

Legislative Council, Hong Kong Special Administrative Region
Meeting of the Panel on Information Technology and Broadcasting
6 February 2007, 4.30pm
Item IV: Public Consultation on Proposed Spectrum Policy Framework
Meeting with the Administration and Deputations

Submission of Hong Kong CSL Limited

Legislative Councillors, ladies and gentlemen

Thank you to the Panel for the opportunity to participate in this meeting and discuss the public consultation on the proposed spectrum policy framework. Due to the limited amount of time available, we will focus on just two of the more important issues set out in the consultation paper.

Spectrum policy first and the need for a comprehensive spectrum policy

First we would like to discuss the need for the Government to develop and finalise a comprehensive spectrum policy prior to considering spectrum implementation issues.

As you would be aware, the spectrum policy consultation is one of a number of very significant spectrum related Government consultations or studies ongoing and/or proposed in Hong Kong. These include the consultation by the Telecommunications Authority in relation to the licensing of spectrum in the 850 MHz band to potentially enable the provision of a CDMA2000 service, the consultation by the Telecommunications Authority on the deployment of broadband wireless access and the consultation by the Commerce, Industry and Technology Bureau on the introduction and regulation of mobile television in Hong Kong.

The spectrum policy consultation is inextricably linked to all of these additional consultations and cannot take place in isolation, particularly as these other consultations relate to implementation rather than policy issues.

We believe that the contemplation of spectrum implementation issues, such as the further release of spectrum, must be postponed until the more fundamental structural and policy considerations for spectrum management are appropriately resolved. As we have repeatedly stated, to focus on implementation issues would create new problems and be inconsistent with a ‘policy first’ approach.

It is our view that the Government should finalise the spectrum policy before dealing with spectrum implementation issues for a number of reasons including (1) dealing with implementation issues before policy would prejudice or preclude the broad spectrum policy; (2) devising the spectrum policy will avoid policy decisions having to ‘fit in’ with decisions previously made in implementation consultations; and (3) creating a spectrum policy would avoid implementation decisions having to be subsequently revised or unwound in order to be consistent with the spectrum policy.

To explain, a spectrum policy should include details about:

- the timing and manner in which spectrum will be allocated;
- whether spectrum will be allocated for particular services or a technology neutral approach will be taken;
- whether secondary spectrum trading will be allowed (being the ability for licensees to trade their spectrum);
- whether spectrum use will be liberalised (being the ability for users to change the technology used, network deployed and services offered using a block of spectrum);
- how spectrum taxation will be handled (including addressing issues of “if”, “when” and “how much”); and
- how interference issues are to be settled.

These are important because if investors were asked to participate in a spectrum auction (assuming an auction was the relevant allocation mechanism), they would need to be provided with all essential information about the spectrum so they could make informed decisions and consider whether, and at what price, they were willing to bid for the spectrum. This would include information about what was being auctioned, what service the relevant spectrum could be used for, how long they could hold the spectrum, whether the spectrum could be traded or its use liberalised, how interference risks would be settled, the reserve price of the spectrum and when other spectrum, and in particular spectrum that could be used to provide competitive end user services, may be released by the Government.

Unfortunately, the consultation paper does not seek to develop a comprehensive policy on all these issues (despite the significant analysis provided in the report of the Government's consultant and the clear recommendations to liberalise Hong Kong's spectrum management contained in the report). Instead, the consultation paper parks both spectrum trading and spectrum liberalisation electing instead to consider the introduction of secondary spectrum trading in the "longer term future" and to "monitor" spectrum liberalisation in other jurisdictions.

We believe that both secondary spectrum trading and liberalisation of spectrum use are critical aspects of a market-based approach. Consequently, if the guiding principle to move to a market-based approach is to be a legitimate aim in Hong Kong, spectrum trading and spectrum liberalisation must be comprehensively consulted upon now.

Until such time as these aspects are appropriately addressed, there will be significant uncertainty in the market, particularly as a piecemeal approach will lead to confusion about whether a genuine market-based approach is being adopted.

We support the general approach adopted in the United Kingdom where both spectrum trading and spectrum liberalisation were the subject of extensive consultation as part of an assessment of overall spectrum policy. We therefore urge the Government to reconsider its proposal to defer specific consultation on these issues and engage in meaningful consultation with industry now about the development and implementation of a comprehensive spectrum policy.

A failure to undertake all relevant consultations and/or studies will lead to an incomplete and inappropriate spectrum policy which would in turn negatively influence investment decisions, the legislative framework and ultimately the management of spectrum in Hong Kong.

Spectrum pricing

The second issue we would like to raise is spectrum pricing. We believe there are a number of considerations in relation to developing a uniform policy about spectrum pricing which have not been captured in the questions proposed by the consultation paper and we strongly urge the Government to further consult the industry on wider aspects of spectrum pricing.

Given that the Government has imposed a spectrum utilisation fee (or SUF) on spectrum used for mobile services, then we agree that a SUF should be imposed on all future spectrum assignments and renewed assignments. Recognising that a SUF represents a tax and taxation should be consistent, it is imperative that the decision of when to apply a SUF, and the basis for calculation of such an SUF should not be arbitrary. A lack of consistency and transparency in taxation policy may deter investment and distort the market. SUF should be determined in a clear, consistent and competitively neutral manner.

For example, the reserve prices for spectrum used for 3G mobile telephony were determined by the Government and without reference to the market. Without appropriate action, this will lead to structural issues on the introduction of a market-based SUF calculation for spectrum where there are competing commercial demands. As the Government has already set the competitive floor for reserve prices, spectrum policy must ensure equitable pricing for future assignments in the same markets to eliminate the risk of anti-competitive asymmetries or distortions within those markets (whether by using existing reserve prices as benchmarks for future spectrum grants or revising existing reserve prices by aligning them with the reserve prices for future spectrum grants). A level playing field must be maintained. To do otherwise would result in new entrants having an unfair and anti-competitive advantage over existing players, impacting and undermining competition in the telecommunications sector.

In the interests of time, I will stop there, however would like to point out that we have set out, in more detail, our views with respect to the consultation paper in our submission to the Government. We would also be happy to answer any questions that the Panel may have.

Hong Kong CSL Limited

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