

**SmarTone Mobile Communications Limited’s
Supplementary Submission to
OFCA Consultation Paper**

**“Arrangements for the Frequency Spectrum
in the 1.9 – 2.2 GHz Band upon Expiry of the Existing Frequency
Assignments for 3G Mobile Services”**

1. SmarTone Mobile Communications Limited (“**SmarTone**”) has submitted its written response to the captioned Consultation Paper on 15 July 2012.
2. It is noted that China Mobile Hong Kong Company Limited (“**CMHK**”) had made a supplementary submission (in addition to its submission of 13 July 2012) on 30 July 2012. Subsequently, Hong Kong Telecommunications (HKT) Limited (“**HKT**”) had made a supplementary submission on 16 August 2012 addressing the various arguments raised by CMHK. In view of the above, SmarTone would also like to make a supplementary submission as follows.
3. As expressed in our submission of 15 July 2012, we submit that “right of first refusal” should be granted to the existing 3G licensees. There is no doubt that these licensees have been making efficient use of the 3G spectrum, which is evident from the large number of 3G customers and the ever-increasing data usage in Hong Kong. Option 1 would not only ensure that the existing 3G licensees can continue to provide services to the general public without interruption, it would also provide the necessary certainty and incentive for continued and long-term investment and innovation. There is no convincing argument nor cost and benefit analysis to support that the Government should intervene into such a highly competitive market by re-auctioning the 3G spectrum, not to mention the substantial risks of service discontinuity and discouragement of investment that the Government and the community of Hong Kong as a whole would have to bear if Option 2 or 3 is adopted. Option 2 is a total disaster to consumers since service continuity cannot be guaranteed at all. Option 3 would produce an unprecedented and untested change which would likely result in a

- number of adverse impacts on consumers, which may include service interruptions or stoppages. Consumer interests would be compromised as a result.
4. Consumer' choices would also be limited because operators may not be able to continue to offer long-term contract in view of the vast uncertainties ahead under Option 2 & 3. Long-term contract is not uncommon in the market as consumers would usually get a more attractive offer under the contract. The widespread existence of long-term contract in the market represents that there is vast demand from the customers. Options 2 & 3 not only dampen the ability of operators to offer long-term contract, they would also make some of the existing long-term contracts unenforceable, as some of the contract term (after stacking up with multiple contracts) may go beyond 2016.
 5. We have also explained in our submission of 15 July that there are many ways for market entry, such as MVNO, future new spectrum auction, M&A and spectrum trading, without interrupting the existing 3G spectrum holding and putting customer service continuity at risk.
 6. We note that CMHK has made a number of points in its supplementary submission to argue that option 1 should not be adopted and all 3G spectrum should be re-auctioned (i.e., Option 2). We would like to respond to them as follows.
 7. As revealed at the end of CMHK's supplementary submission, it appears that one of the reasons of CMHK in acquiring the 3G spectrum is to "*improve its services by bridging the gap between its 2G and 4G services*". We consider that the proposition of CMHK is self-serving and without regard to the substantial cost to the community as a whole.
 - As revealed in Annex 1 of the Consultation Paper, CMHK has the most spectrum holding in the 2.3GHz and 2.6GHz bands. CMHK may well make use of its abundant spectrum holding in the bands to further improve the capacity and coverage of its 4G services, so as to "bridging the gap" in its network.
 - Even if CMHK could acquire spectrum in the 2.1GHz band upon the expiry of the existing 3G licences, the nearest timeframe it might offer service using the

3G spectrum would be by the end of 2016. It is doubtful whether CMHK would still use the acquired spectrum to deploy a brand-new 3G network by then if the spectrum could be used to provide 4G services.

- CMHK currently has 2 x 13.2MHz spectrum in the 1800 MHz band, which can be refarmed to provide 3G service. CMHK has admitted by itself that refarming is an option (paragraph 20 of CMHK's supplemental submission). There is no restriction which prevents CMHK from doing so under the Government's technology neutral policy.
 - CMHK can acquire additional new spectrum from the future spectrum auction. As revealed in the Spectrum Release Plan for 2012 to 2014 published by OFCA, there will be further release of spectrum available for fixed and mobile services in the upcoming 3 years.
8. All of the above options are available to CMHK and could be deployed by CMHK without causing the industry and consumers to bear the costs and risks associated with re-auction of the 3G spectrum.
 9. CMHK has quoted Article 118 of the Basic Law and suggested that Option 1 is in violation of the Article 118 because Option 1 would deprive an interest party of the chance to bid for the spectrum. Article 118 said that "*The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.*"
 10. We are in total disagreement with CMHK's argument. Option 1 is indeed the only option which is consistent with Article 118. As we explained at length in our submission of 15 July, Option 1 will provide regulatory certainty to licensees, which is essential for continued and long-term investments into network and innovation. The industry and the community of Hong Kong as a whole should not be borne by the cost of re-auction of the 3G spectrum, just because CMHK had decided not to bid for the 3G spectrum in 2001. To implement option 2 as proposed by CMHK will not provide an environment for encouraging investments and technological progress. Rather, it will work against such principle and is not in public interest.

11. CMHK also suggests that Option 1 will be open to accusation by the public as collusion between Government and business conglomerates. However, CMHK has not provided any evidence to substantiate such a serious allegation. There is no basis for such allegation. All the existing 3G licensees had acquired the spectrum in 2001 via an open auction. All of them had invested substantially in network and innovation throughout the years. The market is very competitive or even over-served, as evident by the low price of mobile service as well as the various merger and acquisition activities in the past. All of these suggest that the market force is working in the market and therefore regulatory intervention should be kept at minimum. It is no coincidence that the advanced economies (such as UK and Australia) have adopted an approach similar to Option 1 for spectrum renewal arrangement.
12. It is noted that China Resources Peoples Telephone Company Limited (which was acquired by CMHK later) has previously supported granting right of first refusal to incumbent GSM and PCS licensees in the 2G spectrum renewal arrangement in 2004. Also, in CMHK's submission on the Spectrum Policy Framework Consultation paper in 2007, CMHK also supported that right of first refusal should be given to incumbent licensee to a spectrum renewal arrangement if the licence is utilizing spectrum in an efficient way to serve customers. CMHK has not raised the point about Government-business collusion at both occasions.
13. All in all, we do not consider that CMHK has made any substantive argument which would alter our view that Option 1 is in the best interest of the industry and consumers. On the issue about setting of SUF, as we pointed out in our submission of 15 July, there are already references in the industry, such as the arrangement in 2G spectrum renewal in Hong Kong and the overseas experience, such as UK and Australia. The principles and methodologies adopted in these precedent cases could be a reference for the current exercise. The issue could be further deliberated in the 2nd Consultation Paper and we would welcome the opportunity to provide our further comments on this area.