

Consumer Council
Response to the Office of the Telecommunication Authority's
Consultation Paper on a Licensing Framework for Third Generation Mobile Services

Introduction

1. The Consumer Council welcomes this opportunity to express its views in response to the above consultation paper issued by Office of Telecommunications Authority (OFTA) in March 2000.
2. In the consultation paper, the Telecommunications Authority (TA) has expressed its views on a number of possible policy initiatives. The Council would like to take this opportunity to submit its views on the following initiatives:
 - (i) standards issues;
 - (ii) licensing issues; and
 - (iii) regulatory issues.

Standard Issues

3. The Council supports the TA's proposal to adopt a technology neutral policy that will allow prospective operators to use any ITM-2000 standards (including FDD, CDMA2000, TDD and others) within their assigned 3G frequency bands for 3G services. This will allow different prospective operators to enter the 3G mobile services market without a technical standard barrier and will enhance competition as long as the technical standards are compatible with each other from the user's point of view.

Licensing Issues

License allocation

4. The Council is of the view that there are benefits in allowing incumbent operators to bid for the 3G services, but they should not be given any priority over new entrants in the bidding process. The TA has noted a number of licensing options that observe this principle, but which specifically reserve part of the 3G spectrum for new entrants, i.e. options 3 and 4.
5. The Council is of the view that there would be a significant risk to the competitive process if one or more of the incumbents were able to acquire all of the available spectrum. This view is based on the perceived ability of some existing participants to control a range of alternative delivery technologies for services in the relevant markets, and the likelihood that if those participants were to acquire all of the available spectrum, the competitive opportunities for other players would be foreclosed and future facilities based competition would be prevented or hindered.
6. In this context the Council considers that it would be appropriate for the TA to apply competition limits on access to spectrum, by setting concentration ratios for incumbents and new entrants, in order to provide a measure of certainty as to the competitive outcome. Accordingly, it would support either of options 3 or 4.

Operator selection arrangement

7. The consultation paper notes two proposals for allocating licenses. The first is to continue with the TA's usual approach of selecting operators on the merits of their applications. The second is to select operators by spectrum auctioning.
8. The Council accepts the TA's argument that companies which may be in a position to provide more innovative and advanced services, might not succeed in obtaining a license due to limited financial resources when competing with market participants that have access to substantial amounts of capital. However, access to capital implies an ability to undertake the level of infrastructure investment that is necessary to become an effective competitor.

9. The TA has also noted a view that high auction prices for 3G mobile service licenses will eventually be borne by consumers through those costs being passed on in service charges. However, whether this is in fact the case depends on the competitive pressure that the bidders will face from substitute services, such as 2G mobile services, cable services, fixed network services and wireless fixed network services.
10. It is equally possible that the cost of high auction bids may be passed on to shareholders because the level of price competition for the services in the market is such that the high bidder is unable to recover those costs. By the same token, bidders would have regard to predictable competitive pressures from other market participants and will presumably act in a way that will constrain their bids for spectrum to a rational level, and thereby discourage companies from engaging in excessive speculation on spectrum.
11. Moreover, there is a question as to whether the Government should forego the opportunity of obtaining a revenue windfall for a scarce public resource that would be generated from the auctioning process, when it is not certain that the auction process will result in inflated charges for consumers.
12. Nevertheless, the Council does support the TA's view that there should be some merits based element in the selection process. Its view is that a balance needs to be achieved in using the market based process through an open auction process, while at the same time applying an over arching test on the merits of an application and applying conditions on use.
13. The principle noted above in relation to determining spectrum allocation on the basis of its effect on competition in the market would be the starting point. In addition, certain safeguards could also be applied to
 - remove the possibility that spectrum would be treated as a tradable commodity by imposing lease conditions in the same way that Government imposes conditions when auctioning that other scarce resource - land;
 - prohibit the transfer of the spectrum assets, or beneficial ownership of the assets to other market participants; and
 - apply conditions on network rollout.

Collusive behavior

14. An important issue that the Council would also point to, in relation to the auction process, is that the amount of revenue that can be extracted from an open auction process is subject to bidders not engaging in agreements or understandings to limit the amounts of their bids. Or to otherwise allocate bids amongst each other. Because the bidders are outside the license regime administered by the TA, that prohibits anti-competitive agreements between licensees, it would seem that the absence of a general competition law prohibiting collusive practices between competitors, whatever the market, might increase the chances of such collusive conduct taking place. Applying concentration ratios, and excluding certain parties from bidding for all of the spectrum, as noted above, might diminish the scope for such practices, while not completely eliminating any prospect.

Regulatory Issues

Regulatory framework for 3G

15. As noted in our Supplementary Submission to the LegCo Bills Committee on the Broadcasting Bill in April 10, 2000, the provision of information/entertainment through new technology, other than current broadcasting technology such as a 3G platform, raises the issue of whether the

Government's approach to competitive safeguards, through a sector specific approach, is adequate. The Council's concern is that competition works within economic markets and not within arbitrary licensing jurisdictions. Markets are a function of the creative endeavors of entrepreneurs, and the patterns of purchasing behavior by consumers. They are constantly evolving and require a regulatory framework that is equally flexible.

16. The Council pointed to the problem of loopholes, which the Government's sector specific approach to competitive safeguards brings, with regard to emerging competition issues; i.e. where other forms of electronic entertainment/information media (such as through mobile services) will compete with the services offered under Broadcasting licensing regimes. The Council believes that the Government needs to address the issue of loopholes and safety nets, and the question of how abuse of dominance and anti-competitive conduct generally can be addressed across all services markets operating in the combined broadcasting/telecommunications industry.

Domestic roaming

17. The Council considers that a domestic roaming obligation should be imposed on 2G network operators who are successful in obtaining 3G licenses to minimize the inconvenience of consumers, in particular where the coverage of the 3G network had not yet provided. This will encourage consumers to opt for the 3G services and speed up the development of the market.

Consumer Council
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