through mutual agreement and thus expressed concern about the implication of such a situation on the competition state of the market. In response, DG/Tel advised that in practice, this situation was unlikely to happen as the NSP would need to pay a much higher price for the "open-up" network capacity than for a 3G licence. If there were signs that such a situation might occur, TA would examine whether any anti-competitive act was involved and, if appropriate, take enforcement action in accordance with the relevant provisions in the Telecommunications Ordinance (Cap. 106).

Information Memorandum for the Hong Kong 3G Auction

24. Mr SIN Chung-kai enquired when the Information Memorandum (IM) for the Hong Kong 3G auction would be published and the amount of information to be contained therein. DS(ITB) advised that the Administration was working arduously on the IM, which would be a comprehensive and voluminous document. The current plan was to publish the IM in mid-July 2001 and there would be about eight weeks for potential bidders to prepare for the auction. She confirmed that this arrangement was in line with the general practice in other places. She reiterated that up to the present, the Administration had already released all information on the key elements of the auction. Investors should now have sufficient information to decide whether they would position for the Hong Kong 3G auction.

25. Mr James VAUX added that a considerable portion of the IM would be appendices. Most subjects contained in the IM had already been covered during the public consultation period. Hence, investors would not find it difficult to apprehend the IM to get prepared for the auction.

26. The meeting ended at 4:30 pm.

Legislative Council Secretariat

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