Panel on Information Technology and Broadcasting

Extract from minutes of the meeting held on 13 May 2008

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VI. Outcome of the public consultation on the proposed creation of the Unified Carrier Licence

(LC Paper No. CB(1)1456/07-08(06)	--	Paper provided by the Administration
LC Paper No. CB(1)1456/07-08(07)	--	Extract of minutes of meeting held on 14 January 2008
LC Paper No. CB(1)1542/07-08(02) *(tabled at the meeting and subsequently issued via e-mail on 14 May 2008)*	--	Administration's paper on outcome of the public consultation on the proposed creation of the Unified Carrier Licence (power-point presentation materials))

Briefing by the Administration

26. At the invitation of the Chairman, the Secretary for Commerce and Economic Development (SCED) and the Director-General of Telecommunications (DG of T) gave a power-point presentation on the outcome of the two consultation exercises conducted by the SCED and Telecommunications Authority (TA) in December 2007 on the proposals for the creation of a unified carrier licence (UCL) and the related licensing arrangements respectively. Members were briefed on the details of the considerations given to the views expressed and submissions received during the consultation, and the conclusions reached on the relevant issues as detailed in the Administration Paper (LC Paper No. CB(1)456/07-08(06).

27. DG of T said that the proposal to create a UCL had received general support from the respondents. The Administration would proceed with the necessary legislative procedure to amend two pieces of subsidiary legislation under the Telecommunications Ordinance (TO) (Cap. 106). The amendment regulations would be gazetted on 16 May 2008 and tabled in the Legislative Council (LegCo) on 21 May 2008 with a view to completing the negative vetting process within the current legislative session for the new UCL regime to come into force on 1 August 2008. The UCL would be used as the licensing vehicle for broadband wireless access (BWA) service to tie in with the auction of BWA spectrum in the fourth quarter of 2008.

Action

Discussion

The proposed number fee

28. Referring to paragraph 7 of the submission from Wharf T&T Limited (WT&T) as tabled at the meeting, Mr SIN Chung-kai shared WT&T's query about the rationale and policy objective of the proposed annual fee of $3 per subscriber number. He was concerned whether the introduction of the number fee based on the assumption of a shortage of 8-digit numbers was fair to fixed network operators (FNOs) while it was the mobile network operators (MNOs) that had been driving the greatest demand for telecommunications numbers. He shared the doubt of WT&T about the assumption of a number shortage and considered that the freeing up of pager numbers with prefix "7" which were currently greatly under-utilized would prolong the life span of the existing 8-digit numbering plan.

29. In response, DG of T said that there was no provision under the existing licensing regime requiring operators to return unused numbers for reallocation. FNOs and MNOs were generally reluctant to return unused numbers due to their vested commercial interests. As telecommunications numbers were scarce public resources and in view of the low utilization rate at around 60% of the numbers allocated, there was a real need to impose a number fee as an economic incentive for operators to make more efficient use of the numbers that had been allocated to them and also to be more prudent in applying for new number blocks, thereby prolonging the lifetime of the existing 8-digit numbering plan. The Consumer Council and Telecommunications Users Group supported it. DG of T said that instead of waiting for FNOs and MNOs to voluntarily surrender the unused numbers, a multi-pronged approach would be adopted. In addition to the proposed number fee, a working group established under the Telecommunications Numbering Advisory Committee would explore other administrative measures to promote better number utilization, such as further raising the utilization threshold for applying new number blocks, allocating new mobile numbers with prefix "5", and freeing up pager numbers with prefix "7". OFTA would work out practical arrangements for operators to return unused numbers. On the rationale for the creation of UCL, DG of T explained that as the boundary between fixed and mobile networks and services had becoming increasingly blurred, the present separate licensing regimes for fixed and mobile services could no longer meet the technological and market developments of converged services. As such, there was a genuine need to create a unified carrier licensing regime conducive to the emergence of fixed mobile convergence (FMC), including new BWA services with both fixed and mobile attributes.

30. Noting that paging operators serving for about 140,000 pager users had taken up around 5 million numbers, Mr SIN Chung-kai questioned why a similar number fee was not proposed for pager numbers. DG of T responded that there was considerable resistance from paging operators to return the unused numbers which was in fact also the case with other operators. It was time critical to introduce the UCL now since the BWA services, a converged service (the spectrum for which would be auctioned shortly) would require the UCL as a licensing vehicle around end of the year, and the four fixed carrier licences issued in 1995 would

expire in 2010. As the licensing of pager service was not covered under the fixed/mobile carrier licences or the proposed UCL, the charging of a number fee for pager numbers would have to be handled separately. She said that paging operators would be urged to return unused numbers for reallocation and it was the Government's intention to also apply the number fee to pager numbers in the near future.

31. In response to Ms Emily LAU's enquiry about the industry's objection to the proposed number fee, SCED stressed that it was in the public interest and for the protection of consumer rights that the number fee was proposed. The number fee was "revenue neutral" and would not bring OFTA any extra income. Indeed, licence fee income would drop if operators returned unused numbers. He said that based on the existing demand and the pace of number allocation, the remaining capacity of the 8-digit numbering plan was expected to be exhausted by 2015. The new number fee would be an effective economic measure to promote more efficient use of the numbering resources, and also a preventive measure to defer the need for migration to a longer-digit numbering plan which would have significant social and cost implications. He appealed to members for their support of the proposed number fee as it was beneficial to the community.

32. DG of T elaborated that the introduction of the number fee was a result of re-structuring the existing carrier licence fee components, such that part of the customer connection fee was taken out to become a fee component chargeable based on the quantity of numbers held by a UCL licensee. The return of numbers to OFTA would lead to reduction of licence fees which in turn might result in a reduction of income for the OFTA. DG of T said that although such a fee was not charged when the numbers were first allocated in Hong Kong, there was sound legal basis for charging the number fee, and it was common for such fee to be charged in other jurisdictions as a means to promote efficient use of numbers.

33. In response to Mr Albert CHAN's concern that operators might pass on the financial cost of the number fee on to customers, SCED and DG of T advised that the number fee should not have significant impact on the operators for setting the retail price level. MNOs would pay less licence fee under the UCL, whereas FNOs would pay $3 annual number fee (or 25cents per month) which represented only a small sum relative to revenue received for a fixed telephone line. Most importantly, operators could always choose to return unused numbers so as to reduce the licence fee. It was envisaged that in the light of FMC and given the highly competitive telecommunications market, operators would be careful when considering any increase in service charges.

34. Mr Albert CHAN was of the view that a fee of $3 per number was too low to deter operators from hoarding auspicious numbers. He suggested that a quota on telecommunications numbers should be set for each network operator based on its actual usage of numbers over the last five years. Any unused numbers over and above the quota should be returned to OFTA. Alternatively, a higher fee of, say $300 per unused number, should be charged. Mr CHAN called on the Administration to draw up preventive measures to guard against operators from retaining auspicious numbers and releasing only the inauspicious ones.

Consumer protection and dispute resolution

35. Mr Albert CHAN suggested that the income from the number fee should be used to set up an arbitration/litigation fund for financing the investigation, arbitration and litigation of consumer complaints and contractual disputes for telecommunications services. He was disappointed that unscrupulous sales practices for marketing telecommunications services and the hiring of debt collectors to intimidate users, particularly the elderly, in recovering outstanding payment were still rampant. Concern was also expressed that while the operators would crowd the market in affluent districts and commercial areas, consumers in remote areas and low-income districts might not have as much choice of service providers. Referring to franchised mini-buses that required bus operators to run both busy and remote routes, Mr CHAN suggested that telecommunications network operators should also be required to provide services in both economically active areas and underprivileged areas under the new UCL.

36. On setting up an arbitration/litigation fund, DG of T reiterated that the number fee was a result of re-structuring the existing carrier licence fee components and was "revenue neutral" and accordingly would not bring OFTA any extra income if operators returned unused numbers. Moreover, the OFTA Trading Fund was to operate in accordance with the Trading Fund Ordinance (TFO) (Cap. 430) and it was doubtful if the purpose suggested by Mr. Chan fell within the scope covered in the TFO.

37. As regards Mr Albert CHAN's concern about consumer protection, SCED and DG of T stressed that the Administration attached great importance to customer protection and satisfactory resolution of consumer complaints and contractual disputes. To this end, the Administration had proposed to include Special Conditions (SCs) on "Compliance with Codes of Practices" (SC1) and on "Service Contracts and Dispute Resolution" (SC 36) under the new UCL. SCED had personally met with the management of major telecommunications service providers in August 2007 to convey the public and Panel members' concern in this respect. Since then, the number of consumer complaints and contractual disputes had been reduced significantly. Moreover, a pilot voluntary Customer Complaint Settlement Scheme for dispute resolution would be launched.

Legislative timetable

38. Noting that the subsidiary legislation would be gazetted on 16 May 2008 and tabled at the LegCo on 21 May 2008 for negative vetting, Ms Emily LAU asked whether the Administration was confident that it would have the support of the industry for the introduction of the legislative proposals to the LegCo. In view of the tight timeframe and having regard to the objection raised by some market players, she was concerned that Members might not have enough time for scrutiny, as in the case of the Food and Drugs (Composition and Labelling) (Amendments: Requirements for Nutritional Labelling and Nutrition Claims) Regulations 2008.

39. SCED and DG of T replied that under the proposed fee structure, fixed services would be subject to a higher licence fee. It was therefore natural that

carrier licensees, such as WT&T, who were stakeholders with vested interests, would object to paying a higher licence fee and number fee. However, mobile network operators stood to gain from reduction in licence fee and there was general support for all other elements of the UCL. Number fee was only a component among many in the UCL package.

40. While appreciating the difficulty of securing the consensus of all parties concerned, Ms Emily LAU opined that the Administration should seek to address the industry's concerns and balance the interests of the industry and the benefits to consumers.

41. Mr Albert CHAN noted that the legislative timetable was tight and asked about the reasons for such an urgency in completing the legislative process within the current legislative session.

42. In response, DG of T reiterated that as FMC was an imminent reality and the UCL would be used as the licensing vehicle for BWA services, there was a genuine and urgent need to create a unified carrier licensing regime to enable the operation of full range of fixed, mobile and converged services under a single harmonized licensing regime so to tie in with the auction of BWA spectrum in the fourth quarter of 2008. Moreover, with the impending expiry of the four fixed carrier licences in 2010, the details of the new UCL had to be finalized as soon as practicable to allow network operators sufficient time to develop their business plan. DG of T advised that Hong Kong was already behind other jurisdictions such as the UK and Singapore in the roll out of BWA services. To defer the relevant legislative amendments until the next legislative session would delay the BWA auction which in turn would hold up the introduction of new technologies, such as WIMAX, at the expense of consumers. SCED reiterated that it was in the public interest to proceed with the legislation for the creation of the UCL as soon as practicable in order that the new UCL regime could be implemented on 1 August 2008. He urged for members' support of the proposed legislative amendments for the creation of the new UCL and said that while suggestions and views from members were welcome, there was no strong grounds to revise the legislative timetable.

43. Mr Albert CHAN did not subscribe to the Administration's views and proposed to move a motion objecting to the Administration's proposals. As it was already past 6:30 pm which was the official ending time of the meeting, the Chairman ruled that the Panel would not deal with Mr CHAN's proposal to move a motion. Mr Albert CHAN expressed strong dissatisfaction with the way the Chairman had handled the matter.

Summing up

44. The Chairman noted the two customer organizations, namely the Consumer Council and the Hong Kong Telecommunications User Group representing the consumers and business users, both supported the UCL and the proposal of a number fee as a means to encourage better utilization of the number resources. He said that in the interest of the public and to protect consumer rights, he was

supportive of an early introduction of the UCL regime. Mr Albert CHAN opposed the legislative proposals and strongly objected to rushing through the legislative amendments before the close of the current legislative session. Ms Emily LAU reiterated her concern about the divergent views among industry players and expressed reservations over the tight timeframe of the negative vetting process. Mr SIN Chung-kai said that while he supported the policy of an early auction of BWA spectrum, it was equally important to ensure that the UCL regime and the related licensing conditions and arrangements were sound and fair. The Chairman summed up that he supported the Administration's proposal. Mr Albert CHAN was strongly against the proposal. Ms Emily LAU and Mr SIN Chung-kai had reservations on the proposal.

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