

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

May 22, 2000

Dear Sir,

**RE: Response to the TA on Third Generation Mobile Services Licensing Consultation Paper**

MC.Founder Limited (MCF) is a newly established company with business objectives to develop, deploy and promote innovative value added services of converged voice and data services via wireless platform. The company is managed by a team of professionals having very rich experience in the mobile industry of Hong Kong. MCF is a joint venture between Founder Data Corporation International Ltd., a subsidiary of Founder (Hong Kong) Limited, and the managing team.

Subsequent to the launch of wireless application protocol (WAP) services in existing 2G networks, the convergence of Internet and wireless terminal brings a lot of flexibilities for value added services development. The most crucial point is that the consumers are not able to freely enjoy the enhanced lifestyle, banking and other services offered by different network operators. For instance, consumers cannot send short message across mobile networks, some WAP sites are not be accessed by all WAP users. As such, the company's vision is to participate in the deployment of 3G mobile value added services deployment in Hong Kong to promote the initiative of freedom to surf the Internet world.

Attached please find MCF's responses to the 3G licensing consultation paper. Should the TA require further information from MCF, please contact the following correspondent:

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Kwun Tong, Kowloon  
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Yours truly,

Joseph Lau.

MC.Founder Limited

**Response To TA**  
**On**  
**Third Generation Mobile Services**  
**Licensing Consultation Paper**

Date : 22<sup>nd</sup> May, 2000

From : MC.Founder Limited  
4/F WKK Tower  
414 Kwun Tong Road  
Kwun Tong  
Kowloon

## 1. Views and Comments

In view of the mobile services development and license activities in Europe and Asia during the recent months, the introduction of 3G mobile services to Hong Kong is inevitable. This document describes the views from MC.Founder Limited (MCF) to maintain a highly competitive environment for mobile services as well as to protect consumer right to choose and enjoy new services at a reasonable cost.

### *1.1 3G Standards*

It is strongly agreed that TA should adopt the technology-neutral approach in 3G mobile services. The network operators have choices to deploy latest technologies to provide innovative services for consumers. However, the network operators have the responsibilities to allow the migration of services from 2G to 3G network environment, particularly for those services inter-operated with other network operators, e.g. international roaming, mobile number portability, ...etc.

### *1.2 Licensing Issues and Operator Selection Arrangement*

*MCF holds a neutral position on the preference as to which of the four licensing options is to be carried out because we trust that the TA would ensure an equal opportunity for both existing incumbent 2G network operators and new entrants to compete on a level ground.*

Taking into account the pros and cons as set out in the consultation paper, *we consider that spectrum auctioning is not the best method for 3G licensing application.* The rationale behind this argument is that spectrum auctioning will increase the operating costs for the 3G network operators and such costs will eventually be borne by consumer of mobile services.

However, if the TA should decide to select 3G operators by evaluation of the merits of application, our view is that *no privileges in any forms should be either granted or biased against existing 2G network operators and new entrants in regards to their previous telecom operation background.* In other words, *candidates with no previous telecom operation experiences but proposing a sound and innovative business plan with adequate capital and human resources should enjoy the same chance as that of the incumbent 2G operators.* The ultimate decision should be justified solely by the attractiveness of one's business proposal on how it will effectively benefit the consumer of mobile services.

Ever since its establishment, the TA has been open and receptive to the views of the telecom industry on both technical and commercial issues, especially on matters concerning the benefits of the general public. As it comes to the preliminary stage of the consultation on 3G licensing, MCF would recommend the TA to further extend the consultation not only limited to the telecom industry, but also to other interested parties such as academic bodies, the Consumer Council, etc., so that they can involve in the selection process but leaving the final decision to the TA. We consider the objective views reflected by these parties especially valuable because they directly convey the messages from the general consumers of mobile services.

### ***1.3 Separation of Service Provision from Network Operation***

We conceptualize the 3G environments to resemble the current ISP-FTNS model in the Internet environment. More specifically, we stress on the point that consumers of mobile services subscribing to any service providers<sup>1</sup> (SP) would have freedom to access any contents, like World Wide Web (WWW) sites and their respective contents, with no limitation on its access path.

We strongly agree to the concept of separating service provision from network operation. However, we also foresee that as more individual SPs enter the 3G services market, the fierce competition environment will become much highly susceptible to commercial issues raised by anti-competitive conduct. This is especially obvious when *Network Operators (NO) also participate in the service competition as SP (abbreviated NO/SP hereafter), leading to possible conflict of interests due to their double identities*. Three scenarios are illustrated below with our respective recommendations to the TA:-

***Scenario 1:*** *Exclusive agreement between a NO and its strategic service/content providers in creating barriers to entry by forbidding or delaying a new MVNO from teaming up – a situation where a particular 3G NO, or all 3G NOs aligning as cartel, to boycott or postpone a new MVNO with an innovative service or content from launching until similar services from the NO are available. The reason behind the postponement is that the NO foresees the innovative idea as major threats and henceforth hindering its own position as SP within the service market.*

***Recommendation 1:*** *The TA should make effort in encouraging new MVNOs with innovative ideas to launch services in a fair and unbiased environment with no barriers for new entrants. In addition, the TA should require all NOs to open up their networks*

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<sup>1</sup> The terms SP and MVNO have slightly different interpretations. MVNO refers to the 3G value-added service providers who are NOT network operators. SP includes 3G value-added service providers who may be solely MVNO, or both MVNO and NO at the same time.

*for the equal access of voice, data, and all other value-added services to all MVNOs with intention to team up. In other words, services in the forms of SMS, WAP, cell site number, data applications and multimedia contents including video images and interactive applications in the future should be freely accessible to subscribers of all SP by carrier-to-carrier interconnection.*

**Scenario 2:** *SP introduces effectively structured incentives such as discounts, rebates or credits included in its customer service agreement to intimidate, delay, or mislead customers in subscribing or terminating 3G value-added service – when an SP providing similar 3G services to its existing subscribers as its competitors, the SP may incline to offer to its subscribers, structured incentives such as discounts, rebates, or credits in the form of airtime, cumulative points for prize redemption, or cash rebates. These incentive programs may be embedded in the customer service agreement in order to intimidate, delay, or mislead the subscriber’s decision in terminating service and subscribing to a more preferred SP.*

**Recommendation 2:** We recommend the TA to derive proactive measures against anti-competitive behavior as mentioned above by actively monitoring the incentive schemes offered by SP as compliment to intimidate their subscribers as ways to isolate the other SPs offering similar services. Consumers should have free choices as to which MVNO and/or NO to subscribe services. This will also include *portability of 3G value-added services offered by MVNO and network selection from different NOs so that consumers can choose to subscribe or terminate their services with any NO or MVNO at any time with minimum obligations.* This will enhance the overall benefit of consumers and also drive SP to develop and implement unique and innovative services. In other words, *consumer may enjoy maximum freedom in choosing any commercially available combination of NO and SP.* For instance, a subscriber of a particular SP or MVNO may choose to use a specific NO for a better coverage given that the two parties have established a commercial agreement. The NOs will practically become transparent to the consumer and they will effectively compete by deploying more extensive network coverage to attract more MVNO to team up.

**Scenario 3:** Mutual relationships between NO and MVNO. For example, *offering exclusive agreements to subsidiaries, associates, or affiliated companies of an NO such as giving or receiving unfair advantage in network facilities or service provisioning arrangements.* The terms “subsidiaries”, “associates”, “affiliated company” should be well defined by the TA in advance of 3G licensing. That is, NO should not be able to have preferential or favorable treatment or offer significant competitive advantage to its

MVNO due to their corporate relationship<sup>2</sup>.

***Recommendation 3:*** One way for the TA to identify the mutual relationship between NO and MVNO as preferential or favorable is, perhaps to *clarify in advance the percentage of stocks the NO and MVNO may hold against each other to be classified as associated.*

#### ***1.4 Regulatory Issues***

We cannot agree with *Clause 5.17* in the consultation paper that the demerits with the concept of separating service provision from network operation would lessen NO's incentive to invest and build up their own networks. On the other hand, our view is that with this concept implemented, NO and MVNO can each streamline their technical expertise and allocate appropriate capital and human resources in further network or service development. The overall advantage is for the benefit of consumers of mobile services. Moreover, *NO will not have less incentive to develop their infrastructure because the cost will be shared by MVNO on a cost-based charging principles.* In the contrary, NOs will compete among themselves for better network coverage in order to attract SP with unique and innovative service to benefit consumers.

## **2. Technical Considerations**

In order to enhance the competitiveness of MVNO in the 3G environment, the TA may consider the possibility of granting and assigning unique network codes to the MVNO without RF infrastructure. The advantage of such arrangement is that those MVNOs who wish to provide domestic roaming to their subscribers may obtain such coding to allow more technical flexibility when developing innovative value added services.

During the initial stage of 3G network deployment, it may be necessary for MVNOs to install their respective telecom equipment such as Intelligent Network (IN) platform, routing and switching equipment, and transmission facilities. As a consequence, when issuing the MVNO licenses, TA may also need to consider technical aspects such as facilities co-location arrangement between MVNO and NO. The TA should encourage NOs to fully cooperate with MVNOs to establish facility access and physical network integration by facilitating fair commercial agreements.

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<sup>2</sup> With reference to OFTA document "Guidelines to assist the interpretation and application of the competition provisions of the FTNS License June 1995", OFTA has defined the term "Associated or affiliated companies" to cover entities with a corporate relationship to the licensee (subsidiaries, holding companies, subsidiaries of the holding company of the NO) as well as entities with no corporate relationship to an NO. For example, the terms or history of their dealings may indicate an association or a business connection.

### **3. Conclusion**

It would be commercially unjustifiable to prohibit network operators to offer value-added services by setting up or owning part of a subsidiary MVNO. However, in order for the Hong Kong telecom industry to further develop in a free economy and for the benefits of Hong Kong consumers as a whole, fair competition between NO/SP and MVNO, and within groups of NO and MVNO themselves must be maintained. As such, when constructing the regulatory framework for the 3G licenses, TA must derive a set of agreeable anti-competition guidelines and measurable standards to further ensure a self-behaved environment wherein new and established NO (in the 2G market), and new entrants MVNO, to compete and start off on level grounds.

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