

CCT Telecom Holdings Limited

Response to OFTA's Second Public Consultation on

“Licensing Framework for Third Generation Mobile Services

Analysis of Comments Received, Preliminary Conclusions and

Further Industry Consultation 3 October 2000”

13 November 2000

1. Executive Summary

CCT Telecom Holdings Limited (“CCT”) appreciates this opportunity to express its views in response to the public consultation paper on “Licensing Framework for Third Generation Mobile Services Analysis of Comments Received, Preliminary Conclusions and Further Industry Consultation” issued by OFTA on 3 October 2000” (the “Consultation Paper”).

We note that the TA has reviewed and analyzed comments from the submissions in response to the industry consultation paper issued by OFTA on 21 March 2000 (the “first Consultation Paper”), as well as further information on the latest development in the market and regulation overseas.

We note that the TA has formed some preliminary views on certain issues, and would like to seek further comments on these views as well as some remaining issues. We recognize that some of these issues are highly controversial ones, such as the operator selection arrangements, the number of licences and the treatment of new entrants. We believe the TA should consult the industry more thoroughly before attempting to draw any conclusions or make any decision in relation to these issues.

The TA intends to finalize the licensing framework for the 3G services and invite applications for licences around end 2000/early 2001. We acknowledge the need for timely finalization of the licensing framework. We believe this should be done in pace with worldwide 3G developments.

We believe that prolonged and complex process of licensing may result in unnecessary delays in the introduction of innovative 3G services in Hong Kong. This may affect the business plans of operators as well as 3G equipment vendors who are interested in the local 3G market. More importantly, it may adversely alter investors’ incentive to commit investment in the local 3G market.

CCT supports timely issuance of 3G licences but the TA must consider and balance the views of the industry players seriously in order to formulate an unbiased licensing framework which will truly and effectively serve the intended objectives of the public consultation.

Our comments on some specific issues raised in the Consultation Paper are presented below.

2. Operator Selection Arrangements

Paragraph 2.4.2 of the Consultation Paper

“The TA welcomes comments on his preferred hybrid auction approach...”

General Comment

We doubt whether the TA’s preferred operator selection arrangement, i.e. “hybrid” option including pre-qualification, spectrum auction and “open network” requirement would effectively achieve the objectives as laid down in paragraph 2.2 of the Consultation Paper, namely:

- Licences are awarded in a fair, transparent and objective manner;
- Successful applicants will be able to build strong, sustainable businesses which will provide a competitive industry for the long term;
- Adequate network investment will be made, and
- Consumers will benefit from low prices for 3G services, fast rollout of networks and innovative 3G services.

In particular, with the high level of uncertainty in the 3G services, market demands, network rollout requirements, etc at this moment in time, it is interesting to know how the TA is going to achieve the objective that “successful applicants will be able to build strong, sustainable businesses which will provide a competitive industry for the long term.” We are anxious to see how likely the proposed operator selection mechanism would “result in the greatest economic benefit to the community as a whole”.

Stage 1 – Pre-qualification

In the pre-qualification stage, applicants would need to submit their business plans and proposed commitments in order to be qualified to proceed to the next round of the licensing process.

We are of the opinion that some of the so-called minimum requirements are not meaningful or realistic at this point in time and are likely to change due to the ongoing and rapid changes in 3G technology and service development.

For instance, the submission requirement on the proposals in relation to network rollout, service level and coverage to be covered in the “stipulated format” of the business plan should be examined cautiously. Otherwise, there is a risk that the information or commitments indicated in the business plan, even if they are contained within licence terms, may turn out to be meaningless due to changes in the 3G marketplace. Similar argument may apply to the applicants’ agreement on the “open network” requirements which to a large extent are dictated by technological development.

Stage 2 – Auction

CCT has reservations on spectrum auction. Auction may lead to high up-front cost and thus directly or indirectly affect the scale of the 3G infrastructure investment of certain investors.

If Hong Kong is to have a leading role in 3G deployment among the Asian markets, a quick and cost effective rollout of the new technology is absolutely necessary. A high investment in the 3G licence itself, as seen in some European countries these days, could have an adverse impact on the business plan of the 3G network operator.

Paragraph 2.5.7 of the Consultation Paper

“The TA welcomes comments on whether bidders would prefer to pay for licences through an upfront cash payment, deferred cash payment, or the royalty payment with minimum guaranteed payment as proposed.”

Notwithstanding our reservations on auction as expressed above, if auction is decided ultimately, CCT would consider royalty payment with minimum guaranteed payment as relatively the more acceptable payment method than the other two proposed options.

“Open Network Requirement”

Paragraph 2.3.14 of the Consultation Paper

“...Industry feedback on what they consider as a reasonable percentage is sought to assist the TA in making a final decision...”

CCT agrees that in order to allow customers to access the full variety of 3G services, there is a need for separation of service provision from network operation. Accordingly, we recognize the importance of non-discriminatory access to networks by Mobile Virtual Network Operators (MVNO). The TA should ensure that no regulatory barriers would be erected or maintained to hinder MVNO development. The TA should, at least during the initial launch of 3G services, regulate the network operators heavily to minimize collusion among big players.

To achieve this objective, we consider the TA should impose a compulsory requirement on a 3G network operator to open up **at least 50%** of its network capacity to any non-affiliated service providers for a minimum period of **3 years** from its network rollout. Thereafter, such compulsory open network requirement may be lifted and the MVNO business should then be regulated by market forces. This is because we believe that in the long run, the regulatory objectives of OFTA should minimize sector-specific regulation and to rely mostly on competition rules.

Wholesale Price for MVNO or Resellers

Commercial negotiation vs TA's determination

With respect to the wholesale price of the 3G network licensees to MVNOs and resellers, we note it is the initial view of the TA that he prefers to leave it first to commercial negotiations among the parties failing which the TA may intervene by making a determination upon request by the concerned party(ies) under the interconnection provisions of the Telecommunications Ordinance.

We are of the view that reliance on commercial negotiations between parties who are on many occasions of unequal bargaining powers is not an effective means to ensuring timely interconnection between the network operator and the MNVOs. As far as we understand it, there has been numerous examples in the context of carrier-to-carrier dealing in which commercial negotiations failed altogether. This may often lead to service providers' delay or inability to provide services to customers.

Timely Interconnection

TA should consider to devise a fast track mechanism rather than relying on the sometimes tedious and lengthy determination process to ensure timely interconnection between the MVNOs and the network operators for the benefits of the customers and the development of the 3G content and service market as a whole.

Wholesale Price - "Retail Minus" or "Cost Plus"

Paragraph 2.3.15 of the Consultation Paper

"...The TA is prepared to consider submissions on which is the industry's preferred approach..."

As regards the cost model to be based upon in the TA's determination, we believe that the "Retail Minus" is the more preferred approach to setting the wholesale prices to MVNOs and resellers provided that it is the true retail price offered by the 3G network operator or its affiliated service provider to its end customers in the marketplace. This approach encourages those truly competitive suppliers to compete in the service provision market.

The "Cost Plus" approach which contains an element of "long term" average incremental cost which may not suitably reflect the dynamic and revolutionary nature of the 3G

network services. We are of the view that it may not be easy to determine an appropriate cost of capital commensurate with the risk of investment in a 3G network due to the too many uncertainties of the 3G market at this point in time. Moreover, the cost plus approach usually applies to the carrier-to-carrier interconnection regime.

On balance, CCT supports the adoption of “Retail Minus” approach to setting the level of wholesale price of the 3G network licensees to MVNOs and resellers.

3. Spectrum Width per Operator and Number of Licences

It is disappointing to note that the TA has proposed that only four licences be granted in the coming round of licensing and each licence is awarded 2x15 MHz paired spectrum plus 5 MHz unpaired spectrum. It also appears that the TA has ruled out the licensing Option 3 and Option 4 as described in the first Consultation Paper, in which some 3G spectrum will be reserved for new entrants.

CCT strongly believes that new entrants should be brought into the 3G arena for the benefits of the consumers and the overall 3G market. New players will bring in new competition in the telecommunications market and possibly overall economic growth in Hong Kong. Unlike the existing mobile operators, new entrants are more flexible to choose whatever state-of-the-art 3G technology and strategic partners since they are not restrained in any way due to the lack of any existing mobile network infrastructure or customer base. There will not be any network compatibility or migration issues to be faced by the new players.

In fact the TA notes that it is uncontroversial that new entrants should be allowed to participate in the bidding process for the licensing of 3G operators. Bringing in new operators will likely drive down customer end pricing and the level of enjoyment the public is foreseen to have. The 2x10/15 MHz allocations for existing and new players are deemed to be fair in terms of respective ultimate bandwidth assignment taken both incumbent and new players eventually, as well as their respective ability in providing a true 3G mobile multimedia services in Hong Kong.

With due respect, we ask that the TA reconsider Option 4 as described in the first Consultation Paper. Due to the contentious nature of the licensing scheme, we believe that the TA should conduct more thorough consultation with the industry before any final decision is made.

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