

Submission by Hutchison Telephone Company Limited
to Public Hearing by the Legislative Council's Subcommittee on Three
Regulations under the Telecommunications Ordinance (Cap. 106)
on 17 June 2014

Issue: Different treatment of lump-sum upfront payment versus annual payment for Spectrum Utilization Fee ("SUF").

Details:

1. The 3G spectrum auction in 2001 provided for the SUF to be paid on an annual basis. Starting from 2007, the Government changed the payment method from annual to a lump-sum upfront payment simply to ease administrative work and facilitate early collection. Mobile operators made the first upfront payment in 2009. Recently, the Inland Revenue Department ("IRD") reviewed these payments and expressed that they intended to treat this upfront payment differently from the previous annual payments.
2. At the request of the operators the Office of the Communications Authority ("OFCA") wrote to the IRD to explain that this consequence resulting from the change from annual payments to an upfront payment was unintended and was simply to reduce the administrative burden of the Government in collecting SUF payments. The IRD has replied to OFCA in a letter dated 20 May 2014 that the change in treatment was as a consequence of the change from an annual payment to an upfront payment.
3. When the operators bid for the 4G spectrum in 2009 they were obviously unaware, as was OFCA, of the consequence of the change.
4. Operators have paid substantial amounts for spectrum and the different accounting treatment of the SUF will unexpectedly increase the cost of the spectrum.
5. While the operators are sympathetic to OFCA's intention to reduce administrative costs, given the nature of the SUF has not changed, simply the method of payment, it is unfair to the operators that they should suffer an unintended consequence substantially disproportionate to the cost savings.

Request:

1. We urge the Government to reconsider if the SUF shall be payable by annual payments instead of a lump-sum upfront payment.
2. If the Government determines that SUF shall be paid in lump sum, the Telecommunications Ordinance shall be amended to explicitly state that such payment shall be treated by the IRD in the same manner as were the annual payments.