

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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Legislative Council
Panel on Information Technology and Broadcasting
Minutes of special meeting
held on Friday, 27 July 2001, at 2:30 pm
in Conference Room A of the Legislative Council Building

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

Mr M H AU
Deputy Director-General of Telecommunications

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

Staff in attendance : Ms Anita SIT
Senior Assistant Secretary (1)8

I Licensing of Third Generation mobile services in Hong Kong
(LC Papers No. CB(1) 1820/00-01(01) and (02))

The Chairman said that this special meeting was to enable the Administration to brief members on the salient points in the "Hong Kong Third Generation Mobile Services Licensing - Information Memorandum" (IM) published on 18 July 2001.

2. The Deputy Secretary for Information Technology and Broadcasting (DS/ITB) and the Deputy Director-General of Telecommunications (DDG/Tel) gave a powerpoint presentation on the Hong Kong Third Generation (3G) mobile services licence auctioning exercise. (The presentation notes were issued to members vide LC Paper No. CB(1) 1845/00-01(02).)

3. Members noted that the Office of the Telecommunications Authority (OFTA) had issued a consultation paper entitled "Regulation of Mergers and Acquisitions in the Telecommunications Market" on 17 April 2001 and the consultation period had ended on 12 June 2001. It was proposed in the consultation paper that a Regulation on the ownership and control of licensees be introduced under the Telecommunications Ordinance (Cap. 106). Members also noted that the Panel had been briefed on the subject on 28 May 2001.

4. Mr Eric LI sought elaboration on the interim measure for control over the ownership of 3G licensees before the enactment of the Regulation on the ownership and control of licensees. He was concerned that the implementation of the interim measure might create a fait accompli and pre-empt members' consideration of the subject when the proposed Regulation was introduced into the Legislative Council.

5. The Chairman shared Mr Eric LI's concern. He referred to paragraph 5.4.1 of the IM which stated that in respect of any request by 2G operators to co-operate in bidding for a 3G licence, the Telecommunications Authority (TA) would base his decision on the criteria relevant to the competitive state of the market set out in the consultation paper issued on 17 April 2001, and queried the

appropriateness of this arrangement bearing in mind that the outcome of the consultation was not yet published.

6. DS(ITB) explained that currently, mergers and acquisitions (M&A) in the telecommunications market were mainly regulated by way of licence conditions and there were some grey areas such as the M&A transactions taking place at the holding company level. The proposed Regulation on the ownership and control of licenses sought to provide a transparent and efficient regulatory regime on changes in the ownership and control of licensees. The Administration proposed that the Regulation should initially apply to all carrier licensees including 3G licensees. DS(ITB) further advised that before the Regulation was enacted, regulation of the ownership of 3G licensees would still be made through licence conditions. The licensees would be required to seek the consent from TA for any material change in the ownership of the licensees as originally approved by TA upon the grant of the licence. The objective of this requirement was to avoid dominance and safeguard competition in the 3G market.

7. DDG/Tel supplemented that as the proposed Regulation was yet to be enacted, the provisions in the proposed Regulation would not be included in the 3G licences. The licence condition requiring 3G licensees to seek TA's consent for any material change to their ownership structure was similar to the relevant condition already stipulated in some 2G licences.

8. As to why TA would base his decision in respect of any request by 2G operators to co-operate in bidding for a 3G licence on the criteria relevant to the competition state of the market set out in the consultation paper, DS(ITB) advised that for any M&A transaction between carrier licensees and any request for cooperation between existing 2G operators in bidding for a 3G licence, TA's main concern was the effect of such activities on the competition state of the market. Since these criteria had been expressly set out in the consultation paper, they were thus referred to in the auction rules regarding joint applications by 2G operators for 3G licences.

9. DS(ITB) and DDG/Tel further advised that when 2G operators cooperated in bidding for a 3G licence, the cooperation might take different forms. It could mean that they joined resources in constructing the necessary network and/or share the same 3G spectrum band. However, they could still operate as separate companies in the provision of services and compete for business in the 3G market. TA would consider a request for cooperation accordingly.

10. Mr Eric LI cautioned that given the huge financial investment required of a 3G licensee and the financing difficulty faced by the IT sector under the current market climate, it was very likely that 2G operators making a joint bid for a 3G licence would subsequently make M&A arrangements to enhance their financial position. In this connection, he sought clarification on how TA would make his decision on such M&A arrangements.

11. In response, DDG/Tel advised that if the 2G operators made M&A arrangements after they had been successful in obtaining a 3G licence, they would need to seek TA's consent in accordance with the relevant licence condition. If 2G operators made M&A arrangements between/among themselves to become a single network and service operator in the 3G market, this would have a much greater impact on the competition state of the market than the situation whereby two or more 2G operators cooperated in bidding a 3G licence but would operate as separate service providers.

12. DS(ITB) stressed that the main regulatory concern was that any M&A activity in the telecommunications market should not significantly reduce the level of competition in the market. Given that only four 3G licences would be issued, a M&A transaction between two 3G licensees which would result in only three 3G licensees remaining in the market would probably be considered as having a significant effect on the competition state of the market. TA would take into account all relevant factors before making a decision on whether any M&A arrangement should be approved.

13. Miss Emily LAU enquired whether as a matter of policy, the Government would encourage the relatively small 2G operators to cooperate and make joint bids for the 3G licences. In reply, DS(ITB) advised that with the open network access requirement included in the 3G licence, participation of existing 2G operators in the 3G market could take different forms. For example, they might co-operate with other 2G operators to make a joint bid for a 3G licence, or they might choose to be mobile virtual network operators or content and service providers.

14. Miss Emily LAU said that while she attached great importance to market competition, she was concerned whether the current market environment could support the viable operation of four 3G licensees in Hong Kong. In response, the Secretary for Information Technology & Broadcasting (SITB) advised that the design of the 3G licence auction in Hong Kong had already taken full account of the market climate. For example, in order to minimize the upfront financial burden on successful 3G licensees, the spectrum utilization fee had been structured as a royalty percentage on network turnover, subject to an annual minimum guaranteed payment. Although at this stage, the Administration could not predict the number of 3G licence bidders, it should be noted that since the publication of the IM, incumbent mobile service operators had been reported by the press to indicate interest.

15. Members sought clarification on the bidding process in the first phase of the 3G auction. In reply, SITB and DS(ITB) confirmed that the bidding increment applicable to each round of bidding would be one percent (1%) (e.g. 5.00% to 5.99%). Bids must be expressed to two decimal places (i.e. to mini-increments of 0.01%). Any bidder withdrawing was required to specify his final offer and the lowest royalty percentage it could not accept which must be

expressed as 0.01% greater than its final offer. It was possible that at a certain round of bidding, two or more bidders withdrew from the bidding at different royalty percentages within the relevant incremental percentage range. For example, bidders A, C and D might withdraw at the first round of bidding with the final offers of royalty percentage of 5.33%, 5.44% and 5.55% respectively. If there were five or more bidders remaining after a round of bidding, the bidding would proceed to the following round, until the number of bidders remaining was less than five (subject to tie bids). The provisional royalty percentage applicable to the successful bidders would be the royalty percentage at which the highest losing bidder withdrew (i.e. its final offer plus 0.01%).

16. The Chairman commented that as the bidding increment applicable to each round of bidding would be one percent (1%) rather than one mini-increment expressed to two decimal places (0.01%) as required for each bid, a bidder in deciding its own final offer would not have knowledge of the final offer of the other bidders withdrawing at the same round. He therefore considered that the bidders could not make a fully informed decision and the bidding process would thus carry an element of luck. DS(ITB) envisaged that bidders would only confirm their final offer having regard to their respective business plans, a decision not dissimilar to that requested in a sealed bid tender.

17. Miss Emily LAU referred to the 3G licence requirement of providing a network and service coverage of at least 50% of the population in the territory by 31 December 2006 and enquired whether the Administration would consider taking measures to ensure/encourage a wider and more evenly distributed network coverage. In reply, DDG/Tel advised that while the 50% network and service coverage was the minimum requirement, it was envisaged that licensees would provide a wider network coverage to maintain or strengthen its competitiveness in the 3G market.

18. As regards the sanctions for failure to satisfy the network coverage requirement, DDG/Tel advised that failure to satisfy the requirement would be a breach of the relevant licence condition. TA might apply sanctions in accordance with the relevant provisions in the Telecommunications Ordinance ranging from fines, suspension to revocation of the licence etc depending on the seriousness of the breach.

19. Miss Emily LAU referred to the submission of Hutchison Telephone Company Limited (HTCL) tabled at the meeting (issued after the meeting vide LC Paper No. CB(1) 1845/00-01(01)), and sought the Administration's response to the views of the company on mobile number portability (MNP). In reply, DDG/Tel advised that MNP had been implemented in the core network of the 2G mobile services since 1 March 1999 as an important step to improve the competition state of the mobile services market. The competition state of the 3G market would be significantly affected if 3G licensees were not required to provide MNP from launch of services. Furthermore, it would give rise to enforcement problems if

3G licensees were not subject to the MNP requirement while 2G licensees were. This was because with the launch of 3G services, the telephony service for 3G service subscribers might still be provided through the 2G network and therefore, there would be practical difficulties in distinguishing 2G service subscribers from 3G service subscribers.

20. DDG/Tel however concurred with HTCL that a 3G service subscriber would have other identifiers apart from the mobile phone number and some of these identifiers were not yet portable. However, as the telephony service would be a key service for 3G service subscribers, it was considered appropriate to require 3G licensees to provide MNP from launch of services. Issues relating to the portability of other identifiers, such as email addresses, should be dealt with separately from MNP.

21. As to whether the MNP requirement would cause delay to the launch of 3G services as claimed by HTCL, DDG/Tel advised that there would be sufficient lead time from the award of 3G licences to the launch of 3G services and the Administration did not envisage that the MNP requirement per se would cause delay. Upon the issuance of the 3G licences, OFTA would invite the 3G licensees to discuss issues relating to the MNP requirement so that the requirement would be fully taken into account in their preparation for service launch.

22. On the disclosure of information in the course of the auction process, SITB and DS(ITB) advised that the progress in bidding increments would be published on OFTA's website with a slight delay from real-time. At the end of the first phase of the auction, the royalty percentage on which the auction ended together with the identities of the provisional winners would be publicly announced both through the Internet and to the press. A full account of the auction process to date would also be published at the end of the second phase and the third phase of the 3G auction.

23. There being no other business, the meeting ended at 4:15 pm.