

立法會
Legislative Council

LC Paper No. CB(4)1034/13-14
(These minutes have been seen
by the Administration)

Ref: CB4/SS/5/13

**Subcommittee on Three Regulations under the Telecommunications
Ordinance (Cap. 106) Gazetted on 16 May 2014**

**Minutes of the second meeting held on
Tuesday, 17 June 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Charles Peter MOK (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon WONG Yuk-man
Hon Claudia MO
Hon MA Fung-kwok, SBS, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Public Officers attending : **Agenda item I**

Commerce and Economic Development Bureau

Mr Joe WONG, JP
Deputy Secretary for Commerce and Economic
Development (Communications & Technology)

Mr Ivanhoe CHANG
Principal Assistant Secretary for Commerce and
Economic Development (Communications &
Technology) B

Office of the Communications Authority

Mr Danny LAU
Deputy Director-General (Telecommunications)

Ms Linda YU
Head, Economic Analysis

Department of Justice

Ms Grace LEUNG
Senior Government Counsel

**Attendance by
invitation**

: Agenda item I

Hong Kong Telecommunications (HKT) Limited

Mr Anthony LO Chi-yan
Head of Group Taxation

Smartone Mobile Communications Limited

Mr Patrick CHAN
Executive Director

Hutchison Telephone Company Limited

Ms Suzanne CHENG
Chief Financial Officer

China Mobile Telephone Company Limited

Mr James K S KONG
Vice President, Finance and Administration
Company Secretary

The Lion Rock institute

Mr Andrew SHUEN Pak-man
Research Director

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Advisor 1

Ms Shirley TAM
Council Secretary (4)5

Ms Linda MA
Legislative Assistant (4)5

Action

I. Meeting with deputations and Administration

- (LC Paper No. CB(4)814/13-14(01) -- List of follow-up actions arising from the discussion at the meeting on 4 June 2014
- LC Paper No. CB(4)814/13-14(02) -- Administration's response to issues raised at the meeting on 4 June 2014
- LC Paper No. CB(4)831/13-14(01) -- Administration's written response to submissions received by the Subcommittee)

Submissions from deputations attending the meeting

- (LC Paper No. CB(4)814/13-14(03) -- Hong Kong Telecommunications (HKT) Limited
- LC Paper No. CB(4)814/13-14(04) -- Smartone Mobile Communications Limited
- LC Paper No. CB(4)814/13-14(05) -- Hutchison Telephone Company Limited
- LC Paper No. CB(4)814/13-14(06) -- China Mobile Hong Kong Company Limited)

Other relevant papers

- (L.N. 58 of 2014 -- Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9-2.2 GHz Band) Regulation

Action

- L.N. 59 of 2014 -- Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014
- L.N. 60 of 2014 -- Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2014
- File Ref: CTB(CR)7/23/10 -- Legislative Council Brief on Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9-2.2 GHz Band) Regulation, Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014 and Telecommunications (Method for Determining Spectrum Utilization fees) (Third Generation Mobile Services) (Amendment) Regulation 2014
- LC Paper No.LS56/13-14 -- Legal Service Division Report on Subsidiary Legislation Gazetted on 16 May 2014
- LC Paper No. CB(4)753/13-14(01) -- Marked-up copy of the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014 (*Restricted to members*)
- LC Paper No. CB(4)753/13-14(02) -- Marked-up copy of the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2014 (*Restricted to members*)

Action

LC Paper No. CB(4)753/13-14(03) -- Background brief prepared by the
Legislative Council Secretariat)

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Subcommittee received oral representations from five deputations on the subsidiary legislation.

Way forward

3. The Chairman concluded that the Subcommittee had completed scrutiny of the subsidiary legislation. Both the Subcommittee and the Administration would not propose any amendments to the subsidiary legislation.

Secretariat 4. In respect of the concerns about the tax treatment of lump sum spectrum utilization fee payment, members agreed that the matter should be dealt with separately by the Panel on Financial Affairs ("FA Panel").

(Post-meeting note: The Secretariat had referred the matter to the FA Panel on 17 July 2014 for its follow-up.)

5. Members noted that the Chairman would move a motion at the Council meeting of 18 June 2014 to extend the scrutiny period of the subsidiary legislation to the Council meeting of 9 July 2014. They also noted that the date of the Subcommittee's reporting to the House Committee and the deadline for giving notice of motion to amend the subsidiary legislation were 27 June and 2 July 2014 respectively.

(Post-meeting note: The Chairman had given notice in his individual capacity to move a proposed resolution under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) to amend the Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9-2.2 GHz Band) Regulation at the Council meeting of 9 July 2014. The President ruled that the proposed resolution could be moved. However, the said meeting did not deal with the proposed resolution ultimately. The Three Regulations under the Telecommunications Ordinance (Cap. 106) Gazetted on 16 May 2014 came into operation on 11 July 2014 without any amendment.)

Action

II. Any other business

6. There being no other business, the meeting ended at 6:00 pm.

Council Business Division 4
Legislative Council Secretariat
2 September 2014

**Proceedings of the second meeting of
the Subcommittee on Three Regulations under the Telecommunications Ordinance (Cap. 106)
Gazetted on 16 May 2014
held on Tuesday, 17 June 2014, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with deputations and the Administration			
000234 – 000526	Chairman	Opening remarks	
000527 – 000956	China Mobile Hong Kong Communications Limited ("CMHK")	Presentation of views (LC Paper No. CB(4)814/13-14(06))	
000957 – 001414	Hong Kong Telecommunications (HKT) Limited ("HKT")	Presentation of views (LC Paper No. CB(4)814/13-14(03))	
001415 – 001919	Smartone Mobile Communications Limited ("SMCL")	Presentation of views (LC Paper No. CB(4)814/13-14(04))	
001920 – 002157	Hutchison Telephone Company Limited ("Hutchison")	Presentation of views (LC Paper No. CB(4)814/13-14(05))	
002158 – 002715	The Lion Rock Institute	Presentation of views	
002716 – 003600	Chairman Administration	Response of the Administration to deputations' views in respect of the tax treatment of lump sum spectrum utilization fee ("SUF") payment and the minimum level of SUF for the spectrum to be re-assigned through the incumbent 3G operators exercising the right of first refusal ("RFR Spectrum") or by way of auction ("Re-auctioned Spectrum") (LC Paper No. CB(4)831/13-14(01)).	
003601 – 005133	Chairman Mr SIN Chung-kai Administration Assistant Legal Adviser Mr WONG Ting-kwong	Discussion on the feasibility of paying SUF on an annual basis and whether a proposed resolution, which sought to amend one of the Three Regulations under the Telecommunications Ordinance (Cap. 106) Gazetted on 16 May 2014 to the effect that the SUF was to be paid in 15 annual instalments, would have any charging effect within the meaning of Rule 31(1) of the Rules of Procedure. Discussion on the possibility of minimizing the gap between the auction reserve price of \$48 million per MHz for the Re-auctioned Spectrum and the minimum SUF of \$66 million per MHz for the RFR	

Time marker	Speaker	Subject(s)	Action required
		Spectrum.	
005134– 005251	Chairman Mr WONG Ting-kwong Administration	Discussion on the bidding process of the Re-auctioned Spectrum.	
005252 – 012459	Chairman Mr MA Fung-kwok SMCL HKT Mr Christopher CHUNG Mr WONG Ting-kwong Mr SIN Chung-kai Hutchison Administration	Discussion on SUF payment methods, associated tax treatments as advised by the Inland Revenue Department and the impacts on mobile network operators. Members agreed that the matter should be dealt with separately by the Panel on Financial Affairs.	The Secretariat to follow up as per paragraph 4 of the minutes
012500 – 013253	Chairman Mr SIN Chung-kai Assistant Legal Adviser Administration Mr WONG Ting-kwong	Discussion on the charging effect, if any, of the proposed resolution to amend the subsidiary legislation to - (a) the effect that SUF was to be paid in 15 annual installments; and (b) minimize the gap between the auction reserve price of \$48 million per MHz for the Re-auctioned Spectrum and the minimum SUF of \$66 million per MHz for the RFR Spectrum.	
Agenda item II – Any other business			
013254 – 013314	Chairman SMCL	Legislative timetable	