

立法會
Legislative Council

LC Paper No. CB(4)245/12-13
(These minutes have been seen
by the Administration)

Ref : CB4/SS/3/12

**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**

**Minutes of the first meeting
held on Friday, 9 November 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Charles Peter MOK (Chairman)
Hon Cyd HO Sau-lan
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP

Members absent : Hon WONG Yuk-man
Hon Claudia MO

Public officers attending : Agenda item II

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

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

Mr Sanda CHEUK
Assistant Director (Market & Competition), Office
of the Communications Authority

Mr Kingsley YEUNG
Head, Market & Competition 2, Office of the
Communications Authority

Ms Karmen KWOK
Senior Government Counsel, Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mr Joey LO
Senior Council Secretary (4)3

Ms Anki NG
Council Secretary (4)3

Action

I. Election of Chairman

Mr Charles Peter MOK was elected Chairman of the Subcommittee.

II. Meeting with the Administration

L.N. 161 of 2012

-- Telecommunications
(Determining Spectrum
Utilization Fees by Auction)
(Amendment) Regulation
2012

L.N. 162 of 2012

-- Telecommunications
(Designation of Frequency
Bands subject to Payment of
Spectrum Utilization Fee)
(Amendment) Order 2012

- File Ref: CTB(CR)7/10/7 -- Legislative Council Brief on Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 and Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 issued by the Commerce and Economic Development Bureau on 17 October 2012
- LC Paper No. LS5/12-13 -- Legal Service Division Report
- LC Paper No. CB(4)124/12-13(01) -- Marked-up copy of the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 prepared by the Legal Service Division
- LC Paper No. CB(4)124/12-13(02) -- Marked-up copy of the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 prepared by the Legal Service Division
- LC Paper No. CB(4)124/12-13(03) -- Background brief prepared by the Legislative Council Secretariat

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Admin 3. The Administration was requested to provide a written response as to whether the consultancy report on the feasibility of introducing radio

spectrum trading in Hong Kong should be published.

Legislative timetable

4. The Subcommittee completed its scrutiny work. Members generally supported the subsidiary legislation. Members noted that the Subcommittee would provide a written report to the House Committee at its meeting on 16 November 2012. Members also noted that the deadline for giving notice to amend the subsidiary legislation and the date of moving the motion to amend the subsidiary legislation at the Council meeting were 14 and 21 November 2012 respectively.

(Post-meeting note: Following the meeting, the Chairman was consulted and agreed that the Subcommittee should extend the scrutiny period of the two pieces of subsidiary legislation to 12 December 2012 in order to allow sufficient time for Members to give notice of motion to amend the subsidiary legislation, if any, after the presentation of the Subcommittee report to the House Committee. As such, the scrutiny period of the subsidiary legislation had been extended to 12 December 2012 by resolution of the Council on 14 November 2012. The Subcommittee would submit a written report on its deliberation to the House Committee meeting on 23 November 2012. The deadline for giving notice of motion to amend the subsidiary legislation at the Council meeting on 12 December 2012 was 5 December 2012. Members of the Subcommittee had been informed of the revised legislative timetable vide LC Paper No. CB(4)140/12-13 on 9 November 2012.)

III. Any other business

5. There being no other business, the meeting ended at 9:24 am.

Council Business Division 4
Legislative Council Secretariat
14 December 2012

**Proceedings of the first meeting of
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
on Friday, 9 November 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000520 – 000600	Ms Cyd HO Mr Charles Peter MOK Mr SIN Chung-kai	Election of Chairman	
000601 – 000730	Chairman	Opening remarks by the Chairman	
000731 – 001030	Chairman Administration	Briefing by the Administration	
001031 – 001717	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai enquired about the method of assignment of the radio spectrum, the eligibility of bidders and qualifications requirements, the current use of the 2635-2660 MHz band, and whether the amount of radio spectrum released would be sufficient for a new entrant to enter the mobile market.</p> <p>The Administration advised that the 50 MHz of radio spectrum would be assigned by auction rather than by tender. At present, the radio spectrum in the 2635-2660 MHz band was not assigned to licensees and it could be used for provision of public telecommunications services. After the Office of the Communications Authority ("OFCA") had coordinated with the Mainland authorities on technical issues in relation to the use of spectrum in the 2515-2540 MHz band, the frequency band was now ready to be released to the market. Coupled with the 2635-2660 MHz band, the two bands would be open for bidding by all interested parties, including new entrants (non-licensees) and existing mobile network operators ("MNOs"). There would only be minimal qualification requirements for registering bidders' interest and demonstrating their financial capability. Interested bidders would be required to lodge with the Government a specified amount of deposit and submit relevant supporting information. In the previous auction in 2009, a total of 90 MHz of</p>	

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		<p>radio spectrum was assigned to three MNOs for the provision of mobile services, each assigned with 30 MHz. All three MNOs had already rolled out their 4G mobile services with the spectrum assigned. Technically speaking, 30 MHz of radio spectrum was already sufficient to allow a new market entrant to build a territory-wide public mobile network.</p>	
001718 – 001916	Chairman Ms Elizabeth QUAT Administration	<p>Ms Elizabeth QUAT enquired about the anticipated number of successful bidders sharing out the 50 MHz of radio spectrum, and the validity period of the radio spectrum assignment.</p> <p>The Administration advised that the radio spectrum could be assigned to existing MNOs and/or new entrants. Existing MNOs which had been assigned with 30 MHz of radio spectrum in the same frequency band in previous auction would 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 was required by new market entrants to deploy 4G service based on widely adopted technology like LTE. The available spectrum would be divided into five paired frequency bands, each with a bandwidth of 5 MHz x 2 (10 MHz), so as to cater for different amounts of radio spectrum which might be required by existing MNOs and new entrants. The validity period of the radio spectrum assignment would last for 15 years.</p>	
001917 – 002459	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai enquired whether there were any licence conditions or policies governing spectrum trading.</p> <p>The Administration advised that at present, there was 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 this scarce public resource. The consultant found that spectrum trading was not active even in countries with such platform established. The Administration also gathered the trade's view on spectrum trading and found that while demand from the trade for radio spectrum was strong, existing spectrum rights holders were not keen to trade this precious resource to others. The Administration therefore did not consider the issue of radio spectrum trading a matter of priority to</p>	

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		<p>be addressed. Under the Telecommunications Ordinance ("TO") (Cap. 106), the power to assign frequency bands rested with the Communications Authority ("CA"). As such, the question of transfer of radio spectrum amongst licencees, without seeking CA's approval, would not arise. Nevertheless, the trading of radio spectrum could take place in the form of mergers and acquisitions amongst the licencees, and such activities were governed by the relevant provisions under the TO.</p>	
002500 – 002959	Chairman Ms Cyd HO Administration	<p>Ms Cyd HO considered that the findings of 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.</p> <p>The Administration advised that the consultancy report might not be released as it contained sensitive or confidential commercial information.</p> <p>The Chairman said that as the trade had expressed concern about the Administration's policy on spectrum trading, the Administration should consider issuing a statement in relation to the consultancy report if the latter could not be released.</p> <p>The Administration advised that it was still examining the recommendations made by the consultant. If it was considered justifiable to pursue the matter, the Administration would brief the Panel on Information Technology and Broadcasting ("ITB Panel") on the subject accordingly.</p>	The Administration to follow up as stated in paragraph 3 of the minutes.
003000 – 003700	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai enquired about the updated position of the spectrum utilization fees ("SUF") received by the Office of the Communications Authority ("OFCA") Trading Fund, and whether there was any room for downward adjustment of the relevant licence fees to benefit the consumers.</p> <p>The Administration advised that so far, 560 MHz of radio spectrum had already been assigned and the total amount of SUF involved was \$12.5 billion. The SUF received would 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 would consider making adjustments to the licence fees. In fact, the Administration and the CA issued on 29 June</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>2012 a consultation paper 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 would brief the ITB Panel on the way forward in December 2012.</p>	
003701 – 003830	<p>Chairman Ms Elizabeth QUAT Administration</p>	<p>In response to Ms Elizabeth QUAT's enquiry about the Administration's plan to further release radio spectrum to the market, the Administration advised that no further radio spectrum was anticipated to be put on the market in the next two to three years. As such, good response to the upcoming spectrum auction was expected.</p>	
003831 – 004100	<p>Chairman Mr SIN Chung-kai Administration</p>	<p>In response to Mr SIN Chung-kai's enquiry on whether the successful bidders would be required to provide 4G services (using specific technology), the Administration advised that in line with the established technology neutral policy, the CA would 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 might also upgrade their existing 2G or 3G networks to provide 4G services with the spectrum already assigned to them by employing more advanced technology.</p>	
004101 – 004630	<p>Chairman Administration</p>	<p>The Chairman enquired whether the Administration would consult the trade and the public at large on the overall policy on assignment of radio spectrum, so that suitable adjustments could be made in certain aspects, such as the right of renewal of any licence or spectrum assignment.</p> <p>The Administration advised that according to the Radio Spectrum Policy Framework promulgated by the Government in April 2007, there was no legitimate expectation that there would be any right of renewal or any right of first refusal of any licence or spectrum assignment upon the expiry of a licence or spectrum assignment under the TO. In addition, whenever the former Telecommunications Authority and now the CA considered that there were likely to be competing demands for the spectrum from providers of non-Government services, a market-based approach (such as auction) should be used for spectrum assignment unless there were</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>overriding public policy reasons not to do so.</p> <p>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 assignments expired in October 2016, in response to the Chairman’s query, the Administration advised that the first round of public consultation was completed in July 2012. The Administration would take into account the Chairman's view and the views previously gathered when it started the second round consultation.</p>	
004631 – 004700	Chairman Administration	Scrutiny of the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 (L.N. 161 of 2012)	
004701 – 004810	Chairman Administration	Scrutiny of the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 (L.N. 162 of 2012)	
004811 – 004900	Chairman Mr SIN Chung-kai Ms Cyd HO	<p>Invitation of views</p> <p>Members agreed that there was no need to invite public views on the subsidiary legislation.</p>	
004901 – 005406	Chairman Ms Cyd HO Clerk Mr SIN Chung-kai Administration	<p>Legislative timetable and extension of the scrutiny period</p> <p>Ms Cyd HO proposed that the Chairman should request the Administration to make open to the public the consultancy report on the feasibility of introducing radio spectrum trading in Hong Kong when reporting to the House Committee.</p> <p>The Chairman advised that the issue of spectrum trading, which was already included in the List of Outstanding Items of the ITB Panel, would be followed up by the Panel.</p> <p>In response to Mr SIN Chung-kai's enquiry, the Administration advised that subject to the enactment of the subsidiary legislation, the Administration expected to invite interested bidders by end 2012, with a view to staging the auction in the first quarter of 2013.</p>	

Council Business Division 4
Legislative Council Secretariat
14 December 2012