**NBTC said TDRI arguments on 1800 MHz**

**were weak and unreasonable.**

* **Pointing out it’s time to serve the public interests.**

Although NBTC has issued the Notification of the interim measures to prevent the 1800 MHz concession operators to stop the 2G service after the expiration of the 1800 MHz concession during the transitional period in order to allow more than 17 million subscribers of the 2G service to continue using the service after September 15, 2013 for not more than one year, the dispute with some academics over the 1800 MHz spectrum concession has been going on. However, such criticisms are intended to reflect on particular perspectives and misled the public. After analyzing all relevant information, NBTC views that it is very important for NBTC to reveal all missing information so that the public can have better understanding and will not be misled by incorrect information.

From a set of 10 questions on the 1800 MHz concession, Dr. Somkiat Tangkitvanich, TDRI President, intentionally picked up only one-sided of information to allow him to draw his own conclusion on some selected issues. For example, he accused that NBTC had 420 days since announcing the Master Plans until the extension of the use of the spectrum, why NBTC did not solve the problem. The only solution of Dr. Somkiat was to accelerate the 1800 MHz spectrum auction before the end of the state concession. But, when NBTC had different approach which does not conform with Dr. Somkiat’s solution, he concluded that NBTC broke the law. Dr. Somkiat blamed that NBTC violated the law since it extended the duration of the 1800 MHz concession by allowing the same operators to continue using the spectrum.

Dr. Somkiat’s presumption is questionable since he intended to use only some information to jump into his conclusion. One can compare Dr. Somkiat’s comment with the conclusion that a dog and a chair are the same thing since they both have four legs, which is untrue. It is because a dog is an animal whereas a chair is a furniture so they are not the same things. By drawing the same analysis, Dr. Somkiat seemed to lose his way and went to the wrong direction. If one considers the information from all perspectives, one will be able to see that Dr. Somkiat’s conclusion is incorrect and ignored several key information.

Let’s hear from several experts regarding this matter.

Kaewsun Atibhodhi, a legal expert and the chairman of the Working Group on public participation of the 1800 MHz spectrum allocation preparation, viewed that, “The NBTC Notification to prevent the stop of the 2G service relying on the 1800 MHz concession is different from the matter of reallocating such spectrum to the new operators. In addition, **enactment of such notification is not the extension of the 1800 MHz concession since the relationship of the parties to the state concession has already ended when the concession expired**. Instead, this legal measure is the way NBTC has attempted to remedy the consumers who still remained in the system at the time when the concession expired. One should be noted that the spectrum auction and the remedy of the subscribers left in the system are different matters.

**When the concession has not ended, the concession parties are protected by the transitional provisions of the Constitution. Therefore, NBTC could not technically or legally proceed to speed up the migration of 100,000 or millions of subscribers to other networks.**

The NBTC experts analyzed an issue of transfer of the subscribers from technical perspective and presented this information at the NBTC meeting. They confirmed that the migration cannot be conducted in a huge amount since there is technical difficulty which needs to depend on agreement of the subscribers.”

With respect to Dr. Somkiat’s accusation that NBTC could not conduct the 1800 MHz spectrum auction in time and did not speed up the auction before the end of the 1800 MHz concession, Col. Dr. Settapong Malisuwan, Vice-Chairman of NBTC has clear explanation.

“There is no problem that NBTC could not organize the 1800 MHz spectrum auction in time since the law grants discretion to NBTC to decide on when and how we should conduct the spectrum auction. Under the Constitution, NBTC has to conduct spectrum auction for the best interests of the Thai people. **If many factors are not ready, for instance, evidence indicates that there will be huge amount of subscribers left in the system, stimulation of the spectrum auction before the end of the concession will cause damages to those consumers.** And, if the auction hurts the people, how can we achieve our constitutional obligation, i.e., serving the best interests of the Thai people? I think Dr. Somkiat misunderstood when he thought that NBTC had to conduct the spectrum auction in a hurry so that there would be the transfer of the 2G subscribers to the new operators, which is untrue”.

**“From our analysis, instead, stimulating the 1800 MHz spectrum auction before expiration of the concession will injure the country.** There are several seasons supporting this analysis. Firstly, the number of 1800 MHz bidders would be less than that of the 3G bidders since some operators still hold large amount of spectrum in hand so that they may be disqualified as bidders under the present regulation. Secondly, although the 1800 MHz spectrum auction could have been conducted and have been able to identify the winners before the expiration of the 1800 MHz concession, the winners still cannot give the 4G service immediately because they have to proceed lots of work, for example, installing 4G network to replace the 2G network available at present. Thirdly, the 3G licensees have not yet completely installed the 3G network and infrastructure for providing 3G service on the 2100 GHz spectrum so the operators cannot use such equipments for the 4G technology if those operators are granted the 1800 MHz spectrum licenses. And, more importantly, mobile handsets of the 2G subscribers in the 1800 MHz network now cannot be compatible to either 3G or 4G technology. Consequently, although NBTC had followed the academics’ advice in speeding up the 1800 MHz spectrum auction before the concession ended, NBTC still could not have assisted the 2G subscribers left in the system to migrate to the new system. Therefore, Dr. Somkiat’s solution to expedite both the 1800 MHz auction and the transfer of the subscriber will put those consumers into lots of troubles.” Col. Dr. Settapong emphasized.

If the Notification of the interim measures to prevent the 1800 MHz concession operators to stop the 2G service had not been enacted, there would have been the “SIM cards blackout” situation forcing the 2G subscribers to move to the other concession operator providing 2G services whose term of concession is still available for a number of years. If the situation follows in such a way, it is most likely that the monopolized market of 2G service will be created and will affect free and fair competition. Therefore, it is very doubtful why TDRI has proposed the solution which is likely to lead to the 2G service monopoly.

With respect to legal issue, Dr. Songkhla Vijaykadga, Former Deputy Secretary-General of the Council of State, opined that: “The Notification of the interim measures to prevent SIM cards blackout situation is the requirement of obligation to the service providers of the 1800 MHz concession not to stop giving their service. **The Notification does not give rights to entrepreneurs to utilize the spectrum for profits because it is not involved with the allocation of the new spectrum and the operators must campaign to persuade their customers to leave the service.** Additionally, it does not violate the 2010 Frequency Allocation Act (the 2010 NBTC Act) since the 2010 NBTC Act and the Master Plans require all service providers to return the spectrum when the concession ends so that NBTC can reallocate the spectrum. But during the transition, the law does not prescribe how to remedy problems of subscribers remained in the system. However, Section 47 of the Constitution clearly states that spectrum allocation and telecom supervision under the NBTC must put the best interests of the people as the first priority, Therefore, although the concern on free and fair competition is important, it cannot be put as the first priority and NBTC cannot ignore the concern on the best interests of the people. I wonder why TDRI suggested the alternative which does not give the first priority to the best interests of the people. Rather, TDRI’s suggestion is likely to make NBTC act improperly against the intention of the Constitution.”

If NBTC had followed TDRI’s advice and decided to accelerate the spectrum auction before the end of the concession without enacting the Notification and without conducting thorough study resulting the failure of the auction and causing many subscribers to experience the SIM cards blackout, will TDRI under the leadership of Dr. Somkiat claim responsibility? specifically, can over 17 million people who suffer from the SIM cards blackout sue TDRI for compensation?

Dr. Somkiat blamed NBTC by pointing out that NBTC had 420 days to expedite the spectrum auction but it failed to do so. Then, he jumped to the conclusion that NBTC was dishonest and ignored the legal obligation. It is like negatively looking and focusing the facts from only one angle. But, if all relevant factors are disclosed, one can see that Dr. Somkiat’s analysis and conclusion is untrue.

For the explanation of the issue above, the NBTC Secretary-General, Mr. Takorn Tantasith observed that:

“As soon as NBTC took the office, they have spent their time worthily by working actively and efficiently so that they could follow all the processes required by the law such as the official announcement of all Master Plans setting the direction of the national telecommunication and the successful acceleration of the 2.1 GHz spectrum auction for 3G services to solve problems of spectrum shortage and to increase the number of 3G service operators. Particularly, NBTC could overcome many obstacles caused by some groups of people who wanted to desist the 3G auction. The 3G licenses were granted successfully and the outcome has been recognized by foreign and international institutions especially the International Telecommunication Union (ITU) which conducted in-depth study and analysis to evaluate NBTC’s 3G auction. The evaluation study of ITU clearly confirms that NBTC operation was in accordance with international standards and practices. At present, the three licensees have been busy in installing their network according to their roll-out requirements as well as opening their 3G services. The performance is quite satisfactory but not 100% completed. It needs to take time.”

One cannot say that the delay of the 1800 MHz spectrum auction for 4G services is caused by inefficient work of NBTC. It is like when you are constructing a building, you cannot build the fourth floor before building the third floor. If you do not complete construction of the third floor, you cannot construct the fourth floor. **Similarly, if the 3G auction is not achieved, it is very difficult to conduct the 4G auction. Thus, if the 3G auction gets delayed, the 4G auction will also get delayed.** The problem then does not come from the delay of NBTC. Instead, it resulted from the failure in conducting 3G auction in 2010.

After the success of the 3G auction ending up in granting the 3G licenses, **NBTC needs to ensure that the 3G system is stable before conducting the 4G auction. If the foundation is not strong enough, the 1800 MHz spectrum auction to lead to the 4G services will fail.** The problems NBTC seriously concerned was the number of more than 17 million subscribers remained in the system under the 1800 MHz concession. One can compare these subscribers like tenants living before on the second floor. If the third floor and the fourth floor are not completed, how can we push these tenants to leave the second floor? Therefore, NBTC must give them more time and facilitate them with necessary factors to receive their migration effectively.

In addition, the commentator who criticized the NBTC work raised the issue that there are number of legal academics who disagreed with the announcement of the NBTC Notification to prevent the SIM cards blackout. This criticism showed that Dr. Somkiat intended to pick up only one aspect without considering other aspects thoroughly. To get better understanding on this matter, let’s hear from NBTC Commissioner Dr. Suthiphon Thaveechaiyagarn.

“From the NBTC perspective, as the role of regulators who have to be responsible for the decision, we are obliged by the Constitution and the laws to allocate spectrum for the public interest and have to perform our duties by giving the first priority to the best interests of the people. **Although some legal academics disagree with us in issuing the Notification to prevent the SIM cards blackout, there are more lawyers and academics who strongly agree with our approach,** for instance, Kaewsun Atibhodhi, Dr. Songkhla Vijaykadga, Professor Dr. Sakda Thanitkul, Professor Dr. Vanchai Vatanasapt, Professor Dr. Tawil Peungma, Rujira Bunnag, Associate Professor Surawuth Kitkusol etc. Others who agreed with NBTC included 2,728 people or 95.80 % of the participants in the NBTC’s public hearing on the draft of this Notification. They all agreed that NBTC has legal authority to issue the Notification. Thus, it does not mean that the persons who have different views from some legal academics who oppose the Notification need to be dishonest, perform duty illegally or omit the legal duty.”

“Legal opinions can give rise to endless criticisms depending on which reasons you believe. **If the law can be interpreted in different ways and each way is risky, as a role of NBTC, we must apply and interpret the law by giving the first priority to the best interests of the people.** We should neither apply and interpret the law by focusing only at the limitation of the law nor apply the law too strictly in accordance with the legal texts causing the rights of the people to be restricted.” Dr. Suthiphon emphasized.

The examples of the major issues above which cover all 10 questions raised by Dr. Somkiat indicate that there is some truthful information that is still missing. If distorted or one-sided information is presented to the public, it will inevitably turn right into wrong.

**A problem occurred in the Thai society nowadays is that people still cannot distinguish between “lawful discretion” and “lawful but dissatisfied discretion.” Consequently, when one receives any information, one will need to consider it with caution to prevent any misunderstanding resulting from some group of people who are not satisfied with the lawful discretion of any public organization so that they distort the information by turning the lawful discretion into the unlawful discretion like the situation occurred with NBTC again and again. And if we allow this thing to happen without stopping it, it will harm public organizations that work with integrity and honestly.**

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