

Telecommunications - Taiwan

NCC Bans WiMAX Business Spin-Off

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Following on from the unanimous rejection of Chunghwa Telecom's proposal to acquire shares in a new worldwide interoperability for microwave access (WiMAX) operator by the National Communications Commission (NCC) (for further details please see "[NCC Rejects Chunghwa Telecom's Acquisition of New WiMAX Operator](#)"), on July 3 2008 the NCC rejected an application by First International Telecom (FITEL), one of the six WiMAX licence holders and the only personal handy-phone system operator in Taiwan, to spin off its WiMAX business from its personal handy-phone system operation to its wholly owned subsidiary. The proposed spin-off was intended to inject investment from Intel, the WiMAX technology promoter.

FITEL is the only personal handy-phone system service operator operating in the 1900 megahertz band in Taiwan. It has been facing fierce competition from Global System for Mobile (GSM) operators and therefore obtained a WiMAX licence by submitting the highest bid (12.89% of its gross revenue as royalties). However, FITEL has failed to obtain funding from foreign investors and thus improve its financial status, as personal handy-phone systems are not seen as a growing business. Potential investors are being wooed with new WiMAX business. As the transfer of a WiMAX operation licence is prohibited under the Telecommunications Act, FITEL followed some previous experience of mergers and acquisitions among GSM operators by planning to spin off its WiMAX business to a new wholly-owned subsidiary, in which it would later sell up to 60% of the shares to foreign investors. However, the NCC did not accept this approach. In its decision it made it clear that the following cannot be leased, loaned, transferred or assigned to any third party unless specifically provided for by the law:

- establishment approval;
- installation permits;
- radio station licences;
- charters; and
- assigned radio frequencies (according to Article 48 of the Regulations on Wireless Broadband Access Services).

In a legal sense and according to the NCC, a wholly owned subsidiary constitutes a third party to its parent company.

In addition, the due process of law was a crucial consideration in the NCC's decision. Typically, WiMAX licences have been granted through a combined process of a beauty contest and open bidding. The NCC regards the commitments made by the winning bidders as irrevocable and non-transferable. At present, a change in licence holder could involve a replay of the whole review and bidding process to ensure fairness for all possible bidders. A wholly owned subsidiary taking licensed business from its parent company constitutes a change of the licence status.

According to an announcement by FITEL Chief Executive Officer CY Wu, the company does not intend to give up on the spin-off plan even though the NCC has made clear that it has no plans to change existing regulations in order to encourage foreign investment in the WiMAX business, which needs a new capital injection by early 2009.

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