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Paper for the House Committee meeting on 23 November 2012

Report of the Subcommittee on Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 and Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012

Purpose

This paper reports on the deliberations of the Subcommittee on Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 and Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 ("the Subcommittee").

Background

2. With the increasing popularity of smart phones, notepads and other advanced communications devices, mobile services in Hong Kong have continued to grow rapidly in recent years. Adequate and timely supply of radio spectrum to meet the incessant demand for additional network capacity is considered essential and critical to the healthy development of the mobile industry.

3. According to the Spectrum Release Plan ("SRP") for 2012 – 2014¹ published by the former Telecommunications Authority ("TA") on 19 December 2011, a total of 50 MHz of radio spectrum in the 2515 – 2540 MHz band and 2635 – 2660 MHz band ("the 2.5/2.6 GHz Band") is available for assignment. The spectrum can be used to deploy advanced mobile

¹ The SRP provides information about the potential supply of spectrum to users through an open bidding or tendering process in 2012-2014.

telecommunications technology such as the long term evolution ("LTE")² technology for the provision of wireless broadband services.

4. The former TA conducted a two-month public consultation from December 2011 to February 2012 to solicit views from the industry and interested parties on the arrangements of the radio spectrum assignment in the 2.5/2.6 GHz Band and the related licensing matters. Having considered the views received during the public consultation, the Communications Authority ("CA") issued a statement on 4 July 2012 to announce its decisions, amongst others, to hold an auction to determine the parties to whom the 2.5/2.6 GHz Band would be assigned, as well as the spectrum utilization fee ("SUF") to be paid by the users of the spectrum. CA and the Secretary for Commerce and Economic Development subsequently initiated the necessary legislative amendments made under section 32I(1) and 32I(2) of the Telecommunications Ordinance (Cap. 106) ("the TO") to enable the levy of SUF on the concerned spectrum and to determine the SUF by auction.

The subsidiary legislation

5. To enable the release of relevant spectrum by auction, the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 ("the Amendment Order") and the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 ("the Amendment Regulation") under the TO were gazetted on 19 October 2012 and tabled at the Council meeting on 24 October 2012. Subject to the completion of the negative vetting process, the subsidiary legislation shall come into operation on 14 December 2012.

6. The Amendment Order aims at designating an additional frequency band (i.e. 2635 – 2660 MHz) by adding a new Part 4A in which the use of spectrum is subject to the payment of SUF.

7. The Amendment Regulation includes the new Part 4A for the purpose of providing auction as the method for determining the SUF.

The Subcommittee

8. At the House Committee meeting on 26 October 2012, Members

² LTE is a technical standard developed for high-speed mobile communications services, commonly known as fourth generation ("4G") services.

agreed to form a subcommittee to study the two items of subsidiary legislation. Hon Charles Peter MOK was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix**. The Subcommittee has held a meeting with the Administration to examine the subsidiary legislation.

9. The scrutiny period of the subsidiary legislation has been extended to 12 December 2012 by resolution of the Council on 14 November 2012.

Deliberations of the Subcommittee

10. The Subcommittee generally supports the Amendment Order and the Amendment Regulation. The major concerns raised by members about the assignment of the available radio spectrum, licensing arrangements, SUF, licence fees, and spectrum trading are summarized in the ensuing paragraphs.

Assignment of the available radio spectrum and licensing arrangements

11. The Subcommittee notes that the 2515 – 2540 MHz band was designated in the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) in July 2008. The method for determining SUF for such radio spectrum was also prescribed in the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC), originally for a spectrum auction held in January 2009. However, the frequency band was not released in that auction since coordination with the Mainland on technical issues in relation to the use of spectrum in that frequency band had not yet been completed by that time. Coupled with the 2635 – 2660 MHz band, the 2515 – 2540 MHz band which is now available for release to the market will be opened for bidding by all interested parties, including new entrants and existing mobile network operators ("MNOs").

12. Some members have expressed concern whether the amount of radio spectrum released will be sufficient for a new entrant to enter the mobile market. The Administration has advised that in the previous auction in 2009, a total of 90 MHz of radio spectrum was assigned to three MNOs for the provision of mobile services, each assigned with 30 MHz. All three MNOs have already rolled out their 4G mobile services with the spectrum assigned. Technically speaking, 30 MHz of radio spectrum is already sufficient to allow a new market entrant to build a territory-wide public mobile network.

13. In response to a member's enquiry on whether the successful bidders

will be required to provide 4G services using specific technology, the Administration has advised that in line with the established technology neutral policy, CA will not mandate any specific technology to be adopted for the provision of services using the radio spectrum in the 2.5/2.6 GHz Band. In fact, existing MNOs may also upgrade their existing 2G or 3G networks to provide 4G services with the spectrum already assigned to them by employing more advanced technology.

14. As regards the eligibility of bidders and qualifications requirements, the Administration has explained that similar to previous spectrum auctions, there should only be minimal qualification requirements for registering bidders' interest and demonstrating their financial capability. Interested bidders are required to lodge with the Government a specified amount of deposit, which may be forfeited if the bidder violates the auction rules or fails to take up the licence after winning the auction, and submit relevant supporting information which CA considers necessary.

15. Some members have enquired about the anticipated number of successful bidders sharing out the 50 MHz of radio spectrum. According to the Administration, existing MNOs which had been assigned with 30 MHz of radio spectrum in the same frequency band in previous auction will have the incentive to bid for at least 10 MHz of additional radio spectrum in order to further enhance their network efficiency. From a technical angle, a minimum of 10 MHz of radio spectrum is required by new market entrants to deploy 4G service based on widely adopted technology like LTE. The available spectrum will be divided into five paired frequency bands, each with a bandwidth of 5 MHz x 2 (10 MHz), so as to cater for different amount of radio spectrum which may be required by existing MNOs and new entrants.

16. Noting that the validity period of the radio spectrum assignment will last for 15 years, the Subcommittee Chairman considers that the Administration should consult the trade and the public at large on the overall policy in this respect, so that suitable adjustments can be made in certain aspects, such as the right of renewal of any licence or spectrum assignment. The Administration has responded that according to the Radio Spectrum Policy Framework promulgated by the Government in April 2007, there is no legitimate expectation that there will be any right of renewal of any licence or spectrum assignment upon the expiry of a licence or spectrum assignment under the TO. A market-based approach (such as auction) should be used unless there are overriding public policy reasons not to do so. Nevertheless, the Administration will take into account the Chairman's view and the views previously gathered when it starts the second round of public consultation on

the possible arrangements as to how the frequency spectrum in the 1.9 – 2.2 GHz band should be assigned when the existing 3G frequency assignment expires in October 2016.

Spectrum utilization fee and licence fees

17. Some members have enquired about the updated position of the SUF received by the OFCA Trading Fund, and whether there is any room for downward adjustment of the relevant licence fees to benefit the consumers. The Administration has advised that so far, 560 MHz of radio spectrum has already been assigned and the total amount of SUF involved is \$12.5 billion. The SUF received will not go to the OFCA Trading Fund, but the General Revenue Account. As regards OFCA Trading Fund, OFCA would review its financial position from time to time and consider making adjustments to the licence fees. In fact, the Administration and CA issued a consultation paper on 29 June 2012 on the proposed licence fee reductions for Unified Carrier Licences, Public Radiocommunications Service Licences and Services-Based Operator Licences, with effect from 1 March 2013. The public consultation exercise ended on 30 July 2012. The Administration will brief the Panel on Information Technology and Broadcasting ("ITB Panel") on the way forward in December 2012.

Spectrum trading

18. The Subcommittee has enquired whether there are any licence conditions or policies governing spectrum trading. According to the Administration, there is currently no established platform for spectrum trading. The former Office of the Telecommunications Authority appointed a consultant to study the feasibility of introducing radio spectrum trading in Hong Kong for facilitating economic and technically efficient use of the scarce public resource. The consultant found that spectrum trading was not active even in countries with such platform established. The Administration also gathered the view of the trade on spectrum trading and found that while demand from the trade for radio spectrum was strong, spectrum rights holders were not keen to transfer the precious resource to others. The Administration therefore does not consider the issue of radio spectrum trading a matter of priority to be addressed. Under the TO, the power to assign frequency bands rests with CA. The question of transfer of radio spectrum amongst licencees, without seeking CA's approval, will not arise. Nevertheless, the trade for radio spectrum may take place in the form of mergers and acquisitions amongst the licencees, and such activities are governed by the relevant provisions under the TO.

19. Some members are of the view that the consultancy report on the feasibility of introducing radio spectrum trading in Hong Kong should be made open to the public to provide transparency in the Administration's policy in this respect. The Chairman has further supplemented that the Administration may also consider publishing a statement in relation to the consultancy report if the latter cannot be published. The Administration has advised that the consultancy report may not be released as it contains sensitive and confidential commercial information. The Administration is still examining the recommendations made by the consultant. If it is considered justifiable to pursue the matter, the Administration will brief the ITB Panel on the subject accordingly.

Follow-up action required

20. At the request of the Subcommittee, the Administration will provide a written response as to whether the consultancy report on the feasibility of introducing radio spectrum trading in Hong Kong should be published.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

Appendix

Subcommittee on Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 and Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012

Membership List

Chairman	Hon Charles Peter MOK
Members	Hon Cyd HO Sau-lan
	Hon WONG Yuk-man
	Hon Claudia MO
	Hon SIN Chung-kai, SBS, JP
	Dr Hon Elizabeth QUAT, JP

(Total : 6 members)

Clerk	Ms YUE Tin-po
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Legal Adviser	Miss Kitty CHENG
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