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**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**

**Meeting on 9 November 2012**

**Background brief**

**Purpose**

This paper provides background information on the subsidiary legislation to enable the release of the spectrum by auction and the levy of spectrum utilization fee ("SUF"). A summary is also provided on the views and concerns expressed by the Panel on Information Technology and Broadcasting ("the Panel") on related issues.

**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 – 2014<sup>1</sup> published by the former Telecommunications Authority 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 telecommunications

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<sup>1</sup> The SRP provides information about the potential supply of spectrum to users through an open bidding or tendering process in 2012-2014. The latest version of the SRP is available at [http://www.ofca.gov.hk/filemanager/ofca/common/Industry/broadcasting/spectrum\\_plan2011\\_en.pdf](http://www.ofca.gov.hk/filemanager/ofca/common/Industry/broadcasting/spectrum_plan2011_en.pdf).

technology such as the long term evolution ("LTE")<sup>2</sup> technology for the provision of wireless broadband services.

4. The former Telecommunications Authority 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<sup>3</sup> to announce its decisions, among 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 SUF to be paid by the users of the spectrum. CA 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 (Cap.106Y) ("the Amendment Order") and the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 (Cap.106AC) ("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.

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

<sup>3</sup> The statement is available at:  
[http://www.coms-auth.hk/filemanager/common/policies\\_regulations/ca\\_statements/07\\_2012.pdf](http://www.coms-auth.hk/filemanager/common/policies_regulations/ca_statements/07_2012.pdf)

## **Discussions at the Panel on Information Technology and Broadcasting**

8. At the Panel meeting on 9 January 2012, the Administration briefed members on the consultation exercise concerning the assignment of the available radio spectrum in the 2.5/2.6 GHz band for wireless broadband services. Panel members raised no objection to the Administration's proposals to designate the concerned spectrum for use subject to the payment of the spectrum utilization fee and to let the spectrum utilization fee be set by auction. Some Panel members opined that to avoid market domination by large conglomerates, new entrants should be given better chances of winning the bid in the auction. As such, these members considered that a spectrum cap should be imposed on existing mobile network operators ("MNOs").

9. The Administration advised that in January 2012, about a total of 470 MHz of the radio spectrum had been assigned for the provision of mobile services by five major MNOs through auction. In the proposed auction, existing MNOs and new entrants alike were welcome to bid for the total of 50 MHz of radio spectrum available for assignment in the 2.5/2.6 GHz Band. The radio spectrum was available in the form of paired frequency blocks of 25 MHz x 2. To cater for different amount of radio spectrum which might be required by new entrants and existing MNOs, the former Telecommunications Authority proposed that the available spectrum be divided into five paired frequency bands, each with a bandwidth of 5 MHz x 2. The total spectrum available for auction this time was 50 MHz which represented only about 10% of the existing pool of assigned spectrum for mobile services. Given that the mobile market in Hong Kong was extremely competitive, it was not necessary to impose any restriction on the amount of spectrum that a bidder could acquire in the proposed auction. In the previous auction in 2009 using the same market-based approach, a new entrant was successfully introduced into the market.

10. As regards members' concern about spectrum hoarding, the Administration advised that spectrum was a scarce public resource. Since the first spectrum auction in 2001, 470 MHz of radio spectrum had already been assigned, involving SUF of \$12 billion in total. Having paid hefty sums of money for the spectrum, MNOs would no doubt put the spectrum into speedy and effective use in order to obtain returns on their investment. Apart from the obligation to rollout the network and service, successful bidders were required to lodge a performance bond to ensure compliance with rollout obligations. Given such safeguards and according to past experience, spectrum hoarding was not a cause for concern.

## **The Subcommittee**

11. At the House Committee meeting on 26 October 2012, members agreed that a subcommittee should be formed to study the Amendment Order and the Amendment Regulation.

## **Relevant papers**

12. A list of the relevant papers with their hyperlinks is at [http://www.legco.gov.hk/yr12-13/english/hc/sub\\_leg/sc103/general/sc103.htm](http://www.legco.gov.hk/yr12-13/english/hc/sub_leg/sc103/general/sc103.htm).

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