

Joint Letter to Members of the Legislative Council Panel on Information Technology and Broadcasting from:

- (i) CSL Limited
- (ii) Hong Kong Telecommunications (HKT) Limited
- (iii) Hutchison Telephone Company Limited
- (iv) SmarTone Mobile Communications Limited

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Copy: Ms YUE Tin-po, Chief Council Secretary, Panel on Information Technology and Broadcasting (Fax: 3151 7052)

26 April, 2013

Dear Honorable Members of the Legislative Council,

Renewal of licences for 1.9-2.2 GHz Spectrum (“3G Licence Renewals”)

To its Second Consultation Paper, OFCA annexed its (three page) estimated degradation in average data download speed under the scenarios where an average incumbent 3G operator loses one, two or three carriers (of 2 x 5MHz). OFCA estimated that if one 2 x 5MHz carrier is taken away from an incumbent 3G operator (which is a potential outcome if Option 3 – OFCA's favoured option - is adopted) an 18% reduction in user download speed would result. Each of the undersigned operators believes that OFCA's analysis and estimate (of an 18% reduction) is seriously flawed and underestimates the significant degradation in overall service quality, not just reduction in data download speed.

You will recall that, at the public hearing which the Panel held on 27 March 2013 to discuss the above issue, Panel members expressed serious concerns about the degradation in service quality which would be caused if the four 3G network operators lose one third of their current spectrum allocation in a re-auction, which is one possible outcome of the Government's current preferred proposal (Option 3) for spectrum re-assignment being adopted. The fact that there will be degradation in service quality has been acknowledged by the Government and OFCA. It would be avoided if the Government were to re-assign the spectrum for a reasonable fee, as we have proposed. Several participants at the 27 March 2013 hearing were concerned about the effects on customers and urged the government to provide more information about the likely levels of service degradation that Option 3 will entail including to urgently invite independent international experts to prepare a report.

In that context, OFCA informed the Panel at the hearing that it was in the course of appointing a technical consultant (international telecommunications expert) to prepare a report/technical feasibility study and report on the impact on service quality and customer disruption which would be caused if Option 3 were adopted. This is a positive new development. However, at the hearing, OFCA also indicated that it would only make an announcement "*in respect of the feasibility study by October 2013*", in other words, at the same time as rendering its decision on the subject matter of the consultation – namely in October 2013.

As was commented at the 27 March 2013 hearing, this is unlikely to give the incumbent operators sufficient time to provide the necessary technical information to the international experts to allow them to properly prepare their assessment and, crucially, as no further round of consultation appears to be envisaged, this robs both the industry and the public of the opportunity to be properly consulted.


We have concerns about, and comments on, OFCA's position and statements and the proposed process:

1. The terms of the consultancy brief, i.e. the Request For Proposal (“RFP”), and the selection of the consultant should be transparent. This means allowing us to recommend consultants to OFCA, releasing the RFP and seeking comment on the terms of engagement and the methodology to be employed by the consultant.

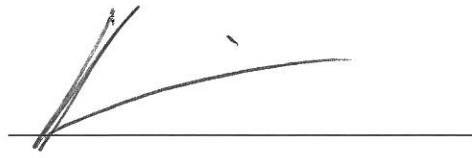
2. Publishing the technical feasibility study in October, when the final decision is published, would deny both the Panel and the public the ability to review the findings in the technical feasibility study, and comment on those findings before the final decision is made. This would not only defeat the proper objective of commissioning the technical feasibility study, but even more importantly, deny the Panel and the public the opportunity of reaching a fully informed view of the Government's proposals. Thus, we would respectfully request the Panel to insist that:
 - The findings of the technical feasibility study be made available by the Administration/OFCa to the Panel and the public as soon as possible, so that the Panel can discuss the findings with the Administration, OFCA and other interested parties. Leaving the publication of the technical feasibility study until October and releasing it at the same time as the final decision in respect of 3G Licence Renewals prevents intelligent and informed discussion and makes it impossible for the Administration and OFCA to take into account comments on the technical feasibility study. Accordingly we would respectfully request that the Panel insist that the Administration/OFCa publishes the findings (including preliminary/draft findings) of the technical feasibility study.
 - The Administration/OFCa send a copy of the RFP or any related documents to us for our comments as soon as possible.
 - The Administration/OFCa update the Panel and the public of the progress of the study and its initial findings at its meeting on 13 May 2013 and at each meeting thereafter.
3. While the findings of the technical feasibility study will hopefully be informative as to the extent of impact on service degradation and quantify it, we nonetheless firmly believe that any material degradation of service is a cause for great concern, given the high levels of service to which Hong Kong customers have been accustomed, which a services based economy requires and for which Hong Kong is internationally-renowned. The Government has thus far failed to provide any convincing evidence of benefits which would outweigh such customer harm, relying instead on speculative claims about promoting competition (when the market, by its own admission, is intensely competitive) and enhancing efficiency (when, by its own admission, keen competition – and the huge growth in mobile data usage – mean that spectrum is being efficiently used). In other words, even without the consultant's technical feasibility study, Option 1 – re-assigning the spectrum by way of right of first refusal for a reasonable fee – is clearly the best way forward.

We hope that the Panel will support our recommendations above, and we welcome the opportunity to provide any further input to the Panel on this matter, which is critically important for Hong Kong and all mobile service users. Enclosed is a copy of our joint letter to OFCA dated 25 April 2013 in respect of the matters mentioned in this letter.

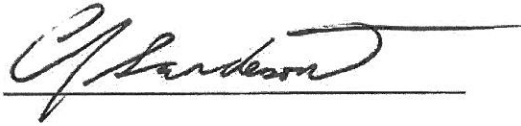
Yours faithfully,



Alison Ko
General Counsel
CSL Limited

A handwritten signature in black ink, consisting of a series of overlapping, sweeping strokes that form a stylized, somewhat abstract shape. The signature is positioned above a horizontal line.

Stuart Chiron
Head of Group Regulatory Affairs
Hong Kong Telecommunications (HKT) Limited

A handwritten signature in cursive script, appearing to read "Chris Sanderson", is positioned above a horizontal line.

Chris Sanderson
Director of Legal Services & Regulatory
Hutchison Telephone Company Limited



Patrick Chan
Executive Director
SmarTone Mobile Communications Limited

By Fax 2803 5111 and Mail

Mr YK Ha
Deputy Director-General (Telecommunications)
Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

25 April, 2013

Dear YK,

Renewal of Licences for 1.9-2.2 GHz Spectrum ("3G Licence Renewals")

To its Second Consultation paper, OFCA annexed its (three page) estimated degradation in average data download speed under the scenarios where an average incumbent 3G operator loses one, two or three carriers (of 2 x 5MHz). OFCA estimated that if one 2 x 5MHz carrier is taken away from an incumbent 3G operator (which is a potential outcome if Option 3 – OFCA's favoured option - is adopted) an 18% reduction in user download speed would result. Each of the undersigned operators believes that OFCA's analysis and estimate (of an 18% reduction) is seriously flawed and substantially underestimates the significant degradation in overall service quality, not just reduction in data download speed.

At the public hearing which the Information Technology and Broadcasting Panel (the "Panel") held on 27 March 2013, Panel members expressed serious concerns about the substantial degradation in service quality which the Administration acknowledges will arise if the four 3G network operators lose one third of their current spectrum allocation in a re-auction.

OFCA informed the Panel at the hearing that it was in the course of appointing a technical consultant (i.e. an international telecommunications expert) to prepare a report/technical feasibility study and report on the impact on service quality and the extent of customer disruption which would be caused if Option 3 were adopted. OFCA initially said at the hearing before the Panel that it would only make an announcement in respect of the consultant's technical feasibility study by October 2013. In other words, the consultant's report would be published at the same time as the Government's final decision on 3G Licence Renewals in October 2013.

We have concerns about, and comments on, OFCA's position and statements and the proposed process:

1. Publishing the technical feasibility study in October 2013, when OFCA's present intention is to also publish its final decision on 3G Licence Renewals, would deny the incumbent operators and MVNOs, the Panel and the public the opportunity to review and comment on the methodology and the findings in the technical feasibility study before the final decision in respect of the 3G Licence Renewals is issued. We believe that this course of action would not only defeat the proper objective of commissioning the report, but even more importantly, deny the incumbent operators and MVNOs, the

Panel and the public the opportunity of properly considering the Government's proposals (since to-date OFCA has not issued a proper feasibility study).

2. We believe that it is essential for the methodology and the findings of the technical feasibility study to be made available to the incumbent operators, MVNOs, the Panel and the public as soon as possible, so that the Panel can discuss the methodology and the findings of the technical feasibility study with the Administration, OFCA and other interested parties. There is also a need to ensure that any consultants selected are fully qualified and neutral. Further, to ensure transparency, the rationale as to the final selection of the consultant should be made public. Leaving the publication of the technical feasibility study until October 2013 and issuing it the same time as the final decision in respect of 3G Licence Renewals prevents intelligent and informed discussion and makes it impossible for the Administration and OFCA to take into account comments on the technical feasibility study.
3. Since any consultants who are to be appointed to prepare the technical feasibility study will need to approach the incumbent operators to request data in order to carry out their assessment of service degradation, it is imperative that the incumbent operators be given the opportunity to recommend consultants and be involved in the selection of suitable consultants and in devising the methodology to be employed to assess the service impact. Accordingly, we would respectfully request that the Administration/OFCA should circulate to the incumbent operators the RFP, any response to the RFP and the shortlist of consultants together with the proposed methodology (including the issues or questions to be addressed). In particular, we request the Administration/OFCA to send a copy of the RFP or any related documents to us for our comments as soon as possible. Moreover, we believe that the Administration/OFCA should update the Panel and the public of the progress of the study and its initial findings at the next Panel meeting on 13 May 2013 and at subsequent Panel meetings.
4. Once the choice of consultants and the methodology have been discussed and agreed with the stakeholders, then any initial or preliminary reports and any findings of the technical consultants should be shared with stakeholders and be the subject of a further round of public consultation before a final decision is taken on the 3G Licence Renewals. In short, due to the acknowledged harm to customers that Option 3 would entail, and the importance of the matter to the industry, a fully transparent technical feasibility study is required to assess all of Options 1 to 3 and any alternatives, with the incumbent operators, MVNOs, the Panel and the public given one or more opportunities to comment. To the extent that this may take the consultation - and hence the final decision on 3G Licence Renewals - past the October date set by OFCA, this is only consistent with the principles of procedural fairness.
5. While the technical feasibility study will hopefully be informative as to the extent of impact on service degradation and quantify it, or at least provide a basis for a more comprehensive debate, we nonetheless firmly believe that any material degradation of service is a cause for great concern, given the extremely high levels of service quality to which Hong Kong customers have been accustomed, which a services based economy requires and for which Hong Kong is internationally-renowned. We also draw attention to the serious penalties which are applied to service outages (under the terms of the licences granted to the incumbent operators) which reflect the public's

and Administration's recognition and concern if such high standards are not consistently and continuously maintained. We are also not aware of any precedents for accepting a substantial harm to the public interest in order to achieve something that is uniformly so speculative and theoretical.

6. As the study of the impact of Option 3 on service degradation lies at the heart of this consultation process and ultimately the final decision on 3G Licence Renewals, participation by stakeholders would be expected in this process. A failure to involve and consult stakeholders on this key matter will be manifestly unfair and will invalidate the decision making process. We trust that our suggestions to participate in the technical feasibility study and to be afforded the opportunity to comment thereon before the final decision on 3G Licence Renewals is made will find favour with you. We must reserve our respective rights if we are not afforded the opportunity and the process is thus rendered procedurally unfair.

Yours sincerely,

Copy: Members of the Legislative Council Panel on Information Technology and Broadcasting

Phil Mottram

Phil Mottram
Chief Executive Officer
CSL Limited



Alex Arena
Group Managing Director
Hong Kong Telecommunications (HKT) Limited

A handwritten signature in black ink, appearing to read 'Peter Wong', is positioned above a horizontal line.

Peter Wong
CEO & Group MD
Hutchison Telephone Company Limited



Patrick Chan
Executive Director
SmarTone Mobile Communications Limited