

26 July 2013

By mail and By fax (No.3128 2436)

Ms Elaine Lau
Head Legal Counsel
Legal & Regulatory Affairs
SmarTone Mobile Communications Limited
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Kwun Tong
Kowloon

Dear Ms Lau,

Consultancy Study in relation to the Impacts on Service Quality and Customers of Adopting a Hybrid between Administratively-assigned and Market-based Approach in Re-assigning the Spectrum in the 1.9 – 2.2 GHz Band (the “Study”)

I refer to your letters to our Danny Lau of 28 May 2013 and 7 June 2013 on the Study. I also refer to your letter of 28 May 2013 to our Helen Lai on the same matter.

Before giving our substantive reply, it is perhaps opportune for us to first recapitulate on the background to the commission of the Study by the Government in May 2013.

As explained by the Commerce and Economic Development Bureau (“CEDB”) in its reply of 10 July 2013 to the issues raised by the incumbent mobile network operators (“MNOs”) vide their joint letter of 31 May 2013, as set out clearly in the first and second consultation papers on 3G spectrum re-assignment, the Government aims at achieving multiple policy objectives in re-assigning the 3G spectrum, viz. customer service continuity, efficient spectrum utilisation, promotion of effective competition, encouragement of investment and promotion of innovative services. The Government will holistically evaluate the proposed hybrid

option against the multiple policy objectives in spectrum re-assignment, and choose the re-assignment arrangement which would best meet the multiple objectives, in accordance with the policy objectives promulgated in the Spectrum Policy Framework in April 2007.

Following the publication of the second consultation paper in December 2012, various interested parties have zeroed in on the impacts on service quality and customers if the proposed hybrid option is adopted for re-assigning the 3G spectrum in expressing their views and concerns on way forward. The Government therefore appointed an independent consultant (“Consultant”) to undertake the Study with a view to providing an objective quantitative assessment on the matter.

It is against this background that the Study is being conducted by the Government. Going back to the three letters from you and the incumbent MNOs under reference, quite a number of the issues raised therein have been overtaken by events. The MNOs have already provided the relevant data to facilitate the conduct of the Study. The Consultant has provided to the MNOs an overview of the assessment model in early June and presented to the MNOs the preliminary assessment results in the last week of June. The MNOs have also provided their supplementary data and comments to the Consultant by 12 July 2013. Upon invitation by the MNOs, the Consultant also attended a site visit arranged by one of the MNOs in early June for the purpose of better understanding the radio environment in Hong Kong.

On the Study duration, the Study was originally scheduled to be completed in early July 2013. As you are aware, taking into account the feedback from the MNOs, and to allow the MNOs more time to comment on the preliminary assessment results and for the Consultant to take into account the comments received, the timeline of the Study has been extended. The Study is expected to be completed around mid-August 2013. It is considered that the duration of the Study with more than one-month extension is both sufficient and commensurate with the scope of the Study.

Regarding your comments on the Study and the model as set out in your letters of 28 May 2013 and 7 June 2013, OFCA has dutifully and timely conveyed them to the Consultant who would take them into account in undertaking the Study.

As for your request for further consultation and an extension of deadline for the Government to make the decision on the 3G spectrum re-assignment arrangements, could we refer you to the letter in reply from the CEDB on 10 July 2013.

There are two further requests raised in your letters. The first is on your proposed participation in the selection of the likely scenarios of spectrum re-assignment to be included in the Study report. The second is that the cost of measures for alleviating the impacts on service quality to be taken into account in the Study.

On your first request, you may wish to note that the status quo scenario (i.e. no change to spectrum assignment of all the four incumbent MNOs) as well as the scenario where all the four incumbent MNOs fail to acquire any of the re-auctioned spectrum would be included in the Study report, in addition to the three most likely scenarios to be decided by the Consultant. The Consultant is required to provide full and detailed justifications in the report to support why the three chosen scenarios would likely occur. It should also be noted that given there are four incumbent MNOs, the report would include all possible permutations for each of the chosen scenarios. As explained in our letter of 29 May 2013, the Government wishes to preserve the independence of the Consultant and the Study. As such, we do not consider it appropriate or necessary for the Consultant to obtain prior agreement from the MNOs and the Government on the choice of the likely scenarios to be included in the Study report.

On your second request, we do not agree that such costs are relevant to the Study which is to provide an objective quantitative assessment on the impacts on service quality and customers if the proposed hybrid option is adopted for re-assigning the 3G spectrum. The Consultant would provide in the Study report, with full and detailed

justifications, the measures they consider to be effective in alleviating the impacts on service quality and customers taking into account the local context. Whether an incumbent MNO would implement such measures is a matter of its own commercial decision, taking account of various considerations including but not limited to the cost of such measures as well as the amount of spectrum utilization fee that could be saved if it does not acquire any re-auctioned spectrum.

Last but not the least, we would like to put on record our objection to the allegation made in your letter of 28 May 2013 that “[we] have not addressed the matters raised in [your] joint letter dated 25 April 2013 which set out [your] concerns about the service degradation issue and the appointment, brief and procedural fairness of the Consultant’s Study”. As explained in our letter of 21 May 2013, we did not address the various allegations and assertions made in your letter of 25 April 2013 pertaining to the consultation exercise on the 3G spectrum re-assignment as most of them repeated what you stated in your submissions in response to the two rounds of consultation conducted on the matter. We however would like to reiterate that our letters of 21 May 2013, 24 May 2013 and 29 May 2013 have already explained to you the issue of the consultancy brief on 14 March 2013 (2 weeks prior to the meeting of the Panel on Information Technology and Broadcasting on 27 March 2013 and more than a month prior to your letter of 25 April 2013), the appointment of the Consultant as well as the participation by the MNOs in the Study at various stages.

We have sent the same letter to other three parties who have signed on the letters of 28 May 2013 and 7 June 2013.

Yours sincerely,



(Chaucer Leung)
for Director-General
of Communications