



**Comments to OFTA'S Industry Consultation Paper
PROPOSED RULES ON "CONNECTED BIDDERS"**

issued 23rd March 2001

Submitted by Hong Kong CSL Ltd.

9th April 2001

Hong Kong CSL Limited (CSL) welcomes this opportunity to comment on the details of OFTA's proposed rules on connected bidders.

The Consultation Paper focuses on the proposed rules regarding "Connected Bidders" with an intention to avoid awarding a license to parties that are closely connected in order to promote competition, prevent collusion, and ensure a fair and transparent auction. CSL supports these goals and would advise TA to lay down clearer rules to obtain these results.

In the course of the presentation session for introducing the connected bidders consultation, there was additional information provided on the nature of the bidding process in respect to royalties.

Two Stage Screening

CSL would suggest that connected bidders resolve their consortium arrangements prior to the bidding process. It is illogical to have bidders participating in the auction who are potentially and/or likely ineligible to be awarded a license. CSL is confident that Government is fully capable of determining and resolving connected bidder issues prior to the start of an auction.

All other jurisdictions throughout the world have successfully dealt with competition and collusion concerns without having to resort to the unusual license auction practices which are currently proposed by OFTA. It is CSL's view that the present proposal does less to dissuade collusion than it does to promote unnecessarily high and/or irrational bidding prices.

Royalty Percentage

“To mitigate any distortive effects that royalties may create in the 3G market, all successful bidders are subject to the same royalty percentage, which will, depending on the detailed auction design, be at or near the highest price willing to be paid by the weakest successful licensee.”

CSL submits that OFTA’s proposal to determine the auction price based on the highest price to be paid by the weakest successful licensee is questionable and not consistent with OFTA’s stated intention to conduct the auction in the simplest and most expedient manner.

This methodology will inflate license fees to an unnecessarily high level, both increasing the licensee operational costs and increasing the consumer tariff. Furthermore, while strong operators can be expected to sustain these costs, the higher levels will unfairly disadvantage the smaller players, particularly in the most vulnerable first five years after license award, when revenues will fall far short of minimum license costs.

CSL is of the view that the most fair and reasonable methodology is for the auction to end when the fifth weakest bidder drops out and only four bidders remain, and the royalty percentage should be determined by the price willing to be paid by the fourth weakest successful licensee at the time when the fifth weakest bidder drops out.

Further Consultation

CSL continues to recommend that full details on all aspects of licensing and the related auction should be publicly disclosed and that the industry should be given a chance to comment on the full details before the licensing process begins. This is the established practice in other developed jurisdictions, such as Singapore and Australia (within Asia). Regulators in other jurisdictions have found it useful and indeed valuable comments from the industry have resulted in changes to the licensing framework.