

Dear Mr. Chairman,

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

Thank you for inviting us to attend the next meeting of the captioned Sub-committee scheduled to be held this Saturday.

We have been asked if we have further submissions to make in relation to above draft regulations. We thank you for this opportunity and, in addition to our submission of 26 April 2001 addressed to you, we have further elaborated our views below. We also attach our two most recent submissions to the Telecommunications Authority (“TA”) which focus on the same issues. Please refer to Appendix 1 and 2 for the said submissions.

Draft Telecommunications (Method of Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation:

Section 3(a) - Auction to determine annual spectrum utilization fee payable

The 4th leaver rule (i.e. the fact that the fourth successful bidder continues to bid against itself) continues to cause great concern to us. In its complexity the 4th leaver rule is not only in contrast with the former government policy, which advocated transparent, clearly-defined and straight-forward method of awarding licences, it will also attract higher tax from the mobile industry. This will in turn affect the consumer pricing. In short, instead of choosing better quality, the proposed auction rules tend to focus on generation of revenue for the government and create tax burden on the mobile operators and to their customers.

It is the matter of fundamental policy to decide the methodology for awarding licences. The government should therefore clarify whether its intention is to award the licences by employing a transparent and unambiguous auction methodology OR whether it wishes to utilize a method to attract higher revenue from the mobile industry. The 4th

leaver rule has nothing to do with the former and should be employed in the latter circumstances only.

The Sub-committee should be mindful of the reality that excessive licence fee will further burden and expose the mobile industry to unnecessary financial risks. Such excessive licence fees are equal to tax and, given the current financial state of the mobile industry which unfortunately cannot be characterized as "strong", excessive licence fees will inevitably translate to higher user tariffs and be ultimately paid by consumers. This is inconsistent with previous government policy in trying to provide access to mobile service to the widest segment of the public.

Section 5 - Auction to remove connected bidders

All issues relating to “connected bidders” should be resolved before the auction starts. The removal of connected bidders only after the pre-qualification stage will inevitably further increase the bidding price.

Moreover, we note that the term “connected bidders” has not been defined in the telecommunications (Method for Determining Spectrum Utilization Fees)(Third Generation Mobile Service) Regulation. To ensure unambiguous application of the Regulation, the said term should be defined in the Regulation. Alternatively, the Regulation should at least stipulate the entity (such as the TA) which has the powers to determine its meaning and the form in which such determination should be made.

Section 7 – Secretary may specify minimum fee of spectrum utilization fee

The Secretary should specify the minimum fee in consultation with the telecommunications industry and such other persons who may be affected to ensure that the level of method for specifying the fee is reasonable to the industry.

Section 8(b) - Authority may promote, etc. an auction to which the method mentioned in section 2 relates

Under Section 8(b), the TA has the right to specify the terms and conditions of an auction to which that method relates by notice published in the Gazette. We are of the

view that the TA or Information Technology and Broadcasting Bureau should publish the full details of the auction process for comments from the mobile industry, and consider in great detail such comments before finalizing the rules. So far the concerns raised by the mobile industry have continued to be ignored. There are still a large number of procedural matters which have not been resolved even though comments were submitted. Selective consultation is not sufficient, only careful consideration of all relevant issues can meet the international standards of best practice.

Broad Policy Issue

We also query how the government regulates fees when auctioning other government-held resources. There are existing auction rules issued by the government to award rights to use the government-held resources but those rules were not applied here. Now that the government has issued this new set of auction rules, will it apply them to other industries, not merely to mobile industry? If not, what are the reasons for such different treatment?

Conclusion

We trust the Sub-committee finds the concerns raised valuable, and respectfully suggest that the Sub-Committee will proceed to consider the amending of the subsidiary legislation on the basis that it should reserve its position on the 4th leaver rule and permit comprehensive industry consultation on all the provisions relating to the auction process.

Yours faithfully,

Hubert Ng
Chief Executive Officer

encl. Appendix 1
 Appendix 2

Telecommunications (Amendment) Bill 2001
Legislative Council Bills Committee

Submission from Hong Kong CSL Ltd.

Introduction:

CSL welcomes the opportunity provided by the Legislative Council Bills Committee to comment on the Telecommunications (Amendment) Bill 2001 published in the Gazette on 9 February 2001.

Forfeiture of Spectrum Utilization Fees

Draft Provisions:

Proposed subsection 34(5) would involve the forfeiture of the whole of any spectrum utilization fee that has been paid, where a license is cancelled, withdrawn or suspended.

CSL Comments:

CSL strongly supports the contention that the forfeiture of the whole of any spectrum utilization fee that has been paid, where a license is cancelled, withdrawn or suspended. CSL is in the view that this will ensure bidders who enter into the bidding process are in fact serious bidders. CSL further submits that successful bidders who eventually decide to terminate the 3G business before the license expires should be liable to pay the yearly minimum guaranteed payment until the license expires.

Public Consultation

Draft Provisions:

As drafted, none. Suggested for inclusion in respect to empowerment.

CSL Comments:

CSL supports the TA's past initiatives to conduct consultation on the licensing and regulatory framework for 3G services in Hong Kong. However, CSL strongly believes that further industry consultation is required on the important issues which remain unanswered from the previous consultation papers and industry workshops. These issues have a direct impact on both 3G business and auction success, and need to be publicly discussed and broadly supported before licensing can begin. We understand that further

industry consultation may require additional time which may cause a slight delay in the current licensing schedule, however we strongly believe that the delay is justified.

To large extent the information released by the TA to date has been general in nature and without substantive detail. We believe it is only proper for the TA to release full details of the overall framework, specific license obligations, and entire auction process to the public before issuance of its final notice. From our observations this would also be in accordance with the practices of overseas administrations from which the TA has drawn many of the elements of its framework.

CSL would submit that the proposed amendments to the Telecommunications (Amendment) Bill 2001 should include explicit obligations for the Secretary or TA, as appropriate, to conduct a thorough and conclusive consultation on the full and complete scheme so as to enable industry and other parties affected by the proposed legislation to have an opportunity to adequately express their views and influence the licensing process.

Conclusion:

CSL would be pleased to elaborate on any particular point discussed in this submission.

Yours faithfully,

Hubert Ng
Chief Executive Officer

Appendix 2

**Comments to OFTA'S Industry Consultation Paper
PROPOSED RULES ON "CONNECTED BIDDERS"
*issued 23rd March 2001***

**Submitted by Hong Kong CSL Ltd.
*9th April 2001***

Hong Kong CSL Limited (CSL) welcomes this opportunity to comment on the details of OFTA's proposed rules on connected bidders.

The Consultation Paper focuses on the proposed rules regarding "Connected Bidders" with an intention to avoid awarding a license to parties that are closely connected in order to promote competition, prevent collusion, and ensure a fair and transparent auction. CSL supports these goals and would advise TA to lay down clearer rules to obtain these results.

In the course of the presentation session for introducing the connected bidders consultation, there was additional information provided on the nature of the bidding process in respect to royalties.

Two Stage Screening

CSL would suggest that connected bidders resolve their consortium arrangements prior to the bidding process. It is illogical to have bidders participating in the auction who are potentially and/or likely ineligible to be awarded a license. CSL is confident that Government is fully capable of determining and resolving connected bidder issues prior to the start of an auction.

All other jurisdictions throughout the world have successfully dealt with competition and collusion concerns without having to resort to the unusual license auction practices which are currently proposed by OFTA. It is CSL's view that the present proposal does less to dissuade collusion than it does to promote unnecessarily high and/or irrational bidding prices.

Royalty Percentage

"To mitigate any distortive effects that royalties may create in the 3G market, all successful bidders are subject to the same royalty percentage, which will, depending on the detailed auction design, be at or near the highest price willing to be paid by the weakest successful licensee."

CSL submits that OFTA's proposal to determine the auction price based on the highest price to be paid by the weakest successful licensee is questionable and not consistent with OFTA's stated intention to conduct the auction in the simplest and most expedient manner.

This methodology will inflate license fees to an unnecessarily high level, both increasing the licensee operational costs and increasing the consumer tariff. Furthermore, while strong operators can be expected to sustain these costs, the higher levels will unfairly disadvantage the smaller players, particularly in the most vulnerable first five years after license award, when revenues will fall far short of minimum license costs.

CSL is of the view that the most fair and reasonable methodology is for the auction to end when the fifth weakest bidder drops out and only four bidders remain, and the royalty percentage should be determined by the price willing to be paid by the fourth weakest successful licensee at the time when the fifth weakest bidder drops out.

Further Consultation

CSL continues to recommend that full details on all aspects of licensing and the related auction should be publicly disclosed and that the industry should be given a chance to comment on the full details before the licensing process begins. This is the established practice in other developed jurisdictions, such as Singapore and Australia (within Asia). Regulators in other jurisdictions have found it useful and indeed valuable comments from the industry have resulted in changes to the licensing framework.

Yours faithfully,

Hubert Ng
Chief Executive Officer