

6 May 2005

The Honorable Sin Chung Kai
Legislative Councilor
Chairman, Information Technology and Broadcasting Panel
Legislative Council
Hong Kong

By email and by fax
Fax no.: 2121 0420

Dear Sir,

Re: Assignment of the Available Spectrum in the 800 MHz and 1800 MHz Bands to the Existing Mobile Network Operators

We refer to the recent Information Paper (CB(1) 1430/04-05(06)) dated May 2005 on the public consultation conducted by the Telecommunications Authority ("TA") on 28 February 2005 on the assignment of the available spectrum in the 800 MHz and 1800 MHz bands to the existing Mobile Network Operators for second generation ("2G") mobile services.

As noted in paragraph 11 of the Information Paper, Hutchison is opposed to the assignment method presently proposed by the TA. The arguments have been set out in our submission to OFTA which we now attach for your reference. Rather than to repeat the same in this letter, we would, instead, like to alert your attention to a number of points which are missing from the Information Paper.

A More Equitable Assignment Method

The Information Paper omitted to mention that the present proposed spectrum assignment method is a departure from the one adopted in a similar exercise three years ago. In March 2002, the TA allocated the then available spectrum from the GSM and PCS frequency band to the 3 GSM licence holders and the 6 PCS licence holders respectively in equal shares. At the time a total of 2.5 MHz x 2 bandwidth from the GSM frequency band was available for assignment, whereas 9.6 MHz x 2 bandwidth was available from the PCS frequency band.

Under the March 2002 spectrum assignment exercise, GSM licence holders divided and shared in equal amounts the available GSM frequency spectrum. Similarly, PCS licence holders divided and shared in equal amounts the available PCS frequency spectrum.

In summary, all GSM and PCS systems deployed by the licence holders were treated equally and were assigned equal amounts of spectrum from their respective frequency bands as follows:-

System / Licence No.	Frequency Band Assigned	Bandwidth Amount
PCS System - Licence No. 056	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 057	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 058	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 059	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 060	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 061	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PMRS (GSM) System - Licence No. 010	800 – 900 MHz GSM Band	0.8 MHz x 2
PMRS (GSM) System - Licence No. 011	800 – 900 MHz GSM Band	0.8 MHz x 2
PMRS (GSM) System - Licence No. 012	800 – 900 MHz GSM Band	0.8 MHz x 2

However, under the present assignment exercise, the TA now proposes to exclude the PCS systems of Dual-Band Operators from any spectrum assignment as follows:-

System / Licence No.	Frequency Band Assigned	Bandwidth Amount
PCS System - Licence No. 056	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 057	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PCS System - Licence No. 058	None	None
PCS System - Licence No. 059	None	None
PCS System - Licence No. 060	None	None
PCS System - Licence No. 061	1.7 – 1.9 GHz PCS Band	1.6 MHz x 2
PMRS (GSM) System - Licence No. 010	800 – 900 MHz GSM Band	1.6 MHz x 2
PMRS (GSM) System - Licence No. 011	800 – 900 MHz GSM Band	1.6 MHz x 2
PMRS (GSM) System - Licence No. 012	800 – 900 MHz GSM Band	1.6 MHz x 2

It is worthwhile to repeat what the TA decided in the 1 March 2002 Statement:

“...[T]he TA considers that the assignment of equal amount of spectrum to individual PMRS [systems] in the GSM band, and also equal amount of spectrum to individual systems in the PCS band, is a standing policy to maintain a level playing field for the operators.”

(emphasis added)

Curiously, we noted that in the 28 February 2005 public consultation paper the TA claimed that the presently proposed spectrum assignment method is to “balance” the playing field. We believe that this constitutes an interference with market forces by favouring certain operators over others which is contrary to and inconsistent with Hong Kong’s long cherished policy of free market economy. A *balanced* playing field is a clear departure from the *level* playing field policy which the TA announced as his standing policy back in March 2002. It is also a substantial departure from what we would legitimately expect from the present spectrum assignment exercise.

The technical issues highlighted by the TA in the 28 February 2005 public consultation paper is not confined only to the Single-Band Operators. Though of a varying degree, the technical issues are equally applicable to Dual-Band Operators, whose networks have been deployed not just solely for network capacity expansion in the GSM band, but based on the legitimate expectation that it can expand in both the GSM and PCS bands. As it stands, if Hutchison is allocated with spectrum only from the GSM frequency band (rather than from both the GSM and PCS bands), then it will have to incur a much higher capital investment to implement its network capacity expansion.

We are of the opinion that all the concerns raised by the operators in response to the 28 February 2005 public consultation paper would have been fairly dealt with had the TA proposed to assign the spectrum based on the March 2002 method.

Removal of 144Kbps Restriction

With the convergence of services between the 2G and 3G spectrum, it is timely to conduct a review of the disparity of spectrum utilization fees (“SUF”) between the 2G and 3G operators in order to level the playing field of mobile operators. We understand that this call for a review of SUF is also the common position of the other 3G operators.

Indeed in the present assignment exercise, the TA has proposed to remove the 144 Kbps speed restriction on the spectrum assigned in March 2002 as well as not to impose a similar speed restriction on the spectrum presently proposed to be assigned. This will create an even greater disparity between the SUF of the 2G and 3G licensees since no SUF will be levied on the 2G licensee’s spectrum which can be used to compete with 3G operators until the relevant licences expire.

From an implementation point of view, the TA’s proposal is also inequitable as between the 2G operators since the expiry dates of the 2G licences all differ. Certain licensees will therefore enjoy a longer SUF-free period for the use of spectrum with no speed restriction compared with the others. Under the TA’s present proposal, the Single-Band Operators (ie the PCS-only operators) will acquire the spectrum with no speed restriction for free until the expiry of their licences in September 2006. However, the Dual-Band Operators (being both GSM and PCS operators) will have to start paying SUF for their GSM spectrum starting from the licence renewal this coming November 2005.

Conclusion

For the sake of fairness and policy consistency, the March 2002 assignment method should be adopted. The speed restriction should also be maintained on both the present spectrum to be assigned and the spectrum assigned in March 2002.

Needless to say, regulatory certainty is important in maintaining investors' confidence in the regulator and the investment environment.

Since the Government has recognized the importance of a comprehensive spectrum policy review and have announced their commitment to conduct such review in the near future, it is all the more appropriate that any departure from announced and implemented policies is made only after such review, with adequate notice to the operators.

Yours sincerely,
For and on behalf of
Hutchison Telephone Company Limited



Oswald Kwok
Senior Counsel – Legal & Regulatory

Encl.

Cc: Members, Information Technology and Broadcasting Panel



HUTCHISON TELEPHONE COMPANY LIMITED

SUBMISSION

ON

CONSULTATION

ON

“Assignment of the Available Spectrum in the 800 MHz and 1800 MHz Bands to the Existing Mobile Network Operators dated 28 February 2005”

This submission is a public version with Hutchison Telephone Company Limited confidential information removed.

**Submission by Hutchison Telephone Company Limited on the Consultation Paper on the
“Assignment of the Available Spectrum in the 800 MHz and 1800 MHz Bands to the
Existing Mobile Network Operators dated 28 February 2005”**

Introduction

Hutchison Telephone Company Limited (“HTCL”) sets out below its views on the Telecommunications Authority (TA)’s public consultation paper entitled “Assignment of the Available Spectrum in the 800 MHz and 1800 MHz Bands to the Existing Mobile Network Operators dated 28 February 2005” (“2005 Spectrum Consultation”).

HTCL appreciates the TA’s initiative to relieve the traffic loading of the existing 2G networks and its proposal to allocate the available spectrum in the 800 MHz and 1800 MHz Bands to the existing 2G licensees. However, HTCL has the following reservations and comments on the TA’s proposal in the 2005 Spectrum Consultation.

Adherence to Policy to Maintain Level Playing Field

In March 2002 when the TA implemented a similar spectrum assignment exercise for the existing 2G licensees, the TA stated that it is OFTA’s standing policy to maintain a level playing field for mobile operators. On this basis¹, each GSM licensee in the 800 MHz band as well as each PCS licensee in the 1800 MHz band were assigned equal amount of additional spectrum in the respective bands. HTCL does not see any reason since the March 2002 Statement for the TA to depart from his stated policy.

As operators of both PCS and GSM systems under two licences, Dual-Band Operators are entitled to rely on the TA’s statement in the March 2002 Statement in organizing their business affairs and to plan their network deployment and configurations. As a Dual-Band Operator, HTCL therefore strongly objects to the TA’s proposed assignment method of limiting HTCL to allocations in 800 MHz band. HTCL believes that this assignment method unfairly disadvantages the Dual-Band Operators vis-a-vis the Single-Band Operators. Clearly, it is a departure from the TA’s stated standing policy in the March 2002 Statement of maintaining a

¹ Paragraph 16 of the Statement of the Telecommunications Authority on “Assignment of the Unused Spectrum in the 800 – 900 MHz and 1700 – 1900 MHz Bands to the Operators of PMRS and PCS Mobile Networks” dated 1 March 2002 (“March 2002 Statement”),

level playing field for 2G licensees.

The TA's view in paragraph 15 of the 2005 Spectrum Consultation paper of ensuring "a more *balanced* playing field for the mobile industry" (emphasis added) through the proposed assignment method raises serious concerns. This has the implication that the TA intends to depart from the level playing field approach and interfere with market forces by favouring Single-Band Operators over the Dual-Band Operators so as to "balance" the present playing field. HTCL is of the opinion that if this assignment method is adopted, it will set a dangerous precedent that is contrary to Hong Kong's system of free market economy.

Technical Issues Not Restricted to Single-Band Operators

The TA's rationale in paragraph 17 of this 2005 Spectrum Consultation paper that Single-Band Operators may have technical issues and capital outlay if they are assigned with spectrum from the 800 MHz band are equally applicable to Dual-Band Operators.

[HTCL confidential information removed]

It is also manifestly unfair for the TA to only consider the interests of the Single-Band Operators on issues relating to their PCS systems, while ignoring similar issues of the Dual-Band Operators' PCS systems. In fact, HTCL in its capacity as a PCS licensee and operator will be adversely affected by any decision to exclude it from any spectrum entitlement from the 1800 MHz spectrum.

Disruption to Network Planning

[HTCL confidential information removed]

Given that the only spare spectrum that was potentially available for assignment for the past couple of years was in the PCS band and that the EGSM band presently available for assignment had been in use by the TDMA licensee up to present, HTCL, in its capacity as a PCS licensee, is entitled to the legitimate expectation that it will be allocated with the unused spectrum in the PCS band when they are ready to be assigned. This expectation is reinforced by the TA's stated policy in support of the assignment method used in March 2002.

Unfair Treatment on Spectrum Utilisation Fee

The TA has also proposed in the 2005 Spectrum Consultation paper that no Spectrum

Utilisation Fee (SUF) be levied on any spectrum assignment to the existing licensees until the renewal of their respective GSM/PCS licences. Given that the Dual-Band Operators hold two 2G licences, they could be disadvantaged if the present spectrum assignment is implemented at a time prior to the renewal of their respective PCS licences in September 2006. For HTCL, its GSM licence expires on 19 November 2005 while its PCS licence expires later on 29 September 2006. Clearly for HTCL, it also has legitimate reasons to be entitled to spectrum assignment from the 1800 MHz spectrum since it could potentially enjoy a longer SUF-free period under its existing PCS licence.

As SUF will be levied upon the renewal of the existing 2G licences with no differentiation as to the frequency bands, HTCL sees no reason why it should be precluded from any entitlements in the 1800 MHz spectrum band since it is also a PCS licensee and operator.

Concern of Over-Allocation Misplaced

The TA should also recognize that the present spectrum requirements of the Single-Band Operators may not be reflective of their future requirements. It is possible that market forces may in fact drive down the spectrum requirements of Single-Band Operators in the future. Therefore it would be erroneous for the TA to assume that by adopting the March 2002 assignment method, he would be over-allocating spectrum to Dual-Band Operators. In any event, the TA's concern of any over-allocation will automatically be addressed when the existing 2G licences are renewed. After the issue of the Mobile Carrier Licences upon the renewal of the respective GSM/PCS licences, all assigned spectrum will be subject to SUFs which will put an economic cost on the use of spectrum by the licensees. Therefore any issue of inefficient and over-allocation of spectrum should automatically be resolved by the levy of the SUF coupled with the new licence condition under the new Mobile Carrier Licence which permits the surrender of spare spectrum by the licensees to the TA.

Equal Treatment of Licences

The TA's concept of equal treatment of the Dual-Band Operators and Single-Band Operators belies the fact that this will result in an unequal treatment of the 2G licensees. HTCL sees no basis for the TA to treat Dual-Band Operators as if they are holders of a single mobile carrier licence. Indeed, the TA has already confirmed in the TA statement dated 29 November 2004 that each Dual-Band operator would be given a right of first refusal for two licences – one for PCS system and the other for GSM system. However if the assignment method in the 2005

Spectrum Consultation paper was adopted, this would imply that the PCS licences of the Dual-Band Operators do not enjoy the same rights as the PCS licences of Single-Band Operators. This will be contrary to the rationale of providing a stable investment and ensuring continuity of customer service underlined by the TA in the 29 November 2004 Statement as the basis for offering the “right of first refusal” to the incumbent 2G licensees.

144 Kbps Restriction Should Stay

In paragraph 25 of the 2005 Spectrum Consultation paper, the TA mentioned that he now considers the 144 Kbps restriction as no longer relevant in the present market environment. The TA therefore proposed in the 2005 Spectrum Consultation paper the 144 Kbps restriction shall not apply to the presently proposed spectrum assignment and the said restriction on March 2002 spectrum assignment is also to be removed.

Noting that the TA had in fact specified such restriction as a condition of the spectrum assignment exercise in March 2002, it appears arbitrary that he now intends to reverse his stated policy that was just decided in 2002. Such a sudden departure from the TA’s own stated policy does not promote a stable investment environment. Such a move will adversely affect investors’ confidence, particularly when the relevant change of policy would disturb the level playing field amongst the incumbent operators. In the interest of promoting a stable investment environment, HTCL believes that the TA should instead remain consistent in his approach to the 144 Kbps restriction until after the expiry of the existing 2G licences. The removal of the 144 Kbps restriction is also an issue apt for further evaluation in the forthcoming spectrum policy review.

Conclusion

HTCL appreciates the TA’s recognition of all the existing 2G networks’ operational needs for extra spectrum to cope with their business requirements. However, the TA’s proposed assignment method in the 2005 Spectrum Consultation paper is neither fair nor equitable. HTCL believes that the TA should adopt the same assignment method used in March 2002 as it puts the 2G licensees on an equal footing.

Given the TA’s stated policy in support of the assignment method used in March 2002 and that the most likely spectrum that would be made available for assignment for the last couple of years was in the PCS band, HTCL, as a PCS licensee, has a legitimate expectation that it will

surely be allocated with the unused spectrum in the PCS band when they are ready to be assigned. This is irrespective of HTCL's other entitlements to be allocated with other available spectrum as and when it becomes available.

Further, the TA's proposal regarding the 144 Kbps restriction is a reversal of the TA's stated policy. This should be avoided in the interests of promoting a stable investment environment.