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**Response to the Communications and Technology Branch, Commerce,
Industry and Technology Bureau (CITB) of Hong Kong on:**

“Consultation Paper on Proposed Spectrum Policy Framework”

Defining and Implementing “Strategic Considerations”

31 January 2007

About the GSMA

Founded in 1987, The GSM Association (GSMA) is a global trade association representing more than 700 mobile phone operators across 217 territories and countries of the world. In addition, more than 180 manufacturers, suppliers and content providers support the Association’s initiatives as associate members.

The primary goals of the GSMA are to ensure mobile phones and wireless services work globally and are easily accessible, enhancing their value to individual customers and national economies, while creating new business opportunities for operators and their suppliers. The Association's members serve more than 2 billion customers – over 82% of the world's mobile phone users.

Introduction

The GSMA welcomes the opportunity to respond to this important consultation. We are especially thankful that the CITB allowed for a one week extension of the deadline for contributions to this consultation. We do value the opportunity and appreciate that the CITB conducts a transparent and participative consultation process.

Hong Kong is one of the most competitive markets in the world for mobile telephony. The review of the spectrum policy framework in Hong Kong is both timely and welcome. The

GSMA cares about what happens in Hong Kong because HK has been at the cutting edge of developing innovative policy frameworks and policies that foster mobile investment.

The GSMA recognises that the way in which the valuable asset of spectrum is managed is important, especially in dynamic markets such as Hong Kong, driven by competition and innovation. Spectrum is a key input in providing services such as mobile telephony. Mobile services are highly valued by consumers; hence society closely watches policy developments because consumers know they can be affected rapidly by changes in the telecommunications framework. Spectrum based services are also a key driver for economic growth.

“Strategic Considerations” and the Risk of Rent-Seeking Behaviour

The GSMA will restrict its response to the issue of “strategic considerations”, discussed in paragraph 24 of the consultation document. The GSMA understands “strategic considerations” in this context as government intervention in the market to address what may be perceived as “market failure”. Such considerations can underlie policies that deliver a strategic outcome that the market itself would not deliver.

The GSMA agrees that there are important strategic objectives such as defence policy and social cohesion that are important and legitimate objectives of government policy. It is also widely known that such strategic considerations might be misused by interest groups to manipulate the market and force through government fiat outcomes that market forces could deliver themselves at a lesser cost, or that may not be strategic at all. Therefore, when a policy maker walks into the terrain of “strategic considerations,” a clear framework must be established for transparent debate about policy strategy and implementation.

The consultation paper mentions the old “command and control” spectrum regime to manage commercial spectrum policy. Under such a regime, the cost of pursuing “strategic policies” was not clear. Hence, regulators could easily become prey of vested interests trying to hide their particularistic aims in the name of broad benefits to society (general “strategic interests”) that actually do not exist. This sort of “rent seeking” is the process by which an individual, organization, or firm seeks to capture economic advantage (“rent”) through exploitation or manipulation of the economic environment, rather than through trade on production of added wealth. Rent seeking generally implies the extraction of uncompensated value from others, without making any contribution to productivity, by imposing regulations or other government decisions that may affect consumers and other businesses.

The central point in this discussion is whether and when it is appropriate to take “strategic considerations” while developing spectrum policy. The GSMA believes that the policy maker wants to set clear procedures for a discussion on strategic considerations in which rigorous analysis permeates the debate. Engaging competing actors in a policy debate in which they are asked to quantify the costs and benefits of their propositions against the alternative scenarios, can provide a major improvement and enhance the quality of such debates. A move to a more transparent spectrum regime that is guided by clear and quantifiable objectives that are fair, proportionate, and objective, is one that will benefit consumers and the overall economic development of Hong Kong.

Cost-benefit analysis seems to provide the best framework for such policy debates. There should be a clear understanding, and if possible the quantification of the specific impact of any implementation of such strategic objectives. For instance, it is necessary to have a clear idea of the extent to which consumers or competition will suffer if certain strategic issues are considered and implemented. Also, it is important to know the likely cost of achieving such an objective, compared to alternative options.

The GSMA has a concern that “strategic considerations” can be used by vested interests to engage in rent seeking activity. The GSMA would encourage this spectrum review to ensure that all reasonable steps are taken so that strategic considerations are carefully costed, and that alternative options are explored. This is to help ensure that the strategic objective is worth the extra costs that might be imposed on spectrum users (and ultimately consumers).

Case in Focus: TA’s Consultation on Mandating CDMA2000

The GSMA is particularly concerned with how strategic objectives are being interpreted by the Hong Kong Telecoms Authority (TA) in relation to the provision of CDMA2000 in Hong Kong, after the year 2008. The GSMA believes that the action proposed by the TA to award 2 x 10 MHz of spectrum to CDMA2000, to ensure the continued provision of this service to roamers from the Mainland, is neither proportionate nor objective. Further, the GSMA believes that such a proposal is premature given that the review of spectrum has not closed yet, and that a service provider is in place (Hutchison) that is able to maintain service beyond the year 2008.

The GSMA also understands that much (if not all) of this objective of providing coverage for Mainland roamers has been addressed by market forces in the shape of dual mode handsets, as was pointed out in the submissions of the GSM incumbents to the TA consultation. There has been little analysis of the opportunity cost of losing the 2 x 3 MHz of EGSM spectrum at 900 MHz, from the proposal to award 2 x 10 MHz to a CDMA2000 network. The TA consultation itself suggests that the minimum requirement for a CDMA2000 network is probably only 2 x 5 MHz¹ (less in the GSMA’s opinion).

The GSMA believes that this early example of how strategic issues are approached—such as the interconnection of Hong Kong to Mainland CDMA2000 networks—raises questions. It shows that such considerations should be carefully monitored and subject to a cost-benefit analysis. This is especially true when the intention of the regulator is to use such initiatives to constrain the normal functioning of the market in anticipation of a possible market failure. Such a market failure may not occur, and in reality may not be a market failure, but the workings of an efficient market.

If the decision of a regulator were that taxes ought to be raised in order to buy the services of CDMA2000 technologies, one would expect that a full value for money analysis would be done. Spectrum is a valuable public asset. To award spectrum for the provision of such a technology-specific service should be considered in the same light, as there is an opportunity cost to the use of the valuable asset of spectrum if constrained to a particular technology.

¹ Paragraph 27 of the OTA consultation document.

In this case, the GSMA would recommend a cost-benefit analysis including:

1. The impact on Mainland roamers, for example, of having to remain in the existing IS95 CDMA network for a period of 2 years beyond the year 2008;
2. The opportunity cost of the lost 2 x 3 MHz of EGSM spectrum, from awarding spectrum to CDMA2000, as proposed in paragraph 25 of the TA document;
3. The current number of Mainland CDMA roamers (who do not have dual mode GSM handsets now), and expected growth over the next 5 years?
4. The impact on CDMA2000 only Mainland roamers of not having access to mobile services in Hong Kong.
5. Other financial impacts on Hong Kong from not having a CDMA2000 network, given that many major cities in the world do not.

The GSMA also believes that a full analysis should examine whether or not there is even a business case for another operator in the very competitive Hong Kong market. The GSMA is of the belief that the case may prove weak, and that this situation is further undermined by the mandating of the CDMA2000 technology. Over 80% of the world uses GSM or WCDMA. This is because of the widespread support for the GSM equipment by multiple competing vendors.²

Conclusion: Cost-Benefit Policy Analysis is Key

“Do you agree that the above considerations, i.e. future shape of radiocommunications, international developments, encourage investment, strategic considerations and fair compensation for the community, should be factored in Hong Kong’s spectrum policy framework and the supporting spectrum management arrangements? Are there any other factors or considerations that should be taken into account?”

The GSMA agrees with the general principle of strategic objectives, but believes that a rigorous cost-benefit analysis should be carried out as far as is practicable, and that a range of regulatory solutions must be tested. The GSMA further believes that any strategic considerations should be approached in a fair, proportionate and objective manner and employ the least intrusive and most economically efficient remedy possible. The GSMA believes that this early example of how such strategic considerations might be considered—the TA’s proposition of mandating a CDMA2000 network in Hong Kong—raises serious questions. The use of such considerations should be carefully constrained and subject to a cost-benefit analysis, including assessment of costs and benefits of alternative solutions.

² This is particularly important in terms of handsets, where many types (low price terminals, high specification terminals etc) are important, as well as the cost of such terminals. The GSMA is undertaking research that shows that there are significant economies of scale to be gained from handset production, and this feeds through into handset prices as well as the available range.