



By email and post

17th June 2004

Office of the Telecommunications Authority
29/F Wu Chung House
213 Queen's Road Central
Wanchai
Hong Kong

Attention: Senior Regulatory Affairs Manager (Technical Regulation)

Dear Sir / Madam,

Re: Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services – Analysis of Comments Received, Preliminary Conclusions and Further Consultation

Motorola thanks OFTA for the opportunity of further commenting on the proposals by OFTA following the first round of consultations on the future of licensing arrangements upon the expiration of 2G licences in Hong Kong. We are pleased to offer the following comments.

Offer of "Right of First Refusal"

We would like to register our disappointment at OFTA's decision to use spectrum utilisation efficiency as the only measure of good performance by a network operator. Make no mistake that Motorola is and has been a long-standing proponent of good spectrum management and spectrum utilisation efficiency is **one** of the objectives behind the management of radio spectrum for public good.

It should be emphasized that spectrum utilisation efficiency **should not be the only consideration** to be employed in determining the performance of a licensee. Equal consideration should be given to the following:

1. Consumer protection

We recognize that consumer protection has been a cornerstone of OFTA's policies and this has resulted in Hong Kong having one of the most competitive telecommunications market in this region and, possibly, the world.

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Consumers in Hong Kong have the right to expect a choice of services and at competitive prices. By having an existing network removed to make way for a new network does not make economic sense as it would take a new network a much longer time at significantly higher cost to be built out to achieve a similar network quality and coverage comparable to the existing network. More importantly, roaming network and commercial agreements with different operators globally will take a long time and significant efforts to be established. The swapping out of an existing operational network with a newly built network would unavoidably cause services interruption to those in-bound roamers.

2. Stable investment environment

One factor that contributes significantly towards a stable investment environment is that of expectation of continuity. There should be a reasonable degree of continuity in the regulatory environment in order to encourage the continuous investment in new technologies by network operators. Network operators and their investors need a clear message that they will be treated fairly and equitably if they keep to the terms and conditions set out in their licences. By penalizing operators of the CDMA and TDMA networks by denying them their "Right of First Refusal" on the grounds of low subscriber numbers, the message sent to operators is: "No matter how much you invest in your network, you will be judged by a standard to be determined later". This is likely to adversely influence how operators invest in and maintain their networks in the future. If the criteria for granting 'Right of First Refusal' based on spectrum utilisation become a precedent then it is likely that network operators will behave irrationally towards the expiration of their licences. We are concerned that this action will set a bad precedent case that leads to uncertainty for investors of new technology.

We would like to bring to OFTA's attention that the New Zealand government, in consultation with its industry, has agreed that commercial spectrum rights be reallocated five years before expiry and that spectrum rights be reallocated to existing rightholders based on pricesetting formulae that estimate the market value of the rights. We believe this policy, in contrast to OFTA's proposal, will contribute towards a stable investment environment.

3. Technology Neutrality

The policy of technology neutrality is more often quoted than practised in some countries but we are pleased to observe that OFTA has an excellent record of keeping to this policy in letter and in spirit. However, by taking spectrum away from an existing allocation in favour of certain technology runs counter to the spirit of technology neutrality. OFTA should allow investors and the market to determine the technology to be adopted.

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Payment of Spectrum Utilisation Fee (SUF)

We agree with OFTA that Spectrum Utilisation Fee (SUF) be imposed on both 2G and 3G services with the aim of encouraging efficient use of spectrum. The level of SUF imposed should be proportional to the amount of spectrum held and the level should not be a financial burden to licensees.

We are of the opinion that fees based on network turnover do not promote efficient use of spectrum as network turnover is not necessarily proportional to the amount of spectrum used.

Conclusion

In conclusion, we urge OFTA to re-consider its proposal to deny the CDMA and TDMA operators the 'Right of First Refusal' by:

- a) recognizing that both operators have made significant investments in their networks and that they have kept to the terms and conditions of their licences.
- b) reasserting its policy of customer protection in order that consumers may enjoy new technologies and services of high quality at affordable prices by allowing the CDMA network to be migrated to a newer, proven successful and recognized IMT-2000 technology in a much shorter time frame and at a lower cost.
- c) continuing with its policy of technology neutrality by encouraging the adoption of newer and more spectrum efficient technologies at the investors' choice. This policy should be reflected in the allocation of radio spectrum. Investors should also be allowed sufficient time to prove the success or otherwise of the technology chosen (e.g. WCDMA as in the case of the 3G licenses granted). By taking spectrum away from an existing allocation in favour of another technology runs counter to this policy.
- d) creating an environment in which network operators are encouraged to invest in and make improvement to their networks without having to look at the calendar and wonder if their investment will be in vain towards the expiration of their licences.

Last but not least, we agree that OFTA should impose Spectrum Utilisation Fee to encourage efficient use of spectrum. Such a fee should be proportional to the amount of spectrum held by each licensee and should not be too high as to become a financial burden.

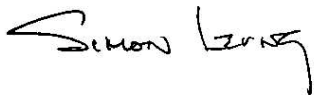
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Should OFTA requires any further discussion on our opinion, please contact our Global Government Relations Office as follow:

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Once again, Motorola welcomes this opportunity to provide our comments on this consultation paper.

Yours faithfully,



Simon Leung
Senior Vice President
President, Hong Kong Special Administrative Region