

立法會
Legislative Council

LC Paper No. CB(1)1723/04-05
(These minutes have been seen
by the Administration)

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Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 9 May 2005, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Hon Albert Jinghan CHENG (Deputy Chairman)
Dr Hon LUI Ming-wah, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
- Member absent** : Hon Howard YOUNG, SBS, JP
- Public officers attending** : Agenda Item IV

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)
- Mr Tony LI
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)B
- Agenda Item V

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Eddie CHEUNG
Principal Assistant Secretary for Commerce, Industry
and Technology (Communications and Technology)A

Ms Lorna WONG
Commissioner for Television and Entertainment
Licensing

Agenda Items VI - VII

Mrs Marion LAI, JP
Deputy Secretary for Commerce, Industry and
Technology (Communications and Technology)

Mr Y K HA
Assistant Director of Telecommunications (Regulatory)

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

Staff in attendance : Ms Debbie YAU
Senior Council Secretary (1)1

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1431/04-05 -- Minutes of meeting held on
8 April 2005

The minutes of the meeting held on 8 April 2005 were confirmed.

II Paper issued since last meeting

LC Paper No. CB(1)1437/04-05(01) -- Consultation paper on
availability and provisioning of
blockwiring for type II
interconnection

2. Members noted the paper issued since last meeting.

III Date and items for discussion for next meeting

LC Paper No. CB(1)1430/04-05(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1430/04-05(02) -- List of follow-up actions

3. Members noted and agreed to discuss the item proposed by the Administration on "Promoting the Development of Digital Entertainment Industry in Hong Kong - Strategy and Measures" at the next meeting to be held on 13 June 2005. The Chairman suggested and members agreed that the Chairman and the Clerk would finalize the agenda in consultation with the Administration.

IV Proposed creation of a supernumerary Senior Principal Executive Officer (SPEO) post as Head of Hong Kong, China Secretariat for ITU TELECOM WORLD 2006

LC Paper No. CB(1)1430/04-05(03) -- Information paper provided by Administration

LC Paper No. CB(1)1432/04-05 -- Background brief on Hong Kong's hosting of the ITU TELECOM WORLD 2006 prepared by the Secretariat

4. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) (DSCIT(CT)) briefed members on the proposed creation of a supernumerary post of Senior Principal Executive Officer (SPEO) (D2) in the Communications and Technology Branch (CTB) of the Commerce, Industry and Technology Bureau (CITB) for the International Telecommunication Union (ITU) TELECOM WORLD 2006 to be held in Hong Kong from 4 to 8 December 2006. She outlined the background, justification and financial implications of the proposal. Members noted that the Administration planned to submit the proposal for the consideration of the Establishment Subcommittee (ESC) of the Finance Committee (FC) on 2 June 2005.

5. In reply to the Deputy Chairman's enquiry, DSCIT(CT) confirmed that the proposed SPEO post was a civil service post and if approved, would be filled by a serving officer in the Executive Officer grade and the posting would be arranged by the Director of General Grades of the Civil Service Bureau.

6. The Chairman concluded that the Panel supported the proposal.

V Proposed creation of a non-civil service position at the equivalent rank of D2 in the Television and Entertainment Licensing Authority to be offset by savings from a permanent post of an Administrative Officer Staff Grade C

LC Paper No. CB(1)1430/04-05(04) -- Information paper provided by Administration

The Administration's notification of the item for Panel discussion

7. The Chairman informed members that the agenda of this meeting had already been finalized at the last meeting held on 8 April 2005. However, the Administration subsequently requested him on 30 April 2005 to add this item on the agenda. He said that having considered the timing of the staffing proposal and the nature of the other items on the agenda, he had, after due consideration, agreed to include this item on the agenda. However, the Chairman reminded the Administration that according to the memo on processing of financial proposals issued by the Secretary for Financial Services and the Treasury to all directors of bureaux and permanent secretaries on 19 November 2004, subject bureaux were requested to notify the relevant Panel Clerk as early in advance as practicable so that the financial proposals could be included in the agenda of the target meeting. The ideal timing was that the Panel should be notified at the regular Panel held a month before the meeting at which the staffing proposal was to be considered. Subsequent changes to the finalized agenda should be avoided unless the item in question related to matters of unforeseeable urgency. The Chairman also pointed out that in general, staffing proposals were processed within the Government in accordance with established procedures and were by no means unforeseeable matters. As such, the Administration should plan ahead and put up the request at the last regular Panel meeting (i.e. 8 April 2005), instead of putting up the request as late as about one week before the meeting today. The Chairman invited the Administration to provide an explanation for the short notice.

8. In this regard, DSCIT(CT) thanked the Chairman and the Panel in allowing the discussion of the item at today's meeting. On the reason for the short notice in requesting the Panel to consider the staffing proposal, she explained that in view of the rapid technological and market developments in the broadcasting industry, the level of technical expertise required in supporting the Broadcasting Authority (BA) to discharge its functions was beyond the capabilities of a general grade officer. It had taken the Administration a few months to explore alternative options to strengthen the internal capabilities of TELA to meet the growing challenges facing its Broadcasting Division. Options such as creating a post at a lower rank or equipping existing staff through overseas training programmes had been considered. However, having regard to the needs to fill knowledge gaps in the legal, technological and economics arena arising from the changing operating environment, and to collaborate with external competition consultants in undertaking competition investigation and analysis etc, the Administration had proposed to engage an

external expert through open recruitment to take up the non-civil service appointment of Assistant Commissioner (Broadcasting) (AC (Broadcasting)). DSCIT(CT) further said that TELA also needed to obtain clearance within the Government after it had finalized the option to make a non-civil service appointment of AC (Broadcasting) to head the Broadcasting Division.

9. DSCIT(CT) said that as the Administration had now decided to take forward the proposal and expected the new AC (Broadcasting) to assume duty in late 2005, it planned to submit the proposal for the consideration of ESC on 2 June 2005 in order to tie in with the recruitment schedule. As such, it was necessary to consult the Panel on the proposal at this meeting. Nevertheless, DSCIT(CT) apologized for the short notice.

10. While accepting the Administration's explanation on this occasion, the Deputy Chairman stated that the present case should not be taken as a precedent and should not happen again.

Justification for the proposed non-civil service post on three-year appointment

11. Noting from media reports that the Administration had in mind a prospective candidate for the post of AC (Broadcasting), the Deputy Chairman sought clarification on whether the current proposal was tailor-made for that candidate.

12. In response, DSCIT(CT) confirmed that the post of AC (Broadcasting) was not tailor-made for any particular individual. She assured members that the post would be filled by the most suitable and competent candidate through open recruitment. In reply to the Chairman on the possibility of filling the position by a serving officer within the Government, DSCIT(CT) advised that the post of AC (Broadcasting), when first created in 1987, was on civil service establishment. However, recent developments in the broadcasting industry had posed unprecedented challenges to the BA. The liberalization of the television market and technology convergence had required BA to re-position its regulatory approach to ensure that it was in line with the best practices adopted by comparable regulators overseas. Moreover, BA was responsible for enforcing the competition provisions and therefore, should be provided with effective support on competition regulation in the face of heightened competition in the television market. Due to the convergence of telecommunications and broadcasting at the technological and business levels, the Government had proposed the establishment of a unified regulator by merging the Telecommunications Authority (TA) and BA. Given that the challenges mentioned above had grown beyond the capabilities of serving government officers, the Administration needed to recruit an external candidate who might have legal or economic analysis background, and wide exposure to overseas regulatory practices and to a unified regulatory set-up. That was why the Administration had proposed to create a non-civil service post of an AC (Broadcasting) to be filled by open recruitment.

13. The Deputy Chairman did not fully subscribe to the Administration's explanation. He pointed out that although the Government would follow the established procedures in the recruitment exercise, the position could still be filled ultimately by the candidate that the Administration had in mind. He further queried why the proposed post of AC (Broadcasting) could not be a permanent civil service post having regard to the pivotal role to be played by the post holder as highlighted by the Administration. The Deputy Chairman said that the proposed non-civil service post for a term of three years would only add to suspicion that the post was tailor-made for a particular person, such as a retiree of the Government.

14. In response, DSCIT(CT) reiterated that the proposed three-year duration of the post was to allow for flexibility. Given that the broadcasting and telecommunications industries in Hong Kong and worldwide were undergoing momentous changes, and new technologies and products emerged every now and then, it would be a better arrangement if the need for and the job requirements of the AC (Broadcasting) post could be reviewed after an initial period of three years before finalizing any longer-term arrangement. DSCIT(CT) further said that during the three-year period, the AC (Broadcasting) could share his/her professional knowledge and expertise in broadcasting and telecommunications and develop the required competence in existing staff of the Broadcasting Division so as to strengthen the BA's capabilities in discharging its statutory functions. In fact, it was common that overseas regulatory bodies engaged both civil service staff and non-civil service contract staff for a good mix of expertise. Such an arrangement had proved to be effective. With the benefit of up-to-date external input, regulatory measures would be more responsive to market needs and conducive to future developments.

15. The Deputy Chairman was worried that if the renewal of the proposed AC (Broadcasting) post after the first three years was subject to review, it might not be able to attract candidates of a high calibre to take up the post. He further remarked that if it was the Administration's intention that the future post holder would primarily be tasked to equip existing staff with the required competence during the three-year period, then TELA might as well consider the alternative of engaging consultants to provide the necessary training for staff and related services.

16. Noting the Deputy Chairman's concern, the Commissioner for Television and Entertainment Licensing (C for T&EL) pointed out that appointment by contract was a common method of recruitment used by public bodies. Experience had shown that both the departments and individuals concerned welcomed the flexibility under contract appointment.

17. Noting that the creation of the proposed post would be offset by the savings derived from freezing one existing permanent Administrative Officer Staff Grade C post, i.e. the current AC (Broadcasting) post, the Chairman was concerned whether this would affect the services of TELA. In response, C for T&EL advised that the new AC (Broadcasting) would also be required to take up

the duties currently undertaken by the incumbent AC (Broadcasting).

18. With the Administration's assurance that the AC (Broadcasting) post was not tailor-made for a particular individual, the Deputy Chairman indicated that he would support the staffing proposal notwithstanding his view that the post should be a permanent civil service appointment. In conclusion, the Chairman said that the Panel supported the proposal.

VI Partial commencement of section 8(1)(aa) of the Telecommunications Ordinance and creation of a class licence to regulate resale of telecommunications services on a prepaid basis

LC Paper No. CB(1)1430/04-05(05) -- Information paper provided by Administration

LC Paper No. CB(1)67/04-05 -- Consultation Paper on Partial Commencement of Section 8(1)(aa) of the Telecommunications Ordinance and Creation of a Class Licence to Regulate Resale of Telecommunications Services on a Prepaid Basis
<http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20041015.pdf>

19. With the aid of power-point presentation, DSCIT(CT) and the Assistant Director of Telecommunications (Regulatory) (AD/Tel(R)) briefed members on the public consultation on the proposal of the TA to commence section 8(1)(aa) of the Telecommunications Ordinance (TO) (Cap 106) to regulate certain resale of telecommunications services. They outlined the background, the public consultation and the details of the proposals to regulate the resale of telecommunications services on a prepaid basis and the resale of telecommunications services by an associated corporation of a fixed or mobile carrier, or a telecommunications licensee in a dominant position, when the services being resold were operated by the carrier or the dominant licensee. Members noted that some issuers of calling cards did not maintain any means of telecommunications at all but they purchased bulks of call minutes from the network or service operators at wholesale rate, re-packaged the services in the form of prepaid calling cards, and sold the cards at retail price under their own brand names.

Resale of telecommunications services on a prepaid basis

Current market situation

20. Mr Jasper TSANG was concerned about the implications on the workload of the Office of Telecommunications Authority (OFTA) if the proposed regulatory regime was administered. He also sought information on the number of service providers currently providing resale of telecommunications services on a prepaid basis in the market.

21. In response, AD/Tel(R) said that while he did not have the information on the number of resellers of prepaid services, there were at present approximately 200 different brands of prepaid cards in the market and it was possible that a reseller might offer more than one brand of prepaid cards. Nevertheless, he anticipated that the additional workload involved would be relatively small because only registration work was involved. That was why the TA had not proposed to levy any licence or registration fee for the time being.

Effectiveness or otherwise of the proposed regulatory regime

22. Recalling that Miss Denise YUE, currently the Permanent Secretary for Commerce, Industry and Technology (Commerce and Industry), had once said to Members that the Government did not see the need to regulate the sale of prepaid services such as the sale of prepaid cake coupons and prepaid beauty services etc, the Chairman remarked that apparently, the present proposal to regulate certain resale of telecommunications services had deviated from the Government's previously stated policy stance. He pointed out that the Government, as a single entity, should not apply two different regulatory standards on business activities involving prepayment of charges. The Chairman also cautioned that the Government, in seeking to regulate the resale of telecommunications services on a prepaid basis, might heighten public expectation on the remedial action to be undertaken by the Government, such as the setting up of a compensation fund to indemnify consumers of their losses in case of defaults.

23. Echoing the Chairman's view, the Deputy Chairman pointed out that unlike the current operation of free market where consumers might purchase prepaid calling cards from more reputable sources, the regulatory regime, if implemented, might create a reasonable expectation among the consumers that all resellers registered as class licensees were reliable.

24. Mr Jasper TSANG agreed that the implementation of the proposed regulatory regime would boost consumers' confidence in using prepaid telecommunications services. As a safeguard, he hoped that the registration requirement might at least enable the Administration to reject future applications of those resellers to register as class licensees again if they had once absconded after receiving customer prepayment.

25. Dr LUI Ming-wah however was supportive of the proposal. He agreed that subjecting this kind of resellers to licensing control could help protect consumer interest since basic information of the resellers such as their names, contact telephone numbers and addresses would be made public.

26. In response, DSCIT(CT) acknowledged the concerns raised by the Chairman and members and said that the Administration had taken into account similar considerations. However, in the past few years, OFTA had received many consumer complaints about prepaid calling cards and TA could not take any action against prepaid card issuers which did not operate any means of telecommunications services as they were not currently subject to the existing licensing regime. Nevertheless, she stressed that the Administration was still in the course of considering the comments and views in the submissions received and had not yet finalized the way forward.

27. On measures to safeguard consumers' interest, AD/Tel(R) pointed out that under the proposal, each class licensee reselling prepaid services would be required to provide specific information including the name of licensee, the registration number under the Class Licence, hotline number, access code, access instructions, tariffs and expiry date of the prepaid services to facilitate customers to trace the reseller for refund in case of default.

28. The Chairman remained unconvinced of the effectiveness of the proposed regulatory regime. He considered that requiring the class licensees to disclose specific information to the consumers was in no way a practical safeguard because in case of default, the information could neither enable the consumers to continue to use the services, nor enable them to claim back the remaining values in the prepaid cards. The Chairman depicted a scenario in which a reseller had absconded after selling 10 000 prepaid cards and some 200 aggrieved consumers lodged their complaints with OFTA. The Chairman said that OFTA would be quite helpless in such a situation notwithstanding the implementation of the class licence requirement.

29. AD/Tel(R) recapped that at present, persons who resold telecommunications services without operating any means of telecommunications were not subject to licensing control. This had rendered any attempt to trace absconded resellers futile. By requiring the resellers to register as class licensees and to provide updated information for enquiry and tracking purposes under the proposal, TA would have the necessary information to monitor the operation of the resellers, conduct investigations, impose regulatory sanctions and issue directions for remedial action as appropriate. For example, TA could black-list and promulgate the names of the resellers in question for the information of consumers.

30. In this regard, the Chairman reiterated that he was not against proposals to regulate the resale of prepaid telecommunications services over which there had been many complaints in the past. His concern was that the regulatory regime must serve an effective purpose in protecting consumers' interests.

Financial obligations

31. The Chairman referred to the existing compensation funds available in various business sectors such as the Investor Compensation Fund and the Travel Industry Compensation Fund. Noting that no compensation fund would be set up under the proposed regulatory regime, he enquired about the proposed measures to address consumers' financial loss.

32. In this connection, AD/Tel(R) referred to the financial obligations as proposed by TA, i.e. requiring the resellers to maintain a net value relative or equivalent to the amount of prepaid proceeds collected at all times, or to procure a bank guarantee in favour of the TA before they were allowed to register under the class licence to offer prepaid services. The guaranteed amount would be forfeited by the TA and paid into the Government's general revenue if the class licensees failed to make available to the customers services which had been resold on a prepaid basis. However, AD/Tel(R) informed members that all operators and industry organizations responding to the consultation paper had expressed reservation on the aforesaid proposed requirements, while the Consumer Council was in support.

33. The Deputy Chairman was concerned that the amount covered by the bank guarantee should be used in favour of the consumers instead of the Government. While considering it inappropriate for the Government to shoulder any financial obligations in case of the licensee's default, Dr LUI Ming-wah however pointed out that the Administration should devise an effective regime to protect the interests of the consumers as well as those of reputable or law-abiding resellers.

34. On whether the money in the bank guarantee forfeited by the TA should be used to compensate consumers' loss, AD/Tel(R) referred to views expressed by responding operators and industry organizations that this might not be practicable as it was extremely difficult to verify the loss of the consumers concerned. In reply to the Deputy Chairman's further enquiry on whether the service providers concerned would continue to provide services in case of the licensee's default, AD/Tel(R) said that although the resellers obtained telecommunications services from licensed network and service operators for reselling to consumers, they were not acting as the agents of the licensed network and service operators. Hence, the network and service operators concerned did not have a contractual relationship with the consumers and were not obliged to continue to provide the services beyond the terms and conditions in their agreements with the resellers.

35. The Deputy Chairman and Dr LUI Ming-wah were concerned about measures, if any, to prevent the resellers to resell more call minutes than they had purchased from the network and service operators. The Deputy Chairman referred to some cases in the United States (US) where consumers had not been able to obtain proper services through prepaid calling cards issued by persons who did not themselves operate any means of telecommunications. In response, AD/Tel(R) referred to the "net asset value" maintenance requirement under the proposal and pointed out that this obligation would ensure that the class licensees

would always maintain a certain level of asset to satisfy outstanding claims of customers who had purchased the prepaid service. The aim was to reduce the chance that the class licensees resold more services than they could afford to offer, thus causing financial loss to the customers if it turned out that the class licensees had no sufficient means to support the services.

Other issues

Admin

36. The Deputy Chairman relayed the concerns of frontline law enforcement officers that the easy purchase and use of prepaid SIM cards by mobile phone users in Hong Kong had made the tracing of offenders through telephone use difficult. He referred to the practice in the US where prepaid SIM cards would only be sold to users who could present their passport numbers and credit cards registered with a US address. He was concerned about the measures, if any, taken by the Administration to facilitate law enforcement in this regard. As strictly speaking, the question was outside the scope of the current agenda item, the Chairman requested the Administration to provide a written response after the meeting.

The way forward

37. Summing up, the Chairman reiterated his view that he was not against measures to regulate the resale of prepaid telecommunications services for the benefit of consumers. However, his primary concern was that there should be a clear policy objective and that the proposed regulatory regime would be realistic and able to meet the expectation of the general public in using such prepaid telecommunications services. Sharing his view, the Deputy Chairman cautioned that the Administration should not take forward the present proposal which would only heighten consumers' expectation but without adequate remedial measures to deal with their claims for losses.

38. In response, DSCIT(CT) took note of members' views and assured members that TA would take into account all views received when finalizing the way forward.

Reseller which was the Associated Corporation of a Carrier or a Dominant Licensee

39. Members noted that the TA had proposed to commence section 8(1)(aa) to regulate a company which was an associated corporation (Resale Associate Corporation) of a carrier or a licensee dominant in a telecommunications market, and resold the services of the associated carrier or dominant licensee. It was proposed to regulate these Resale Associate Corporations by individual licences so that appropriate licence conditions could be incorporated having regard to the nature of the resale business concerned.

40. In this connection, the Chairman remarked that some management companies of private housing estates had, without obtaining the prior consent of

the property owners, outsourced the estates' telecommunications services a certain carrier licensee, with the charges of such services being bundled into the management fees. The Chairman enquired whether this practice of unfair competition would be brought into the proposed regulatory framework, and whether the management companies which were associated with the carrier licensees would be regarded as Resale Associate Corporations and be subject to regulation.

41. In response, AD/Tel(R) confirmed that this type of operations would be regulated when section 8(1)(aa) of TO was brought into operation. As Resale Associate Corporations did not operate any means of telecommunications, they were currently not subject to licensing requirement. He pointed out that the proposal was made in response to an emerging trend that some fixed or mobile carriers would diversify their operations and set up Resale Associate Corporations to run the non-network related aspects of the telecommunications services, including the resale of services to end customers, thereby avoiding the licensing obligations imposed on them under their respective carrier licences.

42. Referring to the example cited by him, the Chairman pointed out that as the owners' corporations were also involved in the provision of telecommunications services for the estates concerned, the Home Affairs Departments or various District Councils should also be consulted on TA's regulatory proposals. In response, AD/Tel(R) said that the Chinese term for "associated corporation" (相聯法團) defined in the TO might appear to catch the owners' corporations. He nevertheless pointed out that as currently defined in the TO, "associated corporation" meant "a corporation over which the licensee has control".

43. The Deputy Chairman expressed his worry that if section 8(1)(aa) was brought into operation, it might mislead consumers/residents to believe that the dominant licensee which had arranged bundled contracts for the provision of residential telephone and broadband services of the estates concerned through its Resale Associate Corporations was operating legitimately under the regulatory regime. He considered such a practice unfair as residents had to pay for the telecommunications services even if they did not use them. The Deputy Chairman urged the Administration to give further thoughts to the proposal and to consult the owners' corporations as appropriate.

44. In response, AD/Tel(R) pointed out that while the Consumer Council supported the proposal, the operators had expressed reservation, particularly on the need to regulate Resale Associate Corporations differently and the scope of the individual licences as they might be subject to a more stringent set of licensing conditions as compared to other resellers. AD/Tel(R) stressed that once being regulated, the Resale Associate Corporations would be subject to provisions in the TO applicable to telecommunications licensees in general (including provisions against anti-competitive conduct such as abusing dominant positions, bundling of services), as well as conditions stated in their individual licences. Referring to the Deputy Chairman's remarks, AD/Tel(R) said that in

his opinion, the Resale Associate Corporation should deduct the charges of telecommunications and broadband services offered under the bundled contract from the management fees if the residents chose not to subscribe for such services.

45. DSCIT(CT) reiterated that since a Resale Associate Corporation could be reselling the whole range of carrier's services but was not currently subject to any regulatory control, there was a need to bring these corporations into the licensing regime. Nevertheless, she assured members that TA would take into account members' views when finalizing the way forward.

46. The Chairman stated his position that he was not against proposals to regulate these corporations but the regulatory measures must be effective and conducive to the objective of protecting the interests of consumers/residents.

VII Consultation exercise on assignment of the available spectrum in the 800 MHz and 1800 MHz bands to the existing mobile network operators

LC Paper No. CB(1)1430/04-05(06) -- Information paper provided by Administration

LC Paper No. CB(1)1433/04-05 -- Background brief on consultation exercise on assignment of the available spectrum in the 800 MHz and 1 800 MHz bands to the existing mobile network operators prepared by the Secretariat

LC Paper No. CB(1)1176/04-05(01) -- Consultation Paper on Assignment of the Available Spectrum in the 800 MHz and 1 800 MHz Bands to the Existing Mobile Network Operators

LC Paper No. CB(1)1469/04-05(01) -- Submission from Hutchison Telephone Company Limited (English version only)

LC Paper No. CB(1)1482/04-05(02) *(tabled and subsequently issued on 10 May 2005)* Power-point presentation material on "Consultation exercise on assignment of the available spectrum in the 800 MHz and 1800 MHz bands to the existing mobile network operators" (Chinese version only)

47. With the aid of power-point presentation, AD/Tel(R) briefed members on the public consultation conducted by TA on 28 February 2005 on the assignment of the available spectrum in the 800 MHz and 1 800 MHz bands to the existing Mobile Network Operators ("MNOs") for the second generation mobile services. In gist, he outlined the assignment of the available spectrum to the six incumbent MNOs, the proposed assignment method, payment of spectrum utilization fee (SUF) and the views received during the consultation.

Proposed spectrum assignment method

48. Mr Jasper TSANG asked why some MNOs were Dual-Band Operators while some were Single-Band Operators. As the former had been assigned with a larger amount of spectrum than the latter, he enquired why the Administration had proposed to treat all the six MNOs equally in the assignment of the available spectrum by dividing the available spectrum in the 800 MHz and 1 800 MHz bands into six blocks for assignment to the six MNOs.

49. In reply, AD/Tel(R) gave a historical account on the licensing arrangements for MNOs. Currently, there were three MNOs which provided services on both the GSM and the PCS standards (i.e, the Dual-Band Operators) and three MNOs which operated only the PCS standard (i.e., the Single-Band Operators). On the proposed assignment of spectrum, AD/Tel(R) explained that as the Single-Band Operators were also serving a relatively large customer base and providing mobile services comparable to those of the Dual-Band Operators, the Single-Band Operators were utilizing their relatively smaller amount of assigned spectrum to a much fuller extent. As such, the TA saw it necessary to give due considerations to the difficulties faced by the Single-Band Operators in dimensioning their networks to meet future growth. He therefore proposed to divide the available spectrum into six blocks for assignment to the six MNOs.

50. Given that radio spectrum was a scarce public resource, Dr LUI Ming-wah considered that the spectrum should be allocated through bidding and that a higher level of SUF should be payable for additional spectrum so as to ensure the most efficient use of the assigned spectrum by operators.

51. In response, DSCIT(CT) pointed out that the Administration had used different methods in assigning available spectrum having regard to the market situation and the relative efficiency of the MNOs in utilizing their assigned spectrum. For example, it had allocated 3G spectrum by way of a bidding exercise. She recapped that the Administration had just commenced a spectrum policy review which would cover, inter alia, the assignment method of available spectrum. DSCIT(CT) reiterated that the current consultation exercise was conducted for the purpose of addressing the spectrum shortage problems faced by the existing MNOs.

52. Dr LUI Ming-wah considered it more appropriate for the Administration to assign the spectrum after the spectrum policy review and questioned the ways the TA had assessed the extent of spectrum shortage problems faced by MNOs.

53. In response, AD/Tel(R) advised that apart from the spectrum currently available for assignment, the only spectrum that would be taken out of the spectrum policy review for assignment would be the broadband wireless access spectrum. The latter is to meet the need of fixed carriers to roll out their networks in anticipation of the sunset of type II interconnection by June 2008. On the extent of the spectrum shortage problems, AD/Tel(R) said that in assessing the performance of the MNOs in the utilization of their existing assigned spectrum, the TA noted that all the MNOs had managed to achieve a high level of frequency re-use and spectral efficiency, and provided service to a large number of subscribers with their assigned radio spectrum. However, having regard to the fact that some MNOs could not maintain their service quality at peak hours, TA had decided to assign the available spectrum to the six existing MNOs at this stage, instead of after the spectrum policy review, so as to address their immediate operational needs. Dr LUI Ming-wah did not fully agree with the Administration and remarked that TA had not given thorough consideration to the market situation.

Policy objective of assigning available spectrum

54. The Chairman stressed the importance in formulating consistent policies, instead of deviating every now and then from the established practice. He referred to the submission from Hutchison Telephone Company Limited (LC Paper No. CB(1)1469/04-05(01)) and pointed out that the spectrum assignment method proposed in the consultation paper was different from that adopted in the last assignment exercise three years ago. The Chairman considered that there should be a clear policy objective in the allocation of radio spectrum, which could be the even distribution of frequencies among operators, among licensees or by total network throughput per MHz.

55. In response, AD/Tel(R) advised that on this occasion, TA had proposed to adopt an approach which was different from the assignment exercise in March 2002. At that time, the GSM licensees shared the available GSM spectrum equally and the PCS licensees shared the available PCS spectrum equally. If the same approach was adopted for the current exercise, this would imply that each Dual-Band Operator would be allocated more spectrum than the Single-Band Operator. However, in the opinion of TA, he did not consider that the Dual-Band Operators had a greater need for additional spectrum than the Single-Band Operators. Assigning a Dual-Band Operator three times the spectrum assigned to a Single-Band Operators, as under the previous method, would not promote efficient allocation and use of radio spectrum and would not therefore be in the best interest of the public. On the question of policy objective, AD/Tel(R) recapped that the 2002 exercise aimed at distributing the spectrum equally among the nine licensees. However, as far as the present assignment exercise was concerned, TA was of the view that all MNOs had operational needs for extra spectrum, he found it necessary to give due consideration to the difficulties faced by the Single-Band Operators in dimensioning their network to meet future growth. Hence, TA had proposed to

divide the available spectrum for assignment to the six MNOs equally.

56. The Deputy Chairman commented that one of the objectives in spectrum assignment was to help maintain a level playing field for all market players. He considered that as spectrum was a scarce public resource, it should best be allocated through bidding. The Deputy Chairman did not subscribe to the view that if MNOs had to bid for the spectrum, their commercial viability would be affected. He was of the view that the Government had a regulatory role to play and it should not be held responsible for the business viability or otherwise of a telecommunications operator which was a commercial entity. Otherwise, it might give rise to concerns about "collusion between business and the Government" and "transfer of benefits".

57. The Deputy Chairman was very concerned that neither the Secretary for Commerce, Industry and Technology (SCIT), the Permanent Secretary for Commerce, Industry and Technology (Communications Technology) nor the Director-General of the Office of Telecommunications Authority was present at the Panel meeting to answer members' questions on the policy issues relating to allocation of spectrum. The Deputy Chairman strongly considered that SCIT should brief members on the long-term spectrum policy.

58. In response, DSCIT(CT) took note of members' views and assured members that TA would take into account views received when recommending the way forward.

59. The Chairman stated that he was not opposing the present proposed spectrum assignment method *per se*, which was beneficial to the small MNOs. He was only concerned that there should be a clear policy objective so that a consistent method of allocating radio spectrum would apply.

VIII Any other business

60. There being no other business, the meeting ended at 4:30 pm.