

**SPEECH
BY
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HUTCHISON TELEPHONE COMPANY LIMITED**

**AT
LEGISLATIVE COUNCIL SUB-COMMITTEE MEETING**

**ON
DRAFT TELECOMMUNICATIONS (METHOD FOR
DETERMINING SPECTRUM UTILIZATION FEES)
(THIRD GENERATION MOBILE SERVICES) REGULATION
AND
DRAFT TELECOMMUNICATIONS (DESIGNATION OF
FREQUENCY BANKS SUBJECT TO PAYMENT OF SPECTRUM
UTILISATION FEES) ORDER**

**ON
SATURDAY, 19 MAY 2001**

Chairman, Members, Ladies and Gentlemen

Hutchison would like to thank the Chairman and Members of the Subcommittee for inviting us to express our views on the draft 3G specific subsidiary legislation and generally on the 3G licensing and regulatory framework proposed by the Government.

Hutchison shares the Government's view that timely issue of 3G licences is important and beneficial to Hong Kong's position as a leading and competitive telecommunications market. However the auction model and process is equally important to the creditability, stability and efficiency of the Hong Kong telecommunication regulatory environment and the viability and development of 3G in Hong Kong in the long run. Our position, as shared by many other operators, is that auction should be an open, highly transparent, fair, objective and economically efficient process.

We note with concern that many features in the auction model proposed by the Government are experimental and not in line with the international practice on 3G auction. Such untested model may bring about adverse effects on the development of 3G in Hong Kong, and on Hong Kong's standing as a leading telecommunication market and consumers' enjoyment of innovative 3G services at efficient prices.

One of the features proposed to be introduced to the 3G auction in Hong Kong is the 4th leaver rule. This contradicts with the underlying principles of an open auction, which by its nature and design should achieve the most economically efficient price by eliminating the bidders in excess of the intended number of successful bidders. However the currently proposed design for the bidding process to continue beyond the point where the fifth winner decides to leave would create an artificial auction whereat the successful bidders would unknowingly (given the concealment of information on the number of bidders proposed) be bidding against themselves with no purpose other than to drive the auction price up unnecessarily.

This design risks to undermine the Government's positive intention of providing for a healthy environment for 3G development rather than maximising the treasury benefits from the auction. The auction price achieved through such process is not an efficient price which may also be unpredictably high, and the increment extracted by this 4th leaver rule unduly increases the financial burden of the 3G operators.

It has also been proposed, in order to promote entry and to prevent collusion, that information on the number and identities of the bidders should be concealed from the bidders. This design would serve little purpose other than to create uncertainties and thus driving up the auction price unnecessarily.

Hutchison contends that such information is basic information to which bidders participating at an open auction should have access and be entitled, so that, by reference to such information and its commercial circumstances, the bidders could make sound and informed decisions on the bid to be made in each round of the bidding.

In fact there are precedent cases, like the auction in the UK, which demonstrate that an open and transparent auction with full disclosure of the bidders' identities and numbers does not necessarily entail collusion. Drawing from experiences from other

auctions, the benefits gained by the openness of such valuable information to the bidders undoubtedly far outweigh the risks of collusion.

Hutchison therefore suggests that information on the number and identities of other bidders should be made available to each bidder at each point in time when the auction commences and re-commences at the first and each succeeding bidding increment. Additional rules prohibiting the bidders from communicating with each other in the auction process would help to prevent collusion.

The Government has proposed "selection by drawing lots", "selection by time of withdrawal", "tied bidders to bid again" and "all bidders to bid again" as the options for resolution of tie bids.

Hutchison strongly objects to drawing lots as the mechanism to determine tie bids as such method is arbitrary and unfair with no justification or reference to anything other than luck. Selection by time is also unfair and vulnerable to manipulation (for instance bidders may choose to withdraw on the last minute allowed before moving onto the next bidding increment) and dispute on the accuracy of time recording. Bidding again by the tied bidders and all bidders simply delay and do not really resolve the problem. Hutchison reiterates its objection to ultimately resorting to drawing lots to resolve the problem on the basis discussed above.

Hutchison would like to urge OFTA to make available certain basic information relating to the 3G licensing framework, like minimum network, security required, minimum royalty percentage etc, as soon as possible to allow reasonably sufficient time for review. Details of such basic information could be made available in draft form. At the same time, as reiterated on a number of occasions, generally details on a number of important issues relating to the 3G regulatory framework, for instance, the obligations of MVNO, the rate of return which may be charged to the MVNOs/NSPs in wholesale pricing, the calculation method of open network etc remain undisclosed. Hutchison urges OFTA to consider publishing the Information Memorandum, which

contains details of all the above details as soon as possible even before the Bill and the Subsidiary Legislation are passed for review.

Thankyou for your attention.