

立法會
Legislative Council

LC Paper No. CB(1)890/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/SS/3/04/1

**Subcommittee on
Telecommunications (Designation of Frequency Bands subject to Payment of
Spectrum Utilization Fee) (Amendment) Order 2004,
Telecommunications (Method for Determining Spectrum Utilization Fees)
(Third Generation Mobile Services) (Amendment) Regulation 2004 and
Telecommunications (Level of Spectrum Utilization Fees)
(Second Generation Mobile Services) Regulation**

**Minutes of second meeting
held on Wednesday, 12 January 2005, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry &
Technology (Communications and Technology)
- Mr Y K HA
Assistant Director of Telecommunications
(Regulatory)
- Miss CHIM Kin-ning, Christine
Regulatory Affairs Manager (Economic Regulation)
Office of Telecommunications Authority
- Ms LAM See-man, Françoise
Senior Government Counsel

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)662/04-05 - Minutes of first meeting on
22 December 2004

The minutes of the first meeting on 22 December 2004 were confirmed.

II. Meeting with the Administration

LC Paper No. CB(1)648/04-05(01) -- Letter dated 8 January 2005 from
(Chinese version tabled at the meeting and subsequently issued to members on 12 January 2005) the Administration in response to
concerns raised at the first
meeting on 22 December 2004

LC Paper No. CB(1)648/04-05(02) -- The Administration's response to
(tabled at the meeting and subsequently issued to members on 12 January 2005) deputations' views

LC Paper No. CB(1)580/04-05(01) -- The Administration's letter
providing supplementary
information further to its reply of
16 December 2004 to the
Assistant Legal Adviser's letter
dated 15 December 2004

LC Paper No. CB(1)562/04-05(01) -- Marked-up copy of L.N. 208 and
209 of 2004 prepared by the
Legal Service Division

LC Paper No. CB(1)562/04-05(02) -- Letter dated 15 December 2004
from the Assistant Legal Adviser
(ALA) to the Administration

- LC Paper No. CB(1)562/04-05(03) -- Reply dated 16 December 2004 from the Administration to ALA's letter of 15 December 2004
- LC Paper No. CB(1)562/04-05(04) -- The subsidiary legislation gazetted on 10 December 2004 (L.N. 208, 209 and 210 of 2004)
- CTB(CR)7/23/11 -- The Legislative Council Brief issued by the Commerce, Industry and Technology Bureau
- LC Paper No. LS21/04-05 -- Legal Service Division Report on the proposed subsidiary legislation
- LC Paper No. CB(1)560/04-05 -- Background brief on the subsidiary legislation (L.N. 208, 209 and 210 of 2004) prepared by the Secretariat

Other relevant papers issued previously

- LC Paper No CB(1)384/04-05(02) -- Statement of the Telecommunications Authority on Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services (English version only)
- LC Paper No CB(1)412/04-05(11) -- Information paper on "Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services and related subsidiary legislation"

Submissions/letters from deputations not attending the meeting

1. China Resources Peoples Telephone Company Limited (Peoples)
(LC Paper No. CB(1)648/04-05(03))
2. Hong Kong CSL Limited (CSL)
(LC Paper No. CB(1)686/04-05(01))
3. Hutchison Telecommunications (Hong Kong) Limited (Hutchison)
(LC Paper No. CB(1)672/04-05(01))

4. New World PCS Limited (New World)
(LC Paper No. CB(1)648/04-05(04))
5. SmarTone Mobile Communications Limited (SmarTone)
(LC Paper No. CB(1)648/04-05(05))
6. SUNDAY Communications Limited (SUNDAY)
(LC Paper No. CB(1)648/04-05(06))

2. The Subcommittee deliberated (Index of proceedings attached at Appendix).

The Administration's response to deputations' views (CB(1)648/04-05(02))

3. Members noted that six submissions had been received. Among them, SmarTone and SUNDAY expressed support for the Administration's proposal. New World and Peoples considered that the charging of spectrum utilization fee (SUF) for 2G spectrum would pose an additional financial burden on 2G operators, which might eventually be passed onto the consumers. While raising no objection to the proposed SUF, Hutchison and CSL suggested that the SUF level for existing 3G licensees should be reviewed with a view to revising the fee level downwards on par with that for 2G licensees.

Amendments proposed by the Administration to the subsidiary legislation made under the Telecommunications Ordinance (Cap 106) (CB(1)648/04-05(01))

4. Members noted that while the Administration considered that the subsidiary legislation, as currently drafted, was in order, it had accepted the suggestion of the Assistant Legal Adviser 3 (ALA3) and would move a resolution to amend the subsidiary legislation to remove any possible doubt and improve textual clarity by

- (a) specifying more explicitly the mobile carrier licences to which the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N. 210) would apply such that the provisions relating to SUF would apply to new mobile carrier licences granted after the commencement of the Regulation; and
- (b) amending the Chinese text of section 10 of the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap 106X) to achieve consistency with section 5 in L.N. 210.

5. As the text of the draft resolution on the proposed amendments was not yet ready for members' perusal at the meeting, the Chairman requested the Administration to make available the draft resolution as early as possible and not later than 15 January 2005 for onward consideration by members and ALA3.

Commencement of the subsidiary legislation

6. Members noted that the Administration intended to move the aforesaid amendments, as well as an amendment to the commencement date of the subsidiary legislation (L.N. 208 to L.N. 210) from 3 February 2005 to 4 February 2005, at the Council meeting on 2 February 2005. However, under section 34(2) of the Interpretation and General Clauses Ordinance (Cap 1), any amendment to subsidiary legislation by resolution of this Council would take effect only from the date of gazettal of the resolution (in this case, 4 February 2005). As the subsidiary legislation as gazetted would have already come into operation on 3 February 2005, there would be a one-day gap between the commencement of the subsidiary legislation as gazetted and the subsidiary legislation as would be amended. Nevertheless, the Administration decided not to amend the commencement date of the subsidiary legislation, and would only proceed with the proposed amendments in paragraph 4(a) and (b).

Admin

7. The Administration assured members that the one-day gap would not cause any problem because the requirement for 2G licensees to pay SUF would not arise until new mobile carrier licences were issued to them upon expiry of their current PRS licences, the earliest being in July 2005. On the designation of commencement date, the Administration said that its intention was to commence the subsidiary legislation as soon as possible so that the Telecommunications Authority could commence discussion with the incumbent 2G licensees on the issues of new mobile carrier licences and the related conditions well in advance of the expiry of their current licences. As the Administration would introduce other items of subsidiary legislation subject to negative vetting in the course of the session, to avoid similar time-gaps in future, the Chairman reminded the Administration to take into account the possibility of amendment to subsidiary legislation by this Council when designating commencement dates.

Legislative timetable

Admin

8. The Chairman advised that the deadline for giving notice of the relevant motion to move amendments at the Council meeting of 2 February 2005 was 26 January 2005.

9. Summing up, the Chairman said that the Subcommittee had completed scrutiny of the subsidiary legislation and would report to the House Committee on 21 January 2005. He suggested that unless members considered it necessary to further examine the text of the draft resolution on the proposed amendments, it would not be necessary to hold a further meeting. Members agreed.

(post-meeting note : The draft resolution on the amendment proposed by the Administration has been circulated to members on 15 January 2005 vide LC Paper No. CB(1)721/04-05. No member has considered it necessary to hold a further meeting to examine the text of the draft resolution.)

III. Any other business

10. There being no other business, the meeting ended at 9:30 am.

Council Business Division 1
Legislative Council Secretariat
8 February 2005

**Proceedings of the second meeting of the Subcommittee on
Telecommunications (Designation of Frequency Bands subject to Payment of
Spectrum Utilization Fee) (Amendment) Order 2004,
Telecommunications (Method for Determining Spectrum Utilization Fees)
(Third Generation Mobile Services) (Amendment) Regulation 2004 and Telecommunications
(Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation
on Wednesday, 12 January 2005 at 8:30 am
in Conference Room A of Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000021	Chairman	Confirmation of minutes of meeting on 22 December 2004.	
000022 – 000626	Chairman Mr Jasper TSANG The Administration	<u>The Administration's response to deputations' views CB(1)648/04-05(02)</u> The Administration's confirmation that it would not cap the transmission speed for new 2G licences at 144 kbps as this would discourage 2G operators from introducing advanced mobile services.	
000627 – 001019	Chairman Mr Howard YOUNG The Administration	(a) The Administration's view that as the level of 3G SUF was determined by an auction held in September 2001 and had subsequently become a licence condition, it would not be appropriate to vary the existing SUF level for 3G services. (b) The current operating environment and market outlook for 3G mobile services in Hong Kong.	
001020 – 002020	Chairman Dr LUI Ming-wah The Administration	(a) The Administration's explanation that the SUF structure for the 2G and 3G spectra was appropriately set as the service capabilities of 2G and 3G networks would likely converge by 2010 or 2011. (b) Method of allocating spectra to 2G operators upon expiry of their existing licences.	
002021 - 003006	Chairman Mr Jasper TSANG The Administration	(a) Market positioning of 2G and 3G mobile services. (b) The advent of 3G technology and growing market demand for more advanced mobile services. (c) Whether the additional cost incurred by 2G licensees as a result of payment	

Time marker	Speaker	Subject(s)	Action required
		of SUF would be passed onto the consumers.	
003007 – 003343	Dr LUI Ming-wah The Administration Chairman	(a) Divergent views on 2G and 3G convergence expressed during public consultation. (b) The Administration’s advice that according to equipment vendors, 3G equipment for 2G frequencies would be available in response to market demand.	
003344 – 004445	Mr Jasper TSANG The Administration Chairman	(a) The Administration’s clarification that it was the commercial decision of individual 2G licensees to deploy the assigned spectrum for basic 2G services or for more advanced mobile services. (b) Forthcoming public consultation on the assignment of additional spectrum in the EGSM band to 2G operators which might alleviate the problem of spectrum shortage. (c) The plan of the Administration to conduct a spectrum policy review on the allocation and assignment of spectrum for telecommunications and related services.	
004446 – 005053	Chairman The Administration Assistant Legal Adviser 3	<u>Amendments proposed by the Administration to the subsidiary legislation made under the Telecommunications Ordinance(Cap.106) (CB(1)648/04-05(01))</u> (a) Commencement of the proposed amendments to the subsidiary legislation (L.N. 208 to L.N. 210) under section 34(2) of the Interpretation and General Clauses Ordinance (Cap 1). (b) The Chairman’s remark regarding the Administration’s designation of commencement dates in subsidiary legislation subject to negative vetting.	The Administration to note and follow up as per paragraphs 6 and 7 of the minutes.
005054 – 005405	Chairman The Administration	(a) Legislative timetable. (b) The Administration to provide the draft resolution on its proposed amendments to the subsidiary legislation.	The Administration to note and follow up as per paragraphs 5 and 8 of the minutes.

Time marker	Speaker	Subject(s)	Action required
			Members to note as per paragraph 9 of the minutes.

Council Business Division 1
Legislative Council Secretariat
8 February 2005