

**SUNDAY's Response to
The Discussion Paper for Industry Workshop
in relation to
"Open Network" Regulatory Framework for
Third Generation Public Mobile Radio Services
in Hong Kong**

Preamble

1. In response to the OFTA's Discussion Paper for Industry Workshop in relation to Open Network Regulatory Framework for Third Generation Public Mobile Services in Hong Kong dated 28th December 2000 ("the Discussion Paper") and also subsequent to the Industry Workshop held on 5th January 2001, SUNDAY is pleased to submit this Response for the Telecommunications Authority's ("TA") consideration. In this Response, SUNDAY will address only the key issues which are of the utmost importance to the 3G regulatory framework. For those issues which are not covered in this Response, SUNDAY would repeat its submissions contained in its Response to the TA's second consultation paper submitted on 13th November 2000.

"Open Network" Requirement

2. SUNDAY echoes the TA's viewpoint that the concept of "Open Network" requirement has to be translated into one of the 3G licensing conditions. But it is also essential that the regulatory framework for the "Open Network" must be settled and published without delay. Above all, "Open Network" requirement has to be defined unequivocally and exhaustively so as to avoid misunderstanding

and abuse in future. No doubt further interactive consultation within the industry will help the TA reach a meaningful and satisfactory conclusion on the “Open Network” requirement.

Preference for Commercial Agreement

3. SUNDAY concurs with the TA’s view that if a commercial arrangement could not be reached between the parties within a reasonable period of time, it would be in the public interest for the TA to intervene to facilitate the efficient and effective interconnection between the 3G network operators and the NSPs (vide para 7 of the Discussion Paper). However, SUNDAY would point out that the phrase “reasonable period of time” is equivocal in itself and such an ambiguity will easily give rise to conflicting interpretations from time to time. To this end, SUNDAY would ask the TA to specify the time limit for both parties to settle the commercial arrangement, failing which the aggrieved party will be eligible to seek the TA’s intervention. Furthermore, SUNDAY also sees the exigent need to have a thorough guideline setting out the procedures for invoking the TA’s intervention.

Non-discriminatory Treatment

4. SUNDAY wishes to reiterate that the TA should introduce appropriate regulations to ensure that MNOs will treat the affiliated and non-affiliated service providers

on an equal basis. Such regulations should also confer powers on the TA to penalize the offender.

Wholesale Price of Usage offered by MNOs to MVNOs

5. Irrespective of which method will be finally adopted by the TA for the determination of the wholesale price, SUNDAY maintains that the methodology must be fair and reasonable. It is also anticipated that further debate within the industry as to which method should be used is inevitable. But if SUNDAY is asked to select amongst “cost plus” or “retail minus”, SUNDAY will opt for “retail minus” approach on the following grounds :

- (i) “cost plus” approach is not a fair method. Firstly it may be prone to the subjectivity of accounting figures of the MNO and the OFTA will have to spend huge amount of time and resources to audit these figures in order to ascertain the true and correct position. Secondly, given higher usage of capacity of the MNO’s network will ultimately bring about additional profits to the MNO in the long run, NSP thus has no obligation to guarantee MNO recovery of the capital investment by way of the wholesale price. Such a guarantee will discourage continual improvement and competitive pricing on the part of MNO.
- (ii) on the other hand, “retail minus” is founded on the retail price of MNO and as such its objectivity is more apparent.

Measurement of Actual NSP Traffic Occupancy Percentage

6. With respect, SUNDAY does not find the proposal made by the TA's independent consultant on the measurement method altogether satisfactory. In particular, SUNDAY wishes to highlight a few key observations which SUNDAY disagrees with the TA's proposal :

- (i) Under the proposed measurement method, the measurement area will be specified at the time when the 3G licence is awarded. However, as the 3G network will not exist at such time, the measurement based on unreal data will be prone to errors. Even the measurement areas are certain and will not be changed afterwards, the busy hours for MNO may be different from that of MVNOs. This again will incur bugs in the measurements;
- (ii) As it will be the case for many 3G services and applications, the downlink loading will be much larger than that of uplink. Using uplink traffic to project downlink capacity is not appropriate at all; and
- (iii) As the parameters of a site may be changing constantly, for instance, number of sectors, antenna bearing, downtilt angle or location etc, this will make downlink RAT measurement at a specific location unreliable and inaccurate.

7. With these flaws in mind, SUNDAY finds that the proposed method is highly complicated and not a practical and economic way to determine the percentage of

the “Open Network”. In view of the repercussion that may follow, SUNDAY would urge the TA to further refine on the proposed measurement in consultation with the industry.

Way Forward

8. The TA’s efforts to present the Discussion Paper and to organize the recent Industry Workshop are highly appreciated. The fact that the 3G regulatory frameworks in other jurisdictions are still in its infancy will limit the opportunity to borrow successful examples from overseas. In these circumstances, the inputs from the industry will be instrumental to the TA’s formulation of the 3G regulatory framework. In view of the time constraint for implementing 3G licence, SUNDAY therefore reiterates its previous proposal that the TA should immediately convene a 3G Implementation Task Force to report on all issues which will have impact upon the industry as soon as possible. If the Implementation Task Force proposal is not accepted, SUNDAY would anticipate that there should be further rounds of consultation within the industry until all key issues have been satisfactorily resolved.

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19th January 2001