

SUBMISSION TO
CONSULTATION PAPER
LICENSING OF SPECTRUM IN THE 850 MHZ BAND
TO ENABLE THE PROVISION OF CDMA 2000 SERVICE

BY
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INTRODUCTION

1. SmarTone Mobile Communications Limited (“SmarTone-Vodafone”) would like to response to the proposals as detailed in the TA’s Consultation Paper entitled “Licensing of Spectrum in the 850 MHz Band To Enable the Provision of CDMA 2000 Service” issued on 27 October 2006 (“Consultation Paper”) as follows.

COMMENTS ON THE SPECIFIC PROPOSAL

TA’s Proposal 1

The TA should make available to the market spectrum which enables the provision of a CDMA2000 mobile service after 20 November 2008

2. In our submission to the “Second Consultation Paper on Licensing of Mobile Services on expiry of existing licences for second generation mobile services” in June 2004, SmarTone-Vodafone expressed the view that it is neutral as to whether the Government should use the vacated CDMA spectrum to issue a new licence. It was considered that “market forces” and “public interest” are

two important factors in determining whether a new licence should be issued. SmarTone-Vodafone still holds the same view today.

3. It is generally agreed that a market-led approach will ensure that public interest is best served. The role of the government is to ensure that market forces work efficiently by providing certainty and transparency in its telecommunications policy, so that potential investors and the market can make informed decision on the use of the vacated spectrum in the 850MHz band accordingly.

4. However, it is noted that the approach the TA has adopted in conducting the current consultation does not provide the necessary certainty to the industry. The Government is still consulting with the industry regarding the long-term regulatory policy on the use of spectrum under the review of spectrum policy framework started in October 2006. A number of fundamental decisions regarding the use of spectrum, such as spectrum rights and spectrum supply (i.e., spectrum trading and liberalization) are yet to be decided. In the absence of a long-term spectrum policy, potential investors would face great uncertainties if they were asked to participate in spectrum bidding under such circumstances. The likely consequence is that it would produce a lower auction price, which should be a concern to the Government.

5. In the TA's Statement entitled "Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services", it was clearly stated that the TA considers that there is no urgency in introducing a new system operating in the vacated CDMA spectrum and further study needs to be conducted as part of the spectrum policy review before a decision is made on whether and if so, when and how the vacated CDMA spectrum should be licensed for the operation of a new system. The TA also said that:

"The Government intends to initiate a separate spectrum policy review on the allocation and assignment of radio spectrum for telecommunications and related services. In the light of the outcome of the review, the Government will initiate the necessary legislative and administrative procedures to implement the revised spectrum policy. The TA will then determine the way forward for the allocation and assignment of

the spectrum vacated by the existing IS-95 CDMA system and other available spectrum for mobile and other telecommunications services.”
[Emphasis added]

6. From the above it is clear that the TA had considered that any decision to allocate and assign the vacated CDMA spectrum should only be made after the Government had formulated the long-term spectrum policy. Both the industry and the public have the legitimate expectation that the TA should follow what had been said in the previous TA’s Statement.

7. To sum up, SmarTone-Vodafone is of the view that if the TA is mindful to issue a licence in the vacated 850MHz band, it should ensure that a clear and certain long term spectrum policy is in place so that potential investor can make informed decision about the bidding of the spectrum.

TA’s Proposal 2

Auction should be used to determine to whom the spectrum released should be assigned.

8. SmarTone-Vodafone is in support of this proposal which is consistent with the market-led approach.

TA’s Proposal 3

The proposed band plan in the 850 MHz band as depicted in Figure 3 should be adopted. While the frequency block from 825 to 835 MHz paired with 870 to 880 MHz may be made available to enable the provision of a CDMA2000 mobile service, views on the optimal amount of frequency spectrum are welcome.

9. SmarTone-Vodafone considers that the prime consideration regarding the optimal amount of frequency spectrum allocated to the proposed new licence is whether the proposed band plan can achieve the most economically and technically efficient use of spectrum.

TA's Proposal 4

The use of spectrum by the licensee should be subject to the payment of one-off SUF the amount of which will be determined through open auction.

10. SmarTone-Vodafone agrees that the new licensee should be subject to the payment of SUF. Spectrum is valuable public resource and therefore the use of it should be subject to payment. This has been the practice adopted for 3G and 2G mobile services.

11. When deciding whether the SUF payment for the new licensee should be in a form of one-off payment or a royalty scheme, the TA should take into account the potential distortive effects to the 3G market if the SUF applicable to the new licensee is different to the incumbent 3G licensees. As the new licensee can offer the same kind of 3G mobile services that can be offered by the incumbent 3G mobile operators, they will be competing directly in the same market. The TA should therefore be mindful to maintain a level playing field in the 3G mobile market when devising the SUF payment scheme applicable to the new licence. It is noted that the TA has taken similar consideration in the 3G bidding exercise. It was considered that all successful bidders of the 3G spectrum are subject to the same royalty percentage. The rationale behind is to mitigate any distortive effects to the 3G market if successful bidders are subject to different royalty rates.¹

12. Following the same principle, the TA should carefully review the distortive effects that would be resulted from different SUF structures between the existing and new mobile licensees. Factors need to be considered include not only the quantum of the SUF that are payable by existing and new mobile licensees, but also the differences in the regulatory regime as a result of the SUF structures. The level of SUF has a direct bearing on service costs. If licensees providing similar services are subject to different levels of SUF, market competition is likely to be distorted by the different SUF regime. This was a concern of the government when devising the royalty rates applicable to successful 3G bidders

¹ In the original proposed “fourth leaver” rule, the SUF level applicable to all successful bidders was set according to the highest bid made by the weakest successful bidder. Under the revised “fifth leaver” rule, the SUF level is the lowest common royalty percentage offered by all successful bidders.

in 2001. Another issue is that because of the royalty scheme, the existing mobile operators are subject to additional licensing requirements such as account separation and anti-avoidance provisions. This represents an administrative burden imposed on the existing operators but not the new licensee. Furthermore, such regulatory requirements represent an imbalanced regulatory intervention into the business of existing operators which may affect the existing operators' flexibility in responding to market competition. The TA should therefore consider the SUF issue in light of its impacts to competition and the consumers as a whole.

TA's Proposal 5

It is proposed that a simple multi-round ascending auction (MRAA) should be adopted in the licensing of the relevant frequency block. Bidders should place open bids in multiples of the bid price increment, starting from the reserve price.

Both the reserve price and the bid price increment will be announced by the Government nearer the time of the auction.

The details of the auction process will be published in due course.

13. In the 3G spectrum bidding exercise in 2001, it was considered that confidentiality of the bidders' identity was fundamental in deterring collusive behaviour and manipulation of the auction result among bidders. The current proposal however suggests that the auction of the concerned spectrum should be in a form of open bidding without explaining why the TA's consideration now is different from the bidding exercise in 2001. SmarTone-Vodafone would request the TA to advise whether it has any measure to prevent collusive behaviour and manipulation of the auction result in the proposed open bidding arrangement.

14. Further, it is proposed that in case when the successful bidder defaults to obtain the new licence, the licence will be awarded to the bidder with the second highest bid. SmarTone-Vodafone considers that such arrangement is inappropriate, as the bidding result would be manipulated by collusive behaviour between the first and second highest bidders. It is more appropriate for the TA to conduct a new bidding exercise in case the successful bidder default in payment.

15. As regards the reserve price of the auction and the details of auction process, the Consultation Paper has provided no information but only stated that it will be announced by the Government nearer the time of the auction. In paragraph 40 of the Consultation Paper, it only stated that there are a number of approaches in estimating and setting the reserve price. As the reserve price would affect the perceived value of the spectrum and the auction result, SmarTone-Vodafone requests the TA to set out its proposal of the reserve price in due course and consult the industry and public in a proper manner.

TA's Proposal 6

Incumbent 2G and 3G licensees should be permitted to take part in the open auction for spectrum in the relevant frequency block provided that they meet the pre-qualification requirements. In this exercise, there will not be any bidding restriction in the form of a spectrum cap i.e. an upper limit on the total amount of spectrum which will disqualify an incumbent 2G/3G licensee from bidding the spectrum.

An individual company or group of companies may not enter more than one bid.

Existing licensees may form joint venture to bid for the licence and prior consent from the TA is not required for participation in the auction.

16. SmarTone-Vodafone agrees that the incumbent 2G and 3G licensees should be permitted to take part in the auction of the concerned spectrum. However, it is considered that there should be a restriction in the form of a spectrum cap to avoid over-concentration of spectrum in the hands of a licensee. The restriction of a spectrum cap is consistent with the principle of promoting competition in the market and prevents spectrum hoarding by incumbent operator.

17. SmarTone-Vodafone supports that an individual company or group of companies may not enter more than one bid. Such restriction should equally applicable to incumbent operators or new entrants.

TA's Proposal 7

The new licensee using spectrum in the relevant frequency block should not be subject to the Open Network Access requirement.

Also, the Open Network Access requirement as applicable to the existing 2G and 3G licensees should be withdrawn altogether.

18. SmarTone-Vodafone is in support of the TA's proposal for not imposing the Open Network Access (ONA) requirement on the new licensee as well as to withdraw the ONA requirement applicable to the existing 2G and 3G licensees altogether. The ONA requirement as stipulated in the 3G licence has been in force for nearly 5 years. As stated in paragraph 59 of the Consultation Paper, there has been no request for regulatory intervention concerning the ONA requirement. For the 2G market, there are a number of MVNO reaching commercial agreement with the 2G operators without the need of regulatory intervention. It is therefore clear that the market situation does not warrant such a heavy ex ante regulatory intervention. Also the Consultation Paper has aptly pointed out that in light of the development of fixed-mobile convergence, the ONA requirement which is only applicable to the mobile operators is inconsistent with the market development.

19. SmarTone-Vodafone therefore agrees that to ensure there is a level playing field in the market, the ONA requirement should be withdrawn altogether.

TA's Proposal 8

The new licensee should be subject to the following special licence conditions:-

- Network and Service Coverage Obligation
- Performance Bond
- Denial of Service to Suspected Stolen Handsets

The new licensee will NOT be subject to the Domestic Roaming Requirements.

20. SmarTone-Vodafone agrees that the new licensee should be subject to the network and service coverage obligations to prevent spectrum hoarding by the successful bidder. The existing 3G licensees are also subject to similar network and service coverage obligation.

21. In relation to the service deployment requirement, SmarTone-Vodafone would like to seek clarification as to whether there would be any restriction on the earliest time that the new licensee can start to provide service in the market. It is noted that a portion of the proposed spectrum band would only be vacated after November 2008. Our question is whether the successful bidder can start to provide service using the unoccupied frequency spectrum in the proposed band for providing service before November 2008.

SmarTone Mobile Communications Limited
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