

**HUTCHISON TELEPHONE COMPANY LIMITED**

**WRITTEN SUBMISSION TO**

**LEGISLATIVE COUNCIL**

**BILLS COMMITTEE**

**ON**

**TELECOMMUNICATIONS (AMENDMENT) BILL 2001**

**6 APRIL 2001**

## **1. GENERAL**

- 1.1 Hutchison Telephone Company Limited (HTCL) would like to thank the Legislative Council Bills Committee for the opportunity to make an oral presentation of its views on the Telecommunications (Amendment) Bill 2001 at the Bills Committee meeting held on 26 March 2001, and would like to follow up with this written submission which sets out in greater detail our views on the same and other matters related to the issue of the 3G licences in Hong Kong.
- 1.2 3G will be an important milestone for Hong Kong's future as a leading telecommunication hub in Asia Pacific and around the world. The process by which the licences are to be allocated and the framework under which the 3G businesses and operations are to be regulated thus will have far reaching implications on the viability of future 3G business and standing of Hong Kong in the international telecommunications market.

## **2. PRINCIPLES OF AUCTION**

- 2.1 The stated aim of the Information Technology and Broadcasting Bureau and the Telecommunications Authority (TA) to ensure a speedy auction process to maintain competitiveness of Hong Kong in the new 3G era is noted and generally supported. However, in HTCL's view, it is paramount to the success of the process that the auction be transparent, fair, objective and economically efficient.
- 2.2 Auction by its nature should be an open and transparent process comprising rounds of interactive bidding whereby the bids made by the bidders would eliminate the bidders in excess of the number of successful bidders intended to be achieved and eventually determine who shall be the successful bidder(s).
- 2.3 Another inherent feature of an auction is the knowledge of the bidders of the bids made by other bidders. A bidder, fully aware of the identity of the other bidders participating at the same auction and fully abreast of the bids made by the other bidders, shall by reference to such information and its commercial circumstances make its own informed decision on the bid to be made in each round of bidding.
- 2.4 Based on the above principles, HTCL has the following comments and views on the auction design and process proposed by the TA, the Telecommunications (Amendment) Bill 2001 and the draft Subsidiary Legislation under Section 32I of the Telecommunications Ordinance (as will be amended by the Telecommunications (Amendment) Bill 2001).

## **3. HYBRID ALLOCATION METHOD**

- 3.1 HTCL welcomes the TA's decision to issue four 3G licences.

- 3.2 The assessment of the pre-qualification criteria has to be based on a set of transparent, objective and quantifiable measures and a set of thresholds and commitments, which should be publicly available prior to submission of applications and applied equally to all licence bidders. HTCL understands that the TA is adopting such approach.

#### **4. COMMENTS ON THE BILL**

##### **4.1 Public Consultation**

- 4.1.1 The object of the Bill is to amend the Telecommunications Ordinance to principally empower the TA, in determining applications for a licence, to regard the fees arising from the method prescribed as a determining factor, and to enable the Secretary for Information Technology and Broadcasting (SITB) to empower the TA to set the terms and conditions of an auction or tender.
- 4.1.2 This empowerment however is not balanced with corresponding obligations on the TA to conduct public consultation.
- 4.1.3 The existing Section 6C of the Telecommunications Ordinance only provide that “before performing any function or exercising any power under the Ordinance, the Authority may consult with the persons affected or the public. The scope of consultation requested of the TA pursuant to Section 32G(2) as a pre-requisite for exercising his powers under Section 32I(1) to designate frequency bands subject to the payment of spectrum utilization fees is undefined.
- 4.1.4 HTCL believes that the amendments to the Telecommunications Ordinance should include express provisions requiring the SITB or the TA to conduct consultation for future licensing processes and to allow sufficient time therefor to give interested parties opportunities to fully consider, carefully analyse and express views on the licensing process and design and the related regulatory framework.
- 4.1.5 On 3G general licensing and regulatory framework, although two rounds of public consultation and an industry workshop have been conducted by the TA, details on a number of important issues, 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, the security required and the detailed pre-qualification requirements etc. remain undisclosed. These issues are complicated and unprecedented, and yet are fundamental to the 3G business and success of the auction.
- 4.1.6 HTCL urges that reasonable time should be allowed between the disclosure and publication of the details on these important aspects and the commencement of the auction process to allow the interested parties to fully analyse such details. HTCL suggests that the Information Memorandum mentioned by the TA could be published as soon as it is available even before the Bill and the Subsidiary Legislation are passed.

- 4.1.7 HTCL believes that the auction process and indeed the whole telecommunications industry will be most economically efficient if they are left to the market forces moderated with light regulatory framework. The TA's role should therefore be to facilitate the market functioning as opposed to create rules which would impose limits to the natural process of growth and evolution of this new 3G era.
- 4.1.8 HTCL also contends that the SITB and the TA in the exercise of their respective powers under the Telecommunications Ordinance should uphold the following principles and policy objectives:
- (a) protection of consumers' interest;
  - (b) protection of industry interest; and
  - (c) fair and equal treatment of all license bidders.

#### 4.2 Forfeiture of Spectrum Utilisation Fee

- 4.2.1 Indeed, in order to ensure the seriousness and soundness (technically and financially) of the prospective bidders, HTCL has no objection to the forfeiture of the security lodged, or as the case may be, the spectrum utilization fee in the case of withdrawal by any one of the bidders after the pre-qualification stage but before the auction commences or withdrawal by any one of the four successful bidders after the licence is awarded. However, the amendments in the Bill do not prescribe the grounds on which the licence may be cancelled, withdrawn or suspended.
- 4.2.2 Section 32I of the Telecommunications Ordinance, as proposed to be amended pursuant to Section 4 of the Bill, prescribes that one of the terms and conditions of the auction may include "that a bid or tender may not be withdrawn by the bidder or tenderer except with the consent in writing of the Authority and for a reason specified in the notice".
- 4.2.3 HTCL hopes that this could be clarified to exclude the situation where a bidder discontinues to make next bid in the bidding schedule in the ascending auction, thereby withdrawing from the auction.

### 5. **COMMENTS ON SUBSIDIARY LEGISLATION**

#### 5.1 Network Turnover

- 5.1.1 The term "network turnover" is defined in the draft Telecommunications (Method for Determining Spectrum Utilization Fees)(Third Generation) Mobile Services) Regulation to mean "in relation to a licensee, ... 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".

5.1.2 As it is proposed for 3G that the spectrum utilization fee be charged based on relevant minimum fee (for the first 5 years) and thereafter on the network turnover, HTCL contends that the following fees and items should not be charged in addition to such spectrum utilization fee, nor, as the case may be, included within the scope of network turnover:

- (a) Fees currently charged and proposed to be charged for the carrier (mobile) licence based on the number of base stations should not be levied in addition to the spectrum utilization fee as that would constitute double counting and penalization of performing mobile operators for maintaining and operating extensive mobile network coverage.
- (b) Fees currently charged and proposed to be charged for the carrier (mobile) licence based on the number of mobile stations should not be levied in addition to the spectrum utilization fee as that would constitute double counting and penalization of performing mobile operators with wide coverage and better service and thereby attracting large customer base.
- (c) Fees currently charged and proposed to be charged for the carrier (mobile licence) based on the frequency spectrum assigned should be excluded as that would certainly constitute a duplication of charges on the same subject.
- (d) At the moment the obligations of MVNOs/NSPs are unclear and undefined. If MVNOs/NSPs are not liable to pay any royalty/fee based on its turnover, network turnover in the case of 3G network operators should then exclude turnover arising from or attributable to content and/or service provisioning, otherwise it would create an unfair disadvantage prejudicing the business case of the 3G network operators as against those of the MVNOs/NSPs.

5.1.3 In the case of open network, the spectrum utilization fee including the royalty based on the network turnover should be included in determining the cost element for the purpose of calculating the wholesale pricing charged to the MVNOs/NSPs.

## 5.2 Auction Process

5.2.1 Reference is made to the explanatory note on auction process and design and rules on connected bidders presented at the Bills Committee meeting held on 26 March 2001. HTCL has the following comments on the same.

5.2.2 The TA suggests that the bidders' identities and numbers be kept confidential to achieve the overall objectives of promoting entry. This certainly contradicts with the principles of an auction and defeats the purpose of an open auction as discussed in paragraph 2 above. It is also questionable as to how this is justified. For example, land auctions which have been conducted in Hong

Kong for many years and other auctions conducted by the Government do not seem to have deterred any players from participating.

- 5.2.3 It has also been suggested that the bids made by the various bidders in the ascending auction shall be kept confidential. HTCL maintains its strong support for the principles of an open auction and contention that the auction process should be conducted in a manner which is highly transparent, fair, objective and economically efficient to the development of 3G market.
- 5.2.4 The SITB has previously stated that treasury benefit is not the priority or emphasis of the Government in the 3G auction. HTCL notes that the underlying principle and purpose of any auction is to eliminate the bidders in excess of the number of successful bidder(s) intended to be achieved and accordingly the process should stop at the point where that principle and purpose is achieved. However the auction as presently proposed is designed to continue beyond that point to where the fourth winner decides to leave, in order to determine the fair market price for 3G licences. HTCL is of the view that the same purpose can still be achieved, by using the price offered by the four remaining bidders immediately after the fifth bidder leaves the auction as the fair market price for the 3G licences.
- 5.2.5 HTCL also suggests that the resolution of connected bidders process should be moved forward to the pre-qualification stage to select out of connected bidders those bidders which shall go forward to the main auction stage.
- 5.2.6 The above comments and other comments in detail will be set out in HTCL's submission to be made on "Auctioning of Spectrum for Third Generation Mobile Services (3G) – Proposed Rules on "Connected Bidders": Consultation Paper Issued by the Office of the Telecommunications Authority 23 March 2001", which HTCL will copy to the Bills Committee upon submission to the TA.

### 5.3 Frequency Bands

On the frequency bands designated in the Telecommunications (Designation of Frequency Bands Subject To Payment of Spectrum Utilization Fee) Order, HTCL has the following comments and recommendations:

- (a) HTCL recommends that the unpaired TDD band 1914.9 –1919.9 be moved to 2014.7 – 2019.7 due to the expected TDD high interference on the FDD uplink, which the 400KHz guard band may not be sufficient for safeguarding the spectrum purity.
- (b) The 1964.9 – 1979.7 spectrum is adjacent to the frequency allocated for the mobile satellite service. According to HTCL's measurements, there are evidences showing that interference from the mobile satellite service exists in the 1964.9 – 1979.7 frequency band. HTCL would be happy to provide information and data on such measurements. HTCL therefore strongly requests the TA to take actions prior to the

commencement of the auction to control and free such frequency band from interference..

- (c) On the basis of the recommendation made in paragraph (a) above, HTCL recommends that the spectrum allocated to each of the four successful bidders should be of the same size of 14.8 MHz paired plus 5 MHz unpaired to ensure fairness and equal treatment to all successful licensees.

## **6. GENERAL**

Should any further clarification or information in relation to the above or generally the subject of 3G licensing be required by the Bills Committee, HTCL would be happy to provide such clarification or information and further discuss with the Bills Committee.