

George Joseph Ho
c/o

April 9, 2013

BY FAX AND BY MAIL

Head, Competition and Economic Analysis
Office of the Communications Authority ("OFCA")
29/F, Wu Chung House
213 Queen's Road East
Wanchai, Hong Kong

Re: Second Consultation on Seizure of 3G Spectrum

I was surprised and puzzled by OFCA's proposal to seize one-third of existing telecom operators' 3G spectrum for the use of China Mobile, the state-owned mobile telecom giant.

First of all, the public consultation period seems inordinately short. Perhaps OFCA believes this proposal is only of concern to industry players. However, it is fairly evident that implementation of the proposal may involve considerable inconvenience and additional expense to the public. I do not think OFCA has shown proper regard for the public interest in arranging this perfunctory consultation.

I believe OFCA's proposal is ill-considered for the following reasons:

1. Hong Kong's good business environment is reliant on predictable and stable government policy. This is especially essential when businesses are invited to make long-term investments in Hong Kong. The licensing of spectrum for telecom operators in Hong Kong has followed this pattern of predictability in the past. While telecom spectrum does not rise to the level of a property right, the prevailing custom has been that once awarded and used productively for its intended purposes, spectrum is not arbitrarily or capriciously taken away from licensees upon expiry. The proposal at hand deviates from customary practices in the S.A.R. and introduces an unwelcome element of political and regulatory risk for doing business in Hong Kong.

2. If the proposal is implemented, even OFCA admits that users of existing 3G networks may suffer interruptions or declines in service for a period of time. Is this not detrimental to the public interest? If consumers are aggrieved by the deterioration in service, OFCA should be prepared to squarely accept the blame.
3. I am not aware that 3G charges by existing operators are all that high, as compared to other developed telecom markets. OFCA should be prepared to show that 3G charges are excessive before making a case for more competition.
4. One of the things which are disturbing about this proposal is that it rewards latecomers rather than pioneers. China Mobile or its predecessor could have bid for 3G spectrum originally, but chose to sit on the sidelines. The other operators took the business risk of investing in an untried technology. The current proposal is a perverse incentive for telecom operators to wait until a new technology is proven to be commercially feasible before moving in to reap guaranteed profits.
5. Other markets have commented about the unfairness of competition from state-owned enterprises which benefit from closed domestic markets. China Mobile, the intended beneficiary of this proposal, has been able to fatten its profits from a domestic market which is not open to private, much less overseas, competition. It benefits from preferential access to credit. None of the telecom operators being affected hereby have been accorded the privilege of competing in China Mobile's home market. Does OFCA desire to promote one-way competition?
6. OFCA has acknowledged that the reallocation of spectrum will increase costs to existing telecom operators. It is likely that these increased costs will be passed on to ultimate consumers. It is by no means clear that consumers will enjoy lower 3G charges simply because more competition is introduced.
7. OFCA has not explained why alternatives to spectrum reallocation have not been explored. As far as I know, China Mobile can lease 3G spectrum from one of the existing telecom operators, at market rates. China Mobile can also secure 3G spectrum by acquiring an existing telecom operator. OFCA appears to prefer to distort the private marketplace by using its powers for the benefit of China Mobile.

In conclusion, the proposal to reallocate 3G spectrum to a state-owned enterprise deviates from business norms in Hong Kong. Such a drastic course of action should not be undertaken unless there is a compelling public interest for doing so. However, all that has been shown thus far is that the telecom consumer will suffer deterioration in service and possibly higher 3G charges from spectrum reallocation. OFCA has not made a clear and convincing case for reallocating 3G spectrum.

Respectfully submitted,



George J. Ho