

立法會
Legislative Council

LC Paper No. CB(1)275/00-01

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seen by the Administration)

Ref : CB1/PL/ITB/1

Legislative Council
Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 13 November 2000, at 2:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon SIN Chung-kai (Chairman)
Hon Howard YOUNG, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Eric LI Ka-cheung, JP
Hon CHAN Kwok-keung
Dr Hon Philip WONG Yu-hong
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon LAW Chi-kwong, JP
- Members absent** : Hon David CHU Yu-lin
Hon Timothy FOK Tsun-ting, SBS, JP
- Public officers attending** : Mrs Carrie YAU, JP
Secretary for Information Technology and Broadcasting
- Ms Eva CHENG, JP
Deputy Secretary for Information Technology and
Broadcasting (1)
- Mr A S K WONG
Director-General of Telecommunications
- Ms Gracie FOO
Principal Assistant Secretary for Information Technology
and Broadcasting

Miss Linda SO
Assistant Secretary for Information Technology and
Broadcasting

**Attendance by
invitation**

: Hutchison Telephone Company Limited

Mrs Agnes NARDI
Managing Director

Mr Cliff WOO
Deputy Managing Director & Wireless Networks Director

Mandarin Communications Limited (Sunday)

Mr Craig EHRlich
Group Managing Director

New World Mobility

Mr Pierre FITZGIBBON
Managing Director

Mr Thomas LEUNG
Director of Product Marketing and Development

Pacific Century CyberWorks (HKT CSL)

Mr Hubert NG Ching-wah
President

Mr Richard MIDGETT
General Manager

Peoples Telephone Company Limited

Mr Charles HENSHAW
Chief Executive Officer

Mr Ali BAIREKTAR
Group General Manager, Engineering

SmarTone Mobile Communications Limited

Mr Ian STONE
Chief Executive Officer

Mr Stephen CHAU
Chief Technology Officer

Pacific Century CyberWorks Limited

Mr Ted HSIUNG
President, Commercial Services

Mr Stuart CHIRON
Director of Regulatory Affairs

Hong Kong Telecommunications Users Group

Mr Simon CHAN
Chairman

Telecommunications Research Project
Centre of Asian Studies, University of Hong Kong

Mr John URE, Ph.D
Director

Individuals

Mr Eric SPAIN

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Ms Sarah YUEN
Senior Assistant Secretary (1)4

I Confirmation of minutes of meeting and matters arising
(LC Paper Nos. CB(1)63 and 123/00-01)

The minutes of the Panel meetings held on 10 and 20 October 2000 respectively were confirmed.

II Information paper issued since last meeting

(LC Paper No. CB(1)72/00-01)

2. Members noted the extract of discussion on pornography in newspapers at the Legislative Council (LegCo) Members' meeting with Eastern District Council members on 8 June 2000 circulated vide LC Paper No. CB(1)72/00-01.

III Licensing of third generation mobile services

Meeting with the Administration

(LC Paper No. CB(1)145/00-01(01) and a set of power-point presentation material on the second consultation paper on the licensing framework for third generation (3G) mobile services tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)170/00-01(01))

3. With the aid of power-point presentation, the Secretary for Information Technology and Broadcasting (SITB) and the Director-General of Telecommunications (DG Tel) briefed members on the second consultation paper on the licensing of 3G mobile services.

4. Miss Emily LAU expressed support for the proposed adoption of a hybrid method involving a two-stage process of pre-qualification and spectrum auctioning for the licensing of 3G mobile services. She was however concerned that the Telecommunications Authority (TA) had not provided information on how the auctioning principles highlighted in paragraph 2.6 of the second consultation paper (which she noted was available in English only) would be observed. In response, DG Tel explained that as spectrum auctioning was new, both in Hong Kong and overseas, its technical details would need to be worked out carefully in conjunction with the adviser to be engaged to assist in the detailed design and implementation of the licence allocation process. He assured members that the auctioning rules to be adopted would have sufficient clarity and transparency and the industry would be consulted as and when necessary.

Admin

5. Miss Emily LAU enquired whether legislation would be required for conducting spectrum auctioning, and expressed concern about the time required. In reply, DG Tel confirmed the need to enact subsidiary legislation under the Telecommunications Ordinance (Cap. 106) to enable spectrum auctioning to proceed. He also admitted that his licensing exercise should take into account the time needed to enact the subsidiary legislation and, should he receive legal advice on the need to consider any other legislative amendments, the time required to effect such other amendments.

6. On the number of 3G network licences, DG Tel said that due to limited spectrum availability, initially only four 3G network licences would be issued. Members noted that although the International Telecommunications Union had

allocated additional radio frequency channels for 3G purposes in May 2000, it would take at least three to four years before the new channels could be allocated for 3G purposes. This was because some of these channels were being put to other uses and there was a need to consult the public on how these channels were to be assigned. DG Tel however assured members that the aforesaid arrangement would be made known to potential bidders before auctioning.

7. Mr YEUNG Yiu-chung expressed support for the proposal to require 3G network operators to open up their network to 3G Mobile Virtual Network Operators (MVNOs). However, noting that unlike network operators, MVNOs would not have to go through pre-qualification to demonstrate their financial and technical capability, he was concerned about how the Administration could ensure the quality of services provided by MVNOs. In reply, DG Tel explained that by pre-qualification, network operators would be required to fulfil certain requirements on network coverage, rollout and investments. As such, the process would not apply to MVNOs who would not be required to construct network but would only provide services on purchased or rented networks.

8. Miss Emily LAU sought the Administration's comments on certain proposals relating to requirements on network operators to open 100% of their network to MVNOs and whether network operation and content/service provision should be separated. In response, DG Tel stressed the importance of striking a balance between the interests of network operators and those of network users. In his view, there might be difficulty in attracting operators to engage in network construction requiring huge investments if they were required to open 100% of their networks. As such, he considered the presently proposed 30% to 50% open network requirement a right balance that could maintain network investment incentives as well as provide business opportunities for innovative but small application houses and service providers. DG Tel envisaged that total separation of network operation and content/service provision might not be in the interest of 3G customers as they might wish to avail themselves of one-stop-shop services provided by the same operator.

Meeting with deputations

9. The Chairman welcomed the deputations and explained that the Panel had sent invitation letters to all mobile phone service operators, all fixed telecommunication network services (FTNS) operators and to the Hong Kong Telecommunications Users Group (HKTUG), the Consumer Council and the Internet and Telecommunications Association of Hong Kong. Apart from the six mobile phone service operators, only one FTNS operator and HKTUG had accepted the invitation to attend the meeting. A general notice had also been posted on the LegCo website providing details of the meeting and inviting all interested parties to submit views. The Chairman then invited the deputations' views on the licensing of 3G mobile services.

Meeting with mobile phone service operators

Meeting with Hutchison Telephone Company Limited (Hutchison)

(Submission tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)170/00-01(02))

10. Mrs Agnes NARDI took members through Hutchison's submission which in gist contained the following points -

- (a) Hutchison strongly supported the proposal to allocate 15MHz paired and 5MHz unpaired spectra to each of the four network operators to be licensed because this would ensure a level playing field in which each operator would have sufficient capacity to facilitate effective provision of 3G services.
- (b) Hutchison supported the adoption of spectrum auctioning as the licensing approach but would consider supporting the proposed hybrid method provided that the pre-qualification criteria, which should be based on a set of transparent, objective and quantifiable measures, would be publicly available before the submission of bids and would be applied equally to all bidders.
- (c) Hutchison strongly believed that a one-off licence fee payment was the best approach because it was simple to administer and could reduce credit risks thereafter.
- (d) The opening of network to MVNOs should not be mandated. Since there was no internationally accepted definition of the term 'MVNO' and MVNOs needed not bear the capital costs and risks associated with network construction, requiring network operators to maintain a reserved capacity for third party MVNOs with uncertain demand and commitment was extremely unfair and would distort true market behaviours of 3G services to the disadvantage of consumers. The wholesale price for network capacity should also be negotiated commercially without regulatory intervention by the TA.

Meeting with Mandarin Communications Limited (Sunday)

11. Mr Craig EHRLICH put forward the following points -

- (a) In consideration of the problems surrounding spectrum auctioning in Europe, the auctioning approach might not be desirable, especially as Hong Kong was already undergoing the best liberalization of the regulatory process throughout Asia. Should Hong Kong choose to adopt the auctioning approach nonetheless, auctioning must be conducted in the fairest way.

- (b) Sunday was against the payment of royalties because such was hard to administer. Instead, Sunday would recommend cash payment which could be paid up-front or by installments spreading over the ten to 15-year term of the licence to enable smaller players who could not afford to pay a large amount of money up-front to compete for a licence.
- (c) Since 3G services were still evolving and relatively costly, and as many innovative services could be provided on 2.5G, it might be more useful to focus on 2.5G services instead of on 3G, which was unlikely to be available in the near future, pending the provision of infrastructure and wireless terminals.
- (d) While supporting the MVNO concept, Sunday was of the view that a MVNO Task Force should be set up by the Office of TA (OFTA) to meet weekly to iron out all the very important and complicated issues before auctioning took place. This was necessary to enable applicants to fairly assess the business proposition created by the ownership of the 3G licence.

Meeting with New World Mobility (New World)
(LC Paper No. CB(1)145/00-01(02))

12. After taking members through New World's comments on the licensing process and the open network requirements, Mr Pierre FITZGIBBON supplemented that due regard should be given to three objectives when formulating the 3G licensing framework for Hong Kong, namely, to maintain Hong Kong's leading role in Asia in mobile technology applications and services, to safeguard consumers' interests and to address public concerns that valuable spectrum would be made available freely for commercial purposes without reasonable charges. In New World's view, the merit based licensing approach with a fixed licence fee was most conducive to achieving the above objectives. This was because if the most qualified operator(s) could be so licensed, the development of innovative 3G services would be sped up. On the other hand, if the auctioning approach was adopted, auction costs might be reflected in higher prices to users, slower network rollout, lower coverage, innovation and service quality.

13. Mr Pierre FITZGIBBON further pointed out that if the auctioning approach was nonetheless preferred, a pre-qualification process should be introduced by requiring a deposit or guarantee from the applicants to prevent irrational bidding behaviour which would lead to high auction costs.

Meeting with Pacific Century CyberWorks (HKT CSL) (CSL)
(LC Paper No. CB(1)163/00-01(01))

14. While stating CSL's support for the proposed hybrid approach, Mr Hubert NG opined that selection by merits was the best approach. He pointed out that even

under the method of selection by merits, 2G licences were not free and a 2G licensee had to pay a significant sum of between \$200 to \$300 million each year for the use of frequency spectrum as well as other fees. On the other hand, under an auctioning approach, the best operators might not be selected and hence, benefits to users would not be maximized. He also highlighted the following points of CSL's submission -

- (a) If auction was to be adopted, a total of four licensees could best balance competition with auction revenues, especially if MVNOs were mandated. In this connection, 2G licences should be renewed automatically on the same terms and conditions. The allocation process of additional spectrum for 3G in future should also be clarified before auctioning.
- (b) Domestic roaming from 3G to 2G networks and network access should not be mandated since there were already sufficient commercial incentives.
- (c) The many MVNO issues should be resolved and the final proposals promulgated for consultation. In particular, there should be restrictions on network use by one single service provider to ensure fair competition. The percentage of network that should also be opened up should be clearly defined.

Meeting with Peoples Telephone Company Limited (Peoples)

(Submission issued to members via cc mail in the afternoon of 10 November 2000, tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)170/00-01(03))

15. Mr Charles HENSHAW took members through Peoples' submission and highlighted that 2.5G was far more important than 3G as far as the introduction of new technology to bring in innovative services was concerned. He also pointed out that in the development of 3G services, equipment and terminals were major issues that would give rise to uncertainties and delay in service launch.

Meeting with SmarTone Mobile Communications Limited (SmarTone)

(Submission tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)170/00-01(04))

16. Mr Ian STONE highlighted the following salient points in SmarTone's submission -

- (a) SmarTone supported a merit award system because auctions might fail to fully realize the anticipated level of transparency and positive market response. Overseas experience revealed that the auction process was subject to enquiries which might result in legal action. The financial markets had also reacted to auction processes by downgrading the credit

ratings of successful operators.

- (b) Hong Kong needed a licensing approach that could encourage innovation, high quality services and fast network rollout, and as such, needed a robust and carefully designed auction process if this was the preferred option. In this regard, SmarTone would like to propose a system of financial guarantees to ensure that the bidders would be able to pay and would go through a proper business planning process.
- (c) SmarTone supported the proposed open network requirement to promote competition and innovation. However, OFTA should allow operators to enter into commercial arrangements instead of imposing regulatory conditions on them. OFTA should provide a clear definition of 'MVNO' and should refrain from intervention and arbitration unless as the last resort.
- (d) There was no need to mandate domestic roaming from 3G to 2G networks as there were already sufficient commercial incentives. The light touch approach to regulation that had been successful in the cellular industry to date should continue.

Meeting with fixed telecommunication network services (FTNS) operators

Meeting with Pacific Century CyberWorks Limited (PCCW/HKT)
(LC Paper No. CB(1)145/00-01(03))

17. Mr Ted HSIUNG took members through PCCW/HKT's submission. Members noted that PCCW/HKT supported a competitive market structure to be achieved by a merit award licensing approach, and was of the view that the market structure should permit network resale/MVNO entry with limited OFTA intervention.

Meeting with other organizations/individuals

Meeting with Hong Kong Telecommunications Users Group (HKTUG)
(LC Paper No. CB(1)145/00-01(04))

18. Mr Simon CHAN briefed members on HKTUG's views -

- (a) Hong Kong's telecommunications legislation should aim to ensure that all telecommunications networks would be part of a comprehensive and seamless network through proper interconnection arrangements. Network operation should be completely distinct from service and/or content provision with different licensing arrangements for each. All network operators should be required to transmit content from any licensed service and/or content provider on a completely non-discriminatory basis. TA had yet to achieve the first two objectives.

- (b) Only the requirement to open 100% of an operator's network to all parties at the same time and at the same cost on a cost plus basis could effect fair competition and protect user choice by enabling 3G operators to compete in service quality, pricing, coverage and innovation. In this connection, greater details should be provided on the licensing of MVNOs or network resellers. There should not be any ceiling on the number of such licences as long as a minimum level of service was set.
- (c) Operator selection should be based on merits rather than by auctioning as the latter would inevitably increase costs and might not be able to identify the best operator. Moreover, as potential operators would have little firm ideas of how well the 3G market would develop, they were in fact asked to make a decision on what was largely unknown.
- (d) As for the spectrum utilization fee, the pay-as-you-go utilization method would best suit the trends of the telecommunications industry, e.g., by charging according to the subscriber number and/or usage of the spectrum by the successful applicants. A royalty based on a certain percentage of profit could also encourage efficient operation and profitability. Hence the HKTUG supported the royalties option with guaranteed minimum payment. The revenue so generated should be ploughed back to the community, such as for setting up a fund to assist small and medium-sized enterprises (SMEs) to understand and use 3G services

Meeting with Mr John URE, Director of the Telecommunications Research Project, Centre of Asian Studies, University of Hong Kong

(Submission issued to members via cc mail in the afternoon of 10 November 2000, tabled at the meeting and circulated thereafter vide LC Paper No. CB(1)170/00-01(05))

19. Mr John URE opined that the two policy objectives of licensing 3G operators by auctioning, namely, raising revenues for the Government and enhancing competitiveness in the industry structure, were essentially contradictory. He also highlighted the need for increased competition to bring the price of 3G services down in recognition of the importance of 3G in providing access to mobile broadband Internet and in revolutionizing the business model to bring in a whole new branch of service industries on which e-commerce developed. Mr URE was therefore against the adoption of the up-front cash auction approach because of its adverse implications on service charges, service level and the speed of 3G roll-out. In his view, this approach would also accelerate tendencies to oligopoly and severely handicap the role of the regulator to urge multinational operators to abide by local competition rules.

20. Commenting on the hybrid approach presently proposed, Mr John URE said that the need and the ability to pay should be brought into line, and it might be desirable to consider the option of calculating the licence fee according to the profit

instead because operators would then have the choice of lowering prices instead of incurring profits which would result in higher royalties payable to the Government. This option however would necessitate separation of accounting and hence extension of the regulator's role. As such, the deferred payment option might also be desirable.

21. Mr John URE strongly urged that every effort should be made to ensure that the market would be highly competitive. For example, by allowing existing 2G operators to offer 3G services as and when their technology permitted, by clearly stating that more licences would be issued when additional spectrum became available, and by issuing six instead of four licences as presently proposed.

Meeting with Mr Eric SPAIN

(LC Paper No. CB(1)145/00-01(05))

22. In reply to the Chairman, Mr Eric SPAIN confirmed that he was speaking in his individual capacity, as well as a member of the information technology (IT) industry. He made the follows points-

- (a) It was not clear whether the Government was promoting the concept of separating service provision from network operation so that network operators would not be permitted to provide content, or that network operators could act as service providers at the same time.
- (b) As content and service applications were expected to be the major revenue sources in 3G business, if network operators were also allowed to provide services, they might retain certain network capacity for their own use or for use by their affiliated companies, thereby creating oligopoly.
- (c) Auction was not in the interest of consumers or SMEs of the IT industry. As such, before finalizing the proposals of 3G licensing, there was a need to clearly identify the relevant objectives for launching 3G services and to examine carefully the various proposals. Further consultation should be conducted where necessary.

General deliberations

The MVNO concept

23. The Deputy Chairman sought the deputations' views on whether the introduction of the MVNO arrangement would enhance or diminish the potential value of the 3G network. In response, Mr Pierre FITZGIBBON of New World said that since 3G services were evolutionary and would enable different new players to join in, the introduction of MVNOs services should not diminish the value of the network licence. Mrs Agnes NARDI of Hutchison basically shared Mr FITZGIBBON's view but supplemented that mandatory access for MVNOs would not

be in the interest of the public because 3G services were still evolving and such an inflexible requirement imposed on network operators would distort free market behaviour and commercial negotiations.

24. At Miss Emily LAU's invitation to comment on Mr Craig EHRLICH of Sunday's proposal to set up a MVNO task force, Mr Ian STONE of SmarTone commented that it might be better to conduct another round of consultation to gauge the industry's views on MVNO-related issues and the auction rules. Mr Craig EHRLICH of Sunday stressed that to safeguard against anti-competitive conduct, TA should work out and familiarize potential operators with all the rules and options under contemplation to enable them to make an informed decision on whether to bid for the network licence.

25. In this connection, SITB reassured members that details of the introduction of the MVNO service would be made known to the potential players. Members noted that while the Administration would need to consider the request by some representatives at this meeting for more consultation and the submissions received at the end of the second consultation exercise, the target timetable was to finalize the licensing framework for 3G mobile services in late 2000 or early 2001. Notwithstanding, DG Tel drew members' attention to the need to introduce 3G services to Hong Kong early to enhance its competitiveness, and cautioned against too many rounds of consultation. He also supplemented that he could conduct industry workshops, which were also a well-established way to provide an industry forum, and collate more input from them. Miss Emily LAU however called for caution and stressed the need to take into account the concerns of the professions, the industry and the public when finalizing the licensing details.

26. The Chairman highlighted the absence of precedents in introducing the MVNO arrangement, and expressed concern about possible difficulties in identifying consultants to advise on this subject. In reply, SITB pointed out that the Administration would work closely with the consultants and at the same time maintain close contact with the industry when drawing up the details.

27. As to whether MVNOs would be licensed, DG Tel confirmed in the affirmative and advised that as MVNO services were offered to the public, regulatory control was necessary to safeguard consumers' interests. The licence however might be very simple as it mainly contained conditions of hire of network to provide service. In response to Miss Emily LAU, SITB agreed that the licensing details of MVNOs would be made public in due course.

Other concerns

28. Miss Emily LAU referred to Mr Eric SPAIN's view that content and network provision should be distinctly separated and sought the Administration's comments. DG Tel clarified that the 3G licence to be issued was mainly for the construction of network. However, he was of the view that 3G network operators should also be

allowed to offer 3G services directly as they were also required to open part of their network for use by other content/service providers. Stringent restrictions might frustrate investment incentives to roll out the 3G network and hence, affect the development of the telecommunications industry. He further assured members that the range of 3G services that could be developed was sufficiently wide to provide ample scope for fair competition, and concerns about possible cross-subsidization could be addressed by account separation. Moreover, some consumers might prefer to avail themselves of the one-stop-shop services provided by the network operator and there was a need to accommodate such a demand.

29. Miss Emily LAU highlighted the operators' preference of arbitration over intervention by the TA in setting the wholesale price for network capacity, and questioned the absence of the arbitration option in the consultation paper. In response, DG Tel agreed that there would not be any need for Government intervention if there were sufficient market forces. He however highlighted the need to enable the Government to intervene to ensure the wholesale price for network capacity was reasonable should the market be distorted. Moreover, legal proceedings relating to arbitration might take years. Miss Emily LAU suggested that another round of consultation should be conducted to gauge more fully the views and concerns of the industry on various issues.

30. Mr YEUNG Yiu-chung referred to an operator's comment that the auctioned licence fee should replace the annual spectrum utilization fee and no additional utilization fee should be levied thereafter. In response to Mr YEUNG, DG Tel explained that incomes from licence fees were mainly used to defray OFTA's operating costs, and any profit in excess would be injected into a development fund to effect reduction in licence fees. As for the income from auctioning, it would go directly to the Treasury as general revenue. Hence the two types of income could not be used to offset each other.

31. The Chairman thanked the deputations for attending the meeting and invited them to submit further views, if any, to the Panel in writing.

IV Any other business

32. The Chairman informed members that the LegCo Commission reserved funds each year for Panels to undertake overseas duty visits and Panels which had such plans had to bid for funds. He also invited members to put up proposals, if any, to the Clerk or himself.

33. The meeting ended at 4:40 p.m.

Legislative Council Secretariat

8 December 2000