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**GSMA RESPONSE TO DRAFT REGULATORY AND LICENSING GUIDELINES FOR
ISSUING RENEWAL LICENSES TO EXISTING MOBILE LICENSEES FOR
ESTABLISHING, OPERATING AND MAINTAINING GSM/CDMA CELLULAR MOBILE
TELECOMMUNICATION SERVICES IN BANGLADESH**

The GSM Association (GSMA)¹ would like to thank you for publishing the '*Draft Regulatory and Licensing Guidelines for Issuing Renewal Licenses to Existing Mobile Licensees for Establishing, Operating and Maintaining GSM/CDMA Cellular Mobile Telecommunication Services in Bangladesh*' (the *Licensing Renewal Draft*) and inviting interested parties to respond to the draft.

The GSMA believes the mobile sector will be integral in providing the Internet access required to accomplish the political goals of *Government Vision 2021*² and *Digital Bangladesh*³. To meet these goals it will be essential, not only to maintain the current mobile infrastructure but also to expand this through technology upgrades, by either HSPA and / or LTE, to deliver mobile broadband services. The GSMA are deeply concerned the *Licensing Renewal Draft* will not deliver an attractive environment for existing investors to continue to expand their businesses in Bangladesh, and we are concerned about the effect the policies outlined will have on the general investment climate.

GSMA understands that the proposed model for sector specific taxes will result in the Bangladesh Government collecting USD 1.577 billion from three GSM operators and USD 85 million from the CDMA operator. Sector specific taxes come in addition to paying various non-sector specific taxes and duties. The *Licensing Renewal Draft* gives an indication of increased sector specific taxes should refarming be implemented, and should spectrum for 3G being released in the future. It is

¹ The GSMA represents the interests of the worldwide mobile communications industry. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organizations. The GSMA represents over 800 operator members deploying GSM/GPRS/EDGE, UMTS/HSPA and LTE based networks. Please visit: <http://www.gsmworld.com/>

² <http://boi.gov.bd/about-bangladesh/government-and-policies/government-vision-2021>

³ <http://boi.gov.bd/about-bangladesh/government-and-policies/digital-bangladesh-overview>



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questionable as to whether such a level of transfer of money to government is sustainable or whether mobile operators will turn their focus to other markets, competing with Bangladesh for investments in mobile infrastructure.

The GSMA strongly recommends Bangladesh to reassess its expectations of revenue generation from these license renewals. We believe Bangladesh should switch from a short term perspective of revenue maximization to a medium-long term perspective of making sure the mobile bands are used in the most economic efficient way to maximize society's benefits stemming from use of the valuable resources.

Globally we have seen the first commercial launches of UMTS/HSPA and LTE in the 900 MHz and 1800 MHz bands, with many ongoing tests and trials. GSMA strongly recommends that the Bangladeshi licenses regulating the use of the 900 MHz and 1800 MHz bands for the upcoming 15 years should be designed based on a more technology neutral approach. This means allowing deployment of technologies that can technically co-exist and are backwards compatible with GSM. Technologies such as e.g. UMTS/HSPA and LTE will meet these requirements. Furthermore, for promoting developments of innovative services such as electronic Government services, mobile banking, electronic health care services and electronic education services, GSMA strongly recommends not imposing restrictions on what services can be developed and provided by mobile operators as proposed in the *Licensing Renewal Draft*.



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1. Introduction and background

According to Bangladesh Board of Investment, the Prime Minister's Office, infrastructure development, including telecommunication infrastructure developments, constitute a part of the political goals under the *Government Vision 2021*⁴. We understand *Digital Bangladesh*⁵ is defined as a political goal under this umbrella strategy.

The GSMA believe making *Digital Bangladesh* happen depends upon increasing the number of Internet users in Bangladesh. According to Internet World Stats⁶ the world average internet penetration is 26.6%, the Asia average penetration is 20.1% and the Bangladesh average is 0.6%. Bangladesh has just over 1.5 million fixed line connections, and few households/persons have access to computers. With more than 50 million mobile subscribers, accessing the Internet using mobile is likely to be the solution to increase consumer and business access to the Internet in the short to medium timeframe. Consequently, the GSMA believes that achieving the ambitious political goals set out in *Digital Bangladesh* and *Government Vision 2021* depends upon successfully developing the mobile sector in Bangladesh.

The GSMA believes developing the mobile sector, to provide the Internet access required for accomplishing the political goals, means not only maintaining the current mobile infrastructure but also expanding this capability, through technology upgrades (e.g. HSPA and/or LTE), to deliver mobile broadband services. For this to happen, we believe Bangladesh requires a regulatory framework and policies that promote private investments in mobile infrastructure. The GSMA are deeply concerned about the *Licensing Renewal Draft* not delivering the most attractive environment for existing investors to continue expanding their businesses in Bangladesh, and we are concerned about the effect the policies expressed will have on the general investment climate.

The 2009 report *Towards A Connected World, Socio-Economic Impact of Internet in Emerging Economies*⁷, written by Boston Consulting Group (BCG)⁸ and commissioned by Telenor Group modeled the economic benefits and the social benefits of increased internet penetration in three different emerging markets. One of the countries analyzed was Bangladesh. The analysis presented in the BCG report indicates a massive positive economic and social impact of Bangladesh increasing its Internet penetration. With very low existing connections to the Internet, with almost no existing fixed network availability, coupled with a low number of households/persons with computers accessing the Internet, using mobile appears to be the most realistic scenario for making Internet connections grow in Bangladesh. But the BCG report highlighted that the positive impacts on the Bangladeshi society cannot be achieved unless the appropriate regulatory framework and policies are developed and implemented by Bangladesh.

Ensuring the regulatory framework in Bangladesh is in-line with best international practice for fostering growth and attracting private investment, stimulating subscriber growth and facilitating technological upgrades. Development of mobile infrastructure is vitally important for achieving goals such as *Government Vision 2021* and *Digital Bangladesh*.

⁴ <http://boi.gov.bd/about-bangladesh/government-and-policies/government-vision-2021>

⁵ <http://boi.gov.bd/about-bangladesh/government-and-policies/digital-bangladesh-overview>

⁶ <http://www.internetworldstats.com/stats3.htm>

⁷ http://www.telenor.com/en/resources/images/Towards%20a%20Connected%20World_tcm28-50426.pdf

⁸ <http://www.bcg.com/>



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The report *Licensing for Growth, Reforming the licensing of mobile operators in developing countries*⁹ (*Licensing for Growth* report) written by Case Associates¹⁰, commissioned by the GSMA, describes an approach to licensing facilitating technology upgrades and developments of new services beneficial for society and its consumers in emerging markets and which is likely to attract investments.

Even during the economic crisis and the recession, we have seen significant investment and long term commitments in the mobile sector. But the competition between countries on attracting investment is fierce, and we understand that regulatory risk is one of the factors significant factors assessed by investors when deciding upon where to allocate their resources.

The *Licensing for Growth* report makes strong recommendations on a practical approach to choosing reforms of the regulatory frameworks and policy frameworks for emerging markets. The GSMA believes the *Licensing for Growth* report reflects what is considered close to best international practice standards.

2. License fees and taxation regime

In addition to the transfer of USD 1.577 billion from three mobile operators to the Bangladeshi government for three GSM licenses, the mobile operators pay non-sector specific taxes and duties. The *Licensing Renewal Draft* also seems to signal an expectation of increased sector specific taxes should reforming be implemented, and should spectrum for 3G be released in the future. The GSMA believe there may be unintended consequences of attempting to levy such sector specific taxes, in addition to non-sector specific taxes, and whether this level of sector specific taxation and duties is sustainable for mobile operators and their investors.

The systems of transferring money from mobile operators to governments are designed differently in different countries. Some countries choose to design sector specific taxes¹¹ to achieve an economic efficient result while other countries sees this as an opportunity to maximize short term government revenue.

The report *The Impact of Taxation on the Development of the Mobile Broadband Sector*¹² written by Telecom Advisory Services LLC¹³ and commissioned by the GSMA, presents the results of five case studies on the impact taxation have on developments of mobile broadband services in four heavy taxation regimes and one country exhibiting a benign approach. Bangladesh is among the four countries with a heavy taxation regime studied. The report presents a clear conclusion on the Bangladeshi taxation approach has a negative impact on the diffusion of wireless broadband developments and this have a negative effect on the economic developments and welfare improvements in Bangladesh.

⁹ http://gsmworld.com/documents/Licensing_FINAL.pdf?PUPOL=LFINAL

¹⁰ <http://www.casecon.com/>

¹¹ We can generally characterize all types of transfer of money from mobile operators to government which is not general taxation as sector specific taxation. Sector specific taxation consequently include all license fees, all spectrum fees and charges, all revenue sharing arrangements and all contributions to social funds, universal service funds etc.

¹² <http://www.gsmamobilebroadband.com/upload/resources/files/TAS%20Report.pdf>

¹³ <http://www.teleadv.com/>



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The proposed *Licensing Renewal Draft* would add to the current existing heavy taxation regime in Bangladesh and by this further increase the risk of the negative effects on economic development losing out on and further delaying investments in mobile infrastructure.

The *Licensing for Growth* report's recommendation on license fees:

- Licensing for Growth report recommendation 8: *Licence fees should generally be limited to recovering the administrative costs of the licensing process and associated regulatory costs (including spectrum management costs). However, where there is excess demand for spectrum, then an auction or administrative assignment of spectrum with a charge set in line with the Marginal Forward Looking Opportunity Cost (MFLOC) of spectrum should be considered. Indexation or benchmarking may prove a practical means to estimate MFLOC in particular circumstances. The MFLOC should be estimated conservatively to reduce the risk that valuable spectrum will be left idle. The relative merits of upfront licence fees versus annual charges should be considered with regard to the particular market circumstances.*

The GSMA understands that the model for sector specific taxes laid down in the *Licensing Renewal Draft* would result in Bangladesh proposing to collect USD 1.577 billion from three GSM operators¹⁴ and USD 85 million from the CDMA operator.

- This must be far beyond license fees recovering administrative costs of the licensing process and associated regulatory costs.
- The *Licensing Renewal Draft* does not outline background for choosing the methodology used for administratively setting the fees, charges and designing the revenue sharing arrangements. The GSMA have no further information on methodology used but it seems unlikely that a Marginal Forward Looking Opportunity Cost based methodology have been the chosen approach.

The underlying national asset that the Bangladeshi government control, and which makes operator licenses and spectrum licenses valuable, is the radio frequencies: the 900 MHz and the 1800 MHz bands. A significant part of the value of those two frequency bands stems from the bands being internationally technically harmonized for economies in scale in network equipment and handset production and the fact that those two frequency bands have been core bands for deploying the greatest second generation mobile technology GSM. The international harmonization and economies of scale effects meant that Bangladesh benefit from lower priced handsets and network equipment.

The main value to society stemming from use of the valuable spectrum resources is the social and economic impact mobile services have on consumers being connected and as an input factor in the production in other sectors of the Bangladeshi economy. The positive economic impact and the positive social impact of increased mobile penetration and increased connections to the Internet represent a significant potential contribution to the Bangladeshi society, delivered by the mobile industry. To realize these benefits it is vitally important that government spectrum policy ensures that the spectrum resources are used and delivering as much mobile service as commercially and

¹⁴ Grameenphone to transfer approximately USD 754 millions in sector specific taxes to Bangladesh government for the GSM license. Banglalink to transfer approximately USD 412 million in sector specific taxes to Bangladesh government for the GSM license. Robi Axiata Limited to transfer approximately USD 411 million in sector specific taxes to Bangladesh government for the GSM license.



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technically possible. Excessive pricing of licenses is unlikely to facilitate government objectives and achieve the optimum return on the government's spectrum assets.

The *Licensing Renewal Draft* proposes a model of spectrum fees and charges that punishes mobile operators for extensive use of their assigned mobile spectrum. The utilization factor proposed is at the serious risk of incentivizing mobile operators to cut back on their use of spectrum, deploying less base stations and to possibly consider giving back spectrum to the BTRC to lower fees and charges. Consequently the utilization factor proposed is at risk of leading to mobile operators to choose not to reach marginal customers, because the cost of doing so, after calculating the cost of spectrum fees and charges proposed, means reaching out to add marginal customers is not cost effective. The proposed policies would result in reducing the incentive for mobile operators to contribute to increase the Bangladeshi mobile penetration with a corresponding loss of economic and social benefits to Bangladesh.

Raising the price of a license, above the underlying value of the rights given to the buyer, is likely to lead to licenses not being sold, spectrum left idle and fewer consumers being connected. Regulatory uncertainty and low average income in any market are factors that reducing value of a license. We believe these should be taken into consideration when defining government's expectations regarding the potential for collecting revenue from sector specific taxation in Bangladesh.

3. Refarming

The *Licensing for Growth* report's recommendation on refarming:

- Licensing for Growth report recommendation 11: *Governments should permit spectrum currently used for 2G services to be used for 3G technologies with any implementation and competition issues being resolved as a priority so as to realise the consumer benefits from the delivery of 3G services at a lower frequency.*

The *Licensing for Growth* report was written in 2007. Almost all assessments and recommendations are still valid and represent a best international practice approach. But the approaches to refarming of the 900 MHz and 1800 MHz bands have been developed further since 2007 based on developments in technology availability and experience from countries who have implemented refarming solutions in the bands.

Since 2007 we have seen commercial launches of UMTS/HSPA in the 900 MHz band and of LTE in the 1800 MHz band.

And we have seen governments and regulators actually lifting technology restrictions from GSM only and allowing deployment of mobile technologies that can co-exist with GSM such as UMTS/HSPA and LTE. Notably the European Union have abolished the regulatory instruments restricting technology choices and paved the way for EU Member States modifying licenses to allow GSM, UMTS/HSPA and LTE deployments in the 900 MHz and 1800 MHz bands. Some of the Latin American countries have never had the strict GSM only requirements in their core "2G bands" and in those markets mobile operators have been able to move forward with plans on technology upgrade without seeking government approvals.

The GSMA strongly recommends Bangladesh promote mobile operators, and the wider mobile eco system, move forward in planning for a commercially sustainable technology upgrade when issuing



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900 MHz and 1800 MHz licenses for the next 15 years licensing period through the adoption of a more technology neutral license structure. Technology upgrades to HSPA and LTE will deliver mobile broadband services, connecting the Bangladeshi consumer and businesses to the Internet and create a tool for achieving the goals of *Government Vision 2021* and *Digital Bangladesh*.

4. Reviewing non-price terms and conditions

The *Licensing for Growth* report recommends reviewing non-price terms and conditions:

- Licensing for Growth report recommendation 9: *Governments should introduce licence terms for mobile operators that are in line with the expected payback period for the investments.*
- Licensing for Growth report recommendation 10: *As an alternative to licence obligations, Governments should determine whether universal access and competition objectives can be better achieved through policies that help to change the underlying economics of extending access or entering the market or through alternative targeted regulation.*

The GSMA observe that 'best international practice' basically is the approach of having a general regulatory framework laid down in Acts and Regulations to ensure transparency, predictability and stability of the framework. And we observe that it is considered 'best international practice' to regulate as much as possible using the general regulatory framework approach and limit the use of requirements of individual licenses. One example of a framework developed, to meet those 'international best practice standards', is the European Union's framework.

Under this 'best practice approach' licenses are typically used for either defining spectrum usage rights (spectrum licenses) or for awarding a specific operator access to the market (operation licenses).

- Abolish requirements of operation licenses to promote market entry as e.g. have been implemented in the general authorization regimes of the European Union.
- Issuing one operation license per mobile operator, which is technology neutral in approach and does not restrict which mobile services can be provided, might be the alternative to implementing the general authorization regime.
- Its considered 'best international practice' on spectrum licenses to focus on defining the spectral dimension (frequency), the geographic dimension and the time dimension (duration) of licenses and only then add technical definitions of the usage right. It might make sense to issue one spectrum license per band for a mobile operator.

The *Licensing Renewal Draft* also suggests that most major sector specific regulatory framework and policy issue which may have impact of the business of a mobile operator are included. For example, the *Licensing Renewal Draft* mentions technology neutral approaches to licensing, spectrum trading, infrastructure and facility sharing, Next Generation Network (NGN), unified licensing, Mobile Virtual Network Operator (MVNO), market structure issues and market power and significant market power regime and social obligation fund. Assessed against a 'best practice standard' it seems like the issues mentioned above and included in the *Licensing Renewal Draft* would be better addressed in the context of the general regulatory framework laid down in Acts and Regulations.



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To address potential adjustments and changes to or expansion of the general regulatory framework through the legally based and open procedures which include public consultations before amending Acts and Regulations are more likely to create the transparency, predictability and the stability investors are looking for when defining regulatory risk as acceptable or even low. Reference is made to the recommendations in the *Licensing for Growth* report as referred to below.

5. Reforming the overall licensing framework

The *Licensing for Growth* report recommendations on reforming the overall licensing framework:

- Licensing for Growth report recommendation 1: *Governments should ensure that the overall licensing framework offers stability and transparency to reduce regulatory risk and promote investment.*
- Licensing for Growth report recommendation 2: *Licensing authorities should ensure that operating licenses do not unnecessarily restrict an operator's choice of services and technologies. Greater use of authorisations and class licences should be considered.*
- Licensing for Growth report recommendation 3: *Governments should separate operating licences from licences for the use of spectrum, to assist changes in business activities and spectrum holdings and to support evolution of technologies and the different needs of radio spectrum management and the other aspects of the licence.*
- Licensing for Growth report recommendation 4: *Governments should consider the need for a spectrum audit to set out in detail the current usage and current rights to use spectrum, identifying which spectrum is currently idle.*
- Licensing for Growth report recommendation 5: *Governments should develop a plan setting out when they will release particular bands of spectrum, with the use or uses of particular bands being determined to maximise overall benefits from the use of the spectrum, including taking into account the benefits of international harmonisation.*

The GSMA believes the potential for improving the Bangladeshi regulatory framework in general and the Bangladeshi framework for licensing exists. We believe a consistent and committed approach to developing the Bangladeshi framework should focus on developing:

- A general framework laid down in Acts and Regulations, and
- A set of licensing requirements which focus on defining predictable and fair spectrum usage rights.

Moving in this direction, Bangladesh will significantly contribute to create the stable and risk reducing environment many investors are looking for when they decide on spending their money in Bangladesh or in other countries competing with Bangladesh for investments in mobile infrastructure.

In December 2009 BTRC issues a public consultation on Bangladesh National Frequency Plan (NFAP). Plans for releasing the 2100 MHz band for deployment of 3G technologies have been announced several times. But it seems like developing and committing to a plan for release of the



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internationally harmonized mobile bands beyond the 900 MHz and 1800 MHz bands have been repeatedly delayed and have been difficult to accomplish in Bangladesh.

GSMA recommends Bangladesh to move forward on developing and implementing a spectrum release plan including all the internationally harmonized mobile bands; the 700 MHz band, the 900 MHz band, the 1800 MHz band, the 2100 MHz band and the 2600 MHz band. And we recommend that this work is seen as independent from sorting out the critically important issue of renewing the mobile operator's licenses in the 900 MHz and 1800 MHz bands.

GSMA would be delighted to provide further insight and contribute to adjusting the proposal on license renewals. We would also be delighted to provide further insights and share the information and experience on related topics mentioned in this response to the consultation. Please do not hesitate to contact us should you have questions or any other enquiries.

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