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29/F, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong
(Attn: Senior Telecommunications Controller
-- Competitive Services)

22 May 2000

Dear Sir/Madam,

RE: LICENSING ARRANGEMENTS FOR 3G MOBILE SERVICES

It has been my pleasure to respond to the Telecommunications Authority for its views on the above subject.

HKTUG has as one of its basic tenets that fair competition is the best means of stimulating the telecommunications market by providing the customer with reasonably priced services, innovation and choice. It is on this basis that the attached views are presented.

If you have further questions, please do not hesitate to contact us at 2805-3480 or the undersigned.

Yours truly,
On behalf of the Hong Kong Telecommunications Users Group

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HONG KONG TELECOMMUNICATIONS USERS GROUP

Licensing Arrangements for 3G Mobile Services

INTRODUCTION

The Hong Kong Telecommunications Users Group (HKTUG) is pleased to respond to OFTA's consultation paper seeking the most appropriate licensing arrangements for 3G Mobile Services. Its response is below.

However, before responding to the specific issues contained in the consultation paper, HKTUG would like to address a rather wider issue, which is the identification, and explicit statement, of the overall objectives of Hong Kong's telecom legislation - 3G and otherwise.

It believes that such objectives are currently ill-defined at operational level. General objectives, such as the need to maintain Hong Kong's competitive edge and the requirement to provide services that are user-oriented, have been expounded on many occasions. These are fine, but they do not always translate easily into specific legislation.

HKTUG believes that some overall objectives should be held in mind when framing each part of the SAR's telecom legislation, without which there is a danger of addressing each issue (currently, 3G Mobile) on a piecemeal basis.

It has formulated its response as part of a consistent and cohesive plan of what it sees Hong Kong's needs to be in terms of telecom regulation, and this is dealt with first.

OBJECTIVES OF HONG KONG'S TELECOM LEGISLATION

HKTUG proposes that the following three requirements be formally adopted by OFTA as the objectives to which Hong Kong's telecom regulations are directed:

- i) all telecom networks (whether they use fixed, mobile, narrowband, broadband, wireline, wireless or any other technologies) must be part of a comprehensive and seamless network, and the necessary interconnection arrangements must be put in place for this to happen
- ii) network operation should be completely distinct from content provision, and different licensing arrangements should be made for each
- iii) all network operators must be required to transmit content from any licensed content provider, and must do so on a completely non-discriminatory basis

The goals above are vitally important because:

- the regulation of telecom services is intended to serve the community's interests, and these can best be served by making all services fully available to all users; full interconnection of the networks is a necessary condition for this to happen
- through licensing, operators are granted privileges (e.g. use of land for wireline services, use of radio spectrum for wireless services) so that they may provide the best possible service to users; unless full interconnection is mandated, some operators will try to use these privileges to set themselves up as gatekeepers, determining the services that individual users may or may not access
- the separate licensing for transmission means that operators will compete solely on their ability to provide transmission services, thus encouraging competition and innovation in such services
- similarly, the separate licensing for the provision of content means that content providers will compete solely on their ability to provide content, again encouraging competition and innovation in such services
- separating the licensing of transmission and content, taken together with the mandating of full interconnection, overcomes the danger of one company dominating a market by using its strength in one area to dictate terms to users in another
- full interconnection is already mandated among FTNS operators, between FTNS operators and mobile operators, between such operators and HKCTV, etc., so it is illogical for an overall policy not to include full interconnection between all existing and future operators
- other countries (e.g. Singapore) have adopted a similar policy to the objectives stated above, Hong Kong's regulatory regime must continue to build on the good foundation that we already laid, and not put users in the SAR at a disadvantage with respect to its competitors

HKTUG's current response to OFTA's consultation paper on 3G Mobile Services is based on the adoption of the above objectives.

RESPONSES TO CONSULTATION PAPER

This paper will now turn to responding to those specific issues contained in OFTA's consultation paper on which HKTUG feels qualified to reply.

3G Standards (Ref: Paras 2.5 - 2.9)

Proposal

HKTUG supports the proposal that users must be able to move from one operator to another without impediment

Reasons

- a) Mobile number portability has been implemented successfully in the 2G arena, and a similar arrangement has been implemented with fixed lines. It would be a highly retrograde step if similar portability were to be denied in the 3G arena
- b) HKTUG's position has always been that users should have the greatest possible choice, and this includes the ability to move freely from one operator to another

- c) The concept that all networks should be part of a seamless telecom infrastructure should be one of the basic premises of telecom regulations

3G Services In 2G Spectrum (Ref: Paras 3.6 - 3.8)

Proposal

HKTUG supports the proposal that 2G operators should be able to use the spectrum already allocated to them in order to offer 3G services should they so wish, whether or not they are successful in obtaining 3G spectrum.

Reasons

- a) The existing PCS licences allow the licensees to use their spectrum for ANY technology, and it would be illogical now to debar them from implementing 3G in the spectrum for which they have a licence, if they so wish

It would then be illogical to put other operators at a disadvantage to the PCS operators, especially in view of the existence of dual-band networks

- b) Debarring operators from using 2G spectrum for 3G use would doubly disadvantage those 2G operators that are unsuccessful in obtaining 3G spectrum
- c) Specifying which technology can and cannot be used in a particular range of spectrum conflicts with OFTA's technology-neutral licensing philosophy

Allocation of TDD Spectrum (Ref: Paras 4.1 - 4.3)

Proposal

HKTUG agrees with the proposal that the TDD spectrum should remain unallocated for now.

Reasons

- a) With the technology changing so quickly (together with the fact that there is no pressing reason for the spectrum to be allocated yet), it would be prudent to defer any allocation
- b) It would also be prudent to retain the spectrum to give more time for the performance of the operators (both 2G and 3G) to be judged.

Need For New Entrants (Ref: Paras 4.1 - 4.3)

Proposal

While it believes that introducing new operators could provide additional benefits both to consumers and to the market as a whole, HKTUG does not see any over-riding reasons for doing this simply as a matter of policy and without any other justification

Reasons

- a) The best applicant(s) should be chosen, on the basis of the services they propose, irrespective of whether or not they are incumbents.

- b) When choosing applicants on merit, OFTA should pay particular attention to each applicant's ability to introduce new and innovative services, the ease with which it can integrate its services into Hong Kong's seamless telecom infrastructure and the ease with which its services are made accessible to users.

Incumbent Operators (Para 4.4)

Proposal

HKTUG believes that incumbent operators should be allowed to bid for 3G spectrum.

Reasons

- a) The best applicant(s) should be chosen, on the basis of the services they propose, irrespective of whether or not they are incumbents.
- c) When choosing applicants on merit, OFTA should pay particular attention to each applicant's ability to introduce new and innovative services, the ease with which it can integrate its services into Hong Kong's seamless telecom infrastructure and the ease with which its services are made accessible to users.

Licensing Options (Ref: Paras 4.5 - 4.6)

Proposal

HKTUG is broadly in favour of Option 2 from among the licensing options as set out in Paras 4.5 – 4.6

Reasons

- a) HKTUG is in favour of licensing the operator(s) that are considered to provide the best services for the community, and the issue should not be seen in relation to whether the applicants are existing or new service operators; thus Options 1 and 2 are preferable to Options 3 and 4
- b) At the same time, HKTUG recognises that new operators are inevitably at a disadvantage to existing operators, and allocating them greater spectrum could minimise that disadvantage; consequently HKTUG favours Option 2

Operator Selection Arrangement (Ref: Paras 4.7 - 4.14)

Proposal

HKTUG believes that selection should be on merit rather than by auction. It rejects auctions for the following reasons:

Reasons

- a) Experience elsewhere has shown that the currently-popular method of auctioning spectrum has serious deficiencies, not least because potential operators have little firm idea of how well the 3G market will develop and are therefore being asked to make a decision on what is largely unknown.
- b) Equally, regulators have no idea whether the bids they are accepting are reasonable in terms of the market potential.

- c) With no experience on which to judge the likely success of 3G Mobile, neither the auctioneer nor the bidders can have a very precise idea of the value of what is being auctioned. HKTUG believes this to be a highly unsatisfactory state of affairs.
- d) With respect to charging operators for the use of a community resource, HKTUG believes there are better ways of achieving doing this than by auction (e.g. by charging according to the usage of the spectrum and/or subscriber number by the successful applicants)
- e) Auctions tend to give the impression that the successful applicants have somehow ‘bought’ spectrum. This is a mis-perception. Charging by subsequent use makes the clear point that radio spectrum remains the property of the community, and operators have to pay to use it.
- f) Auctions give advantage to the operators that have the deepest pockets, not necessarily those that will provide the best or most appropriate services for the community
- g) The roll-out cost of any telecom network is heavy, while the auction of spectrum would add greatly to initial costs. HKTUG worries that these up-front costs will exclude smaller operators that have valuable and innovative products, but have lower financial resources, thus denying such services to the user community

However, HKTUG has strong views concerning the conditions under which 3G Mobile licences should be issued. While rejecting auctions, it believes that the successful operators should pay fair dues for the use of the community’s radio spectrum, and arrangements should be put in place for this to happen.

Reasons

- a) The spectrum is an extremely valuable resource, and one that is currently owned by the community. It should not be made available freely to commercial concerns without reasonable charge.
- b) It is fundamentally wrong, both in principle and in practice, to give a community resource to one set of commercial concerns to the exclusion of others, and to do so without charge.

HKTUG believes that the fairest, the most sensible and the most effective approach is for operators issued with licences to be required to pay for their utilisation of the spectrum. The money so generated should be ploughed back to the community in the form of assistance to those most in need of assistance. For example, the government should set up a training fund with the objective of, inter alia, assisting SMEs to understand and use 3G services.

By utilising the resources generated in this way, not only would the community as a whole benefit but so would the operators, as a result of the greater and more informed use of their services.

It may be argued that there is no mechanism for ploughing resources back into the user community in this way. HKTUG has little time for such an argument. If no mechanism currently exists, then it should be set up. The ultimate goal should be to adopt the most appropriate arrangements to further the interests of the community.

Similar Regulatory Framework (Ref: Paras 5.1 - 5.7)

Proposal

HKTUG believes that a similar regulatory framework should be adopted for 3G mobile services as for existing mobile services.

Reasons

- a) The concept that all networks should be part of a seamless telecom infrastructure should be one of the basic premises of Hong Kong's telecom regulations
- b) It follows that the adoption of a similar regulatory framework is essential

Fixed-Mobile Convergence (Ref: Paras 5.8 - 5.12)

Proposal

While it is acknowledged that some distinction between fixed and mobile operations is unavoidable for now, because of existing licence commitments, the policy should be to work towards a unified regulatory arrangement.

Reasons

- a) The distinction between fixed and mobile operations is becoming increasingly blurred, and that eventually there will be no distinction. Therefore, there is no point in prolonging the distinction unnecessarily
- b) The concept that all networks should be part of a seamless telecom infrastructure should be one of the basic premises of Hong Kong's telecom regulations

Domestic 2G and 3G Roaming (Ref: Para 5.13 – 5.14)

Proposal

HKTUG believes that roaming between networks is essential, and that the ability to roam should be one of the key issues when choosing new licensees.

Reason

- a) All telecom networks (whether they use fixed, mobile, narrowband, broadband, wireline, wireless or any other technologies) must be part of a comprehensive and seamless network; in such an environment, roaming from one network to another is assumed

Separation of Service Provision from Network Operation (Ref: Paras 5.15 – 5.18)

Proposal

HKTUG strongly supported the concept of separating service provision from network operation in the case of Broadband regulation. The same reasons apply to 3G mobile.

Reasons

- a) Users should not be subject to the commercial or political whims of the carrier that happens to be providing their connection(s), but should be able to access the full choice of content that is available. Anything less is an erosion of users' rights.
- b) Equally, service providers should not be subject to the commercial or political whims of the carriers

providing a user's connection. If a service provider can develop a service that people want, and can market it successfully, then the means to deliver it to all those interested should be immediately and always be available.

- c) Network operators are granted use of the radio spectrum to be facilitators who connect users to content providers in the most convenient and user-friendly manner. They should not perceive themselves as gatekeepers, determining who will pass and who will not.
- d) HKTUG believes that the separation of service provision from network operation should be one of the key objectives of the SAR's telecom legislation

Simon Chan
Chairman, HKTUG

22 May 2000