

Submission to Legislative Council

Panel on Information Technology and Broadcasting

Wednesday, 27 March 2013

**Arrangements for the frequency spectrum in the 1.9 – 2.2 GHz band
upon expiry of the existing frequency assignments for 3G mobile
services**

Thank you, Chairman. I appreciate the opportunity to address the panel today on this issue, which is of vital importance to all end-users of mobile services in Hong Kong.

In my remarks today I make three points:

- “Option 1” is the best of the three options OFCA proposes for comment.
- “Option 3” would seriously diminish 3G service quality for businesses and consumers in Hong Kong, in OFCA’s own estimation. It must be rejected in order to avoid serious damage to Hong Kong’s hitherto high-quality mobile services.
- OFCA has taken a wrong path by focusing on spectrum auctions in connection with utilized spectrum. It should instead be developing spectrum trading as a market mechanism for fine-tuning spectrum allocation within Hong Kong’s highly functional and competitive market.

These remarks focus on “Option 1,” which would be best for end-users, and “Option 3,” which currently appears to be favoured by the SCED.

“Option 1”

Option 1 is the best of the three options currently on the table, because it would inflict the least disruption on end-users.

I submit that the public of Hong Kong should not be asked to sacrifice service continuity or service quality for the slender gains in competitiveness that a mandatory auction might or might not bring.

A key objection by OFCA to “Option 1” is that some of the 3G spectrum might possibly be allocated more efficiently than it is at present, despite incumbents’ claims (para 33). I would accept that this is logically a possibility.

But if efficiency gains can be realized by fine-tuning the current spectrum allocation, then the right way to do that is by establishing a spectrum trading market, not by a mandatory re-auctioning of spectrum that is currently in use.

I will return to the advantage of spectrum trading over re-auctioning shortly.

“Option 3”

“Option 3” would have strongly adverse consequences for Hong Kong’s mobile services customers, as OFCA’s own reasoning reveals.

The mandatory re-auctioning of all the spectrum in question under “Option 2” is rightly rejected “...in light of the potentially severe and long lasting effect on service quality and reception...” (para 27).

Mandatory re-auctioning under “Option 3” would involve similar severe effects, in relation to one-third of the relevant spectrum instead of all of it. What are the implications of that?

According to OFCA’s own analysis:

- “[I]t is certain that the decrease in network capacity of base stations due to spectrum loss will have impact on the continuity of calls or data connections...” (para 24).
- If each operator loses one-third of its 3G spectrum, OFCA estimates download speeds would be reduced “at most 18% on average during the transition period” (para 31).

- This 18% degradation estimate is based on an assumption of continuing investment by operators in the latest technology available (footnote 10), which is a highly doubtful assumption if they have been deprived of spectrum.

What countervailing benefit to the public justifies this certainty of reduced call continuity and possibility of 18% slower download speeds?

The case for “Option 3” is based in part on the expectation that “...under Option 3, the incumbents should be able to compete more efficiently...” (para 37) but this forecast, with respect, seems extremely doubtful:

- As Hong Kong’s mobile services market is already one of the very most competitive in the world, any possible increase in competition must necessarily be marginal – when competition is already so intense, there is only room for a very slight incremental increase.
- Under the auction rules OFCA proposes, OFCA acknowledges that “...it is possible that the number of operators operating in the 1.9 – 2.2 GHz band may be reduced from four to three” (para 66). The departure of one operator is unlikely to be beneficial to end-users.

I submit that the public interest would be badly served by “Option 3.” By OFCA’s own estimates, “Option 3” asks the public to pay the price of service degradation -- which is a certainty -- in return for a forecast of increased competition -- which can only be marginal and speculative.

Neglect of spectrum trading

It is highly regrettable that OFCA postpones consideration of spectrum trading “as a separate exercise” (Annex 1, para 15). With respect, spectrum trading is the correct regulatory tool for the current circumstances.

Spectrum trading allows spectrum users to buy and sell blocks of spectrum between them, in order to tailor their spectrum holdings to their needs.

Its neglect of spectrum trading has led OFCA unfortunately to favour spectrum auctions, in a context where auctions are a very blunt tool to accomplish OFCA’s policy objectives.

Around the world, spectrum auctions have been highly successful as a means of harnessing market forces to achieve an efficient allocation of

vacant spectrum, at efficient prices. But an auction is the wrong tool to apply where spectrum is already utilized.

Spectrum trading is the superior tool and spectrum trading is “a market based approach”, as required by the 2007 Spectrum Policy Framework.

I support OFCA in seeking to “*facilitate assignment of spectrum to the MNOs which value it the most and which can put it to the most efficient use*” (para 34). Spectrum trading was developed for exactly this function.

By creating a market in tradable spectrum rights, which operators can voluntarily buy and sell, spectrum is acquired by whoever values it most highly – whether a growing incumbent or a new entrant. And the problems caused by mandatory re-auctioning (which OFCA rightly has acknowledged) do not arise.

CONCLUSION

In conclusion, I respectfully submit that this Panel should direct OFCA to:

- reconsider its current proposals in relation to the reassignment of 3G spectrum;
- re-evaluate the advantages of “Option 1” in combination with creation of a spectrum trading market; and
- perform a thorough regulatory impact assessment of the remaining options.

Confidentiality is not asserted in relation to the content of this submission.

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