

Auction of Radio Spectrum
for the Provision of Broadband Wireless Access Services
- Second Batch of Questions and Answers

The Telecommunications Authority (the “Authority”) has received further questions in relation to the Information Memorandum published on 3 October 2008. The Authority now under Section F.2.1 of the Information Memorandum sets out his responses to the questions.

Terms not otherwise defined herein shall have the same meaning ascribed thereto in the Notice issued by the Authority on 3 October 2008 (the “Notice”), or as the case may be, in Appendix D “Glossary of Terms” of the Information Memorandum.

NETWORK ROLLOUT AND PERFORMANCE BOND (NP)

NP.10 Regarding paragraph C.4 of the Information Memorandum:

- (a) Does the mobile service coverage requirement to “an area where at least 50% of the population of Hong Kong live” include indoor coverage?**
- (b) If a Successful Bidder plans to offer a combination of both fixed line and mobile retail services, what network and service rollout requirements will be imposed?**
- (c) If the Bidder only intends to offer wholesale services (rather than a retail service directly to end-customers), is that consistent with the Licence requirement to provide a public telecommunications network service and if so, what rollout requirements will be applied?**
- (d) What are the network and service rollout requirements for “nomadic” and “converged” services?**

Ans. Regarding (a), for Licensees providing mobile service, the network and service rollout requirement will only cover outdoor locations.

Regarding (b), if the Licensee provides both fixed and mobile services pursuant to Schedule 1 of its Licence, both of the criteria under the network and service rollout requirement mentioned in paragraph C.4.1

of the Information Memorandum must be met within five years from the issue of the Licence.

Regarding (c), the Licence conditions do not differentiate between the provision of wholesale service and retail service. A Licensee is allowed to provide wholesale service and/or retail service using the Frequency Bands. The same network and service rollout requirement as specified in Schedule 1 of the Licence will apply.

Regarding (d), the description in the Information Memorandum on nomadic service and converged service is intended only to provide a generic account of the type of services that the Licensees of the Frequency Bands can provide. In verifying the network and service rollout requirement, the Authority will follow the relevant provisions of the Ordinance in the definition of fixed and mobile services. According to the Ordinance, “fixed service” refers to the communications between fixed locations, whereas “mobile service” refers to the communications between moving locations or between fixed locations and moving locations.

NP.11 Paragraph C.4.1 (a) of the Information Memorandum states that “where the scope of the service authorised under the Licence includes a fixed service, coverage of the network and the service shall be provided within 5 years from the issue of the Licence and maintained thereafter, to a minimum of 200 commercial and/or residential buildings in Hong Kong...”. To how many households or companies within the building must service be provided before OFTA will regard the building as being covered by the Licensee’s network or served by the Licensee?

Ans. In respect of the network and service rollout requirement for Licensees providing fixed services, the check for compliance will focus on verifying whether the service is readily available to any customers residing within a building rather than counting the actual number of occupants being served by the Licensee. In checking the compliance of the milestone, OFTA will inspect whether the relevant network infrastructure and equipment have been installed in a building and are

in normal operating state, and whether the service can be readily provided to any requesting customers within that building. Special Condition 10.2 of the Unified Carrier Licence is relevant in this aspect.

AUCTION ARRANGEMENTS AND LOGISTICS (AL)

AL.13 Regarding paragraphs D.5 and D.8 of the Information Memorandum, if any of the Frequency Bands are left unassigned following the Auction:

- (a) What would be the earliest date that OFTA would re-release the spectrum?**
- (b) What will be the process of re-releasing the spectrum?**
- (c) What will be the minimum SUF to be paid for this spectrum?**
- (d) When this spectrum is made available in future, can OFTA confirm that operators who have participated in the Auction will be given the opportunity to acquire this unassigned spectrum on a non-discriminatory basis (absent a competition law concern) and will not be limited by the 30 MHz restriction imposed under this Auction?**
- (e) Would there be any limitations imposed on the amount of additional BWA spectrum that can be subsequently acquired by an entity which has been formed by the merger of two Successful Bidders after the Auction?**

Ans. Regarding (a), if there are any Frequency Bands left unassigned after the Auction, the Authority will review the circumstances to assess the way forward, including whether and if so, when to hold another auction for the unassigned spectrum. It is premature at this stage to specify the earliest date that the Authority would re-release any unsold spectrum for assignment.

Regarding (b), pursuant to the Spectrum Policy Framework, the Authority will follow a market-based approach in re-releasing the unsold spectrum for assignment if he considers that there are likely to be competing demands for the relevant Frequency Bands.

Regarding (c), if it is considered appropriate to hold another auction to assign the unsold spectrum, the minimum amount of SUF will be reviewed and announced by the Secretary for Commerce and Economic Development at a time near the auction.

Regarding (d), the issue as to whether Spectrum Cap restriction applicable in this Auction will be relaxed in future auctions is subject to review by the Authority in light of the circumstances.

Regarding (e), the Authority wishes to point out that the Spectrum Cap is the maximum amount of spectrum among the Frequency Bands that may be assigned to a Bidder or a group of Connected Bidders in the Auction. The Spectrum Cap applicable in the Auction does not *per se* restrict the Licensee from acquiring additional BWA spectrum by merger and acquisition (M&A). However, Licensees must observe the competition conduct rules provided for in the Ordinance (namely sections 7K, 7L, 7N and 7P). In terms of M&A activities, parties should note that the provision under section 7P enables the Authority to intervene in an M&A transaction involving a carrier licensee. The competition assessment conducted by the Authority will take into account all relevant circumstances, including the holding of spectrum, in deciding whether intervention is required on the basis that the M&A transaction has, or is likely to have, the effect of substantially lessening competition in a telecommunications market. When planning merger / acquisition, parties should conduct their own competition assessment of the proposed transaction.

AL.14 Concerning paragraphs D.5 of the Information Memorandum, assuming that Party X holds directly 100% of the issued share capital of Bidder A and also holds indirectly about 24% of the issued share capital of Bidder B, will Bidder A and Bidder B be treated as Connected Bidders and hence only one would be allowed to participate in the Auction?

Ans. Under the auction rules, two Bidders are Connected Bidders where, among others, a third party holds a material interest in both Bidders. A material interest includes, inter alia, shareholding of more than 25%.

Based on your assumptions, Bidder A and Bidder B are associated by 24% shareholding by Party X. Since 24% is lower than the threshold of 25%, Bidder A and Bidder B are not Connected Bidders. Both of them may participate in the Auction.

AL.15 Regarding paragraph D.5 of the Information Memorandum, how and why has the Spectrum Cap of 30 MHz been set?

Ans. After public consultation, the Authority decided that a Spectrum Cap of 30 MHz should be set in order to promote competition and to enable sufficient competition in the provision of BWA services with territory-wide coverage. For details, please refer to paragraphs 20 to 33 of the TA Statement on BWA, which can be downloaded from <http://www.ofta.gov.hk/en/tas/others/ta20071203.pdf>

AL.16 According to paragraph D.5.13 of the Information Memorandum, the Authority will publish a Qualified Bidder Notice to announce the identities of all the Qualified Bidders. Will the Notice also include information showing the number of Eligibility Points acquired by each of the Qualified Bidders?

Ans. No. The Qualified Bidder Notice will only state the identities of all the Qualified Bidders. The Authority will not announce the amount of Deposit and the corresponding number of Eligibility Points attributed to each Qualified Bidder in the Qualified Bidder Notice. Each Qualified Bidder will be separately informed of the number of Eligibility Points attributed to it.

AL.17 The Authority will notify each Bidder of the list of information shown under paragraph D.6.17 of the Information Memorandum before the start of each Round. What information will be provided to the Bidder in respect of Frequency Bands in which the Bidder has not yet placed a Valid Bid?

Ans. Before the start of each Round, the Authority will notify each Bidder of the list of information shown under Paragraph D.6.17 of the Information Memorandum. In respect of each Frequency Band, the number of bids received in the immediately preceding Round, the amount of the Standing Highest Bid (if any) and the Round Price applicable for the present Round will be provided to all Bidders. Such information will be provided to each bidder irrespective of whether it has or has not submitted a bid for the Frequency Band in the previous Round(s). (See also our answer for question AL.4). Each individual Bidder can also review the results of each previous Round and its own bidding history.

AL.18 Paragraph D.6.42 of the Information Memorandum states that “Where the number of EPs attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is equal to the number of EPs attributed to the Bidder in the current Round, the Activity Level of the Bidder will be equal to the number of EPs attributed to it even if it submits no further Valid Bids. Waiver will not be applicable.” Please explain what this means by way of example.

Ans. Referring to the Auction Worked Examples in Appendix C of the Information Memorandum, Bidder M had 6 EPs at the beginning of Round 4 and it did not submit Valid Bid in the Round. The Activity Level of Bidder M in Round 4 was counted as 6 EPs as it held a Standing Highest Bid for D1 (6 EPs) at the end of Round 3. Similarly, Bidder Q had 3 EPs at the beginning of Round 4 and it also did not submit Valid Bid in the Round. The Activity Level of Bidder Q in Round 4 was counted as 3 EPs as it held Standing Highest Bids for D4 (2 EPs) and D5 (1 EP) at the end of Round 3.

Pursuant to paragraphs 4.10.1(b) and 4.10.2(b) of the Notice, Waiver is not applicable to Bidder M and Bidder Q in Round 4 since the number of EPs attributed to all Standing Highest Bids of both Bidders at the end of Round 3 equals to the total number of EPs attributed to them in Round 4.

AL.19 Regarding paragraph D.6.43 of the Information Memorandum, is a Bidder permitted to submit a Waiver in respect of specific Frequency Bands within a round whilst still placing bids for the other Frequency Bands within the same round?

Ans. No. In any Round other than the first Round, a Bidder is permitted to actively submit a Waiver or may be deemed to submit a Waiver if it does not take any action in that Round. However, a Bidder is NOT permitted to submit a Waiver along with placing Bids for some Frequency Bands in the same Round.

AL.20 Paragraph D.6.46 of the Information Memorandum explains that, the Bidding Stage ends when there is a Round in which no Valid Bids, no Withdrawals and no Waivers are submitted by any of the Bidders. Assuming there are no Valid Bids, no Withdrawals and no Waivers submitted, will the Bidding Stage continue if the Bidders take no action and are deemed to have submitted a Waiver?

Ans. The Bidding Stage will end when there is a Round in which no Valid Bids, no Withdrawals and no Waivers are submitted by any of the Bidders. Waivers include those deemed to be submitted by the Bidders if they take no action.

For the avoidance of doubt, Waiver is not applicable to a Bidder if the number of EPs attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round equals to the total number of EPs attributed to it in the current Round. Please refer to our answer to AL.18 above for details.

AL.21 Paragraph 4.10.1 of the Notice states that:
“In any Round other than the first Round, a Bidder may submit a Waiver in lieu of taking any action under paragraph 4.5.2(a) provided:
(a) [...]; and

(b) the number of Eligibility Points attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is less than the number of Eligibility Points attributed to the Bidder in the Round.”

Please explain what this means by way of example.

Ans. Referring to the Auction Worked Examples in Appendix C of the Information Memorandum, Bidder N had 6 EPs at the beginning of Round 6 and it did not hold any Standing Highest Bid at the end of Round 5. Pursuant to paragraph 4.10.1(b) of the Notice, Bidder N was permitted to submit a Waiver in Round 6 because the number of EPs attributed to its Standing Highest Bid at the end of Round 5 (0 EP) is less than the number of EPs attributed to it (6 EPs) in Round 6. Bidder N was permitted to submit a Waiver in Round 6 and it decided to submit a Waiver in the Round.

In contrast, referring to our answer to AL.18 above, where the number of EPs attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round was equal to the number of EPs attributed to the Bidder in the current Round, Waiver would not be applicable.

AL.22 Regarding slide 30 of OFTA Industry Briefing on 27 October 2008, OFTA stated that, starting from Round 2, if a Bidder is the Standing Highest Bidder, it may “maintain” its Bid in the following Round.

(a) Please explain how the Bidder indicates its intention to “maintain” its bid? Is this done by submitting its bid without selecting any of the choices presented to the Bidder on screen, i.e. “Bid” or “Withdrawal”?

(b) Please confirm that by doing so, the Bidder has not used up one of the three rounds in which it is permitted to submit a “Waiver”.

Ans. Regarding (a), in respect of a Frequency Band which the Bidder holds the Standing Highest Bid, the Bidder may choose to submit (i.e. further bid up) or not to submit a Valid Bid (i.e. “maintain” its Bid at

the price of the Standing Highest Bid). A Bidder may “maintain” its Standing Highest Bid by not ticking the “Bid” box or the “Withdrawal” box for the Frequency Band in the Bid Form.

Regarding (b), submission of a bidding decision involves two steps: (1) submitting the Bid Form and (2) confirming the decision. In every Round, a Bidder has to indicate its bidding decision in respect of each Frequency Band. If it wishes to submit a Bid, it should tick the “Bid” box. If it does not wish to submit a Bid, it should leave the “Bid” box blank. After indicating its bidding decision in respect of each Frequency Band, it should press the Submit button at the end of the Bid Form and then press the Confirm button in the confirmation page.

If a Bidder wishes to submit “no Bid” for all Frequency Bands in a Round (which may include Frequency Bands for which it holds the Standing Highest Bids), it should (1) leave all the “Bid” boxes blank, (2) press the Submit button at the end of the Bid Form and (3) press the Confirm button in the confirmation page. In such case, no Waiver is exercised because the Bidder has submitted a “no Bid” decision.

In contrast, a “deemed Waiver” will be exercised on behalf of the Bidder if the Bidder does not take any action. If the Bidder does not submit the Bid Form and/or the Bidder fails to confirm the decision after submitting the Bid Form, the Auctioneer will receive nothing from the Bidder, irrespective of whether the Bidder has or has not ticked any “Bid” box in the Bid Form. A Waiver will be deemed to be submitted by the Bidder provided that two conditions are satisfied: (i) the number of Eligibility Points attributed to all Standing Highest Bids of the Bidder at the end of the immediately preceding Round is less than the total number of Eligibility Points attributed to the Bidder; and (ii) there is at least one Waiver left for the Bidder.

Please also refer to our answer for question AL.5 for the distinction between “deemed Waiver” and “no Bid”.

LICENSING (LG)

LG.9 Regarding paragraph C.2 of the Information Memorandum, (a) can OFTA provide more information regarding the level of interference (i.e. adjacent channel interference field strength data) caused by services operating in the channels next to 2500 MHz (i.e. the lower limit in Block C1) and 2690 MHz (i.e. the upper limit in Block C3)? (b) what is the tolerance limit of devices (if any) operating next to 2690 MHz, i.e. the upper limit in Block C3?

Ans. For the detailed technical characteristics of other services operating in the frequency band 2483.5 – 2500 MHz, please refer to paragraph C.2.4(d) of the Information Memorandum and the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106Z).

According to the Hong Kong Table of Frequency Allocations, all emissions are prohibited in the frequency band 2690 – 2700 MHz.

As mentioned in paragraph C.2.4(c) of the Information Memorandum, the Licensees of the Frequency Bands B1, B2, B3, C1, C2 and C3 shall comply with the relevant block edge mask(s) promulgated by the latest “Decision of the Commission of the European Communities on the harmonisation of the 2500 – 2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community”.

LG.10 Regarding paragraph C.3 of the Information Memorandum, the Licensee is allowed to provide “fixed”, “nomadic”, “mobile” and “converged” telecommunications services and associated applications. Please define each of these four types of telecommunications services.

Ans. The description in the Information Memorandum is intended to provide a generic account of the type of services that the Licensees of the Frequency Bands can provide. According to the Ordinance, “fixed service” refers to the communications between fixed locations and “mobile service” refers to the communications between moving locations; or between fixed locations and moving locations. Nomadic

service generally refers to hotspot-type wireless access service, whereas converged service represents any combination of fixed, nomadic and/or mobile services.

OTHERS (OT)

OT.3 Is it possible to reduce the level of Minimum Fee, to spread the SUF payment by instalments, and to lower the level of Performance Bond in the light of the intensified financial turmoil?

Ans. The Authority recognises that the financial turmoil has intensified since the publication of the Information Memorandum on 3 October 2008. While the Authority considers it appropriate to introduce certain mitigating measures to cope with latest situation, he has also had regards to the fact that radio spectrum is a scarce public resource. The Minimum Fee at HK25 million for every 5 MHz of radio spectrum represents the minimum acceptable value for the Government to assign the right to use the scarce public resource for providing BWA services. In setting the Minimum Fee, the Government has taken into account the international benchmarks, local market situations, technological development and the advice of independent consultants. The Government is minded to maintain the Minimum Fee at the current level.

The SUF payment method is set on the up-front lump sum basis after thorough consultation with the industry and the community. Changing the payment method to yearly instalments would necessitate a higher financial commitment from the Provisional Successful Bidders as they will be required to pay interest on the outstanding SUF to the Government. Besides, the Provisional Successful Bidders will be required to guarantee the payment of the outstanding SUF by lodging yet another performance bond. This will require Provisional Successful Bidders to secure additional credit from banks and this would place them in a more difficult position. As such, the Government is minded to maintain the up-front lump sum payment of SUF as originally proposed.

The Performance Bond requirement serves to provide the necessary financial incentive for the Licensees to comply with the network and service rollout requirements. Each Licensee is required to lodge with the Authority a Performance Bond, the amount of which is set proportional to the amount of radio spectrum assigned to the Licensee. In view of the fast changing environment resulting from the financial turmoil and in order to mitigate any difficulty which the Provisional Successful Bidders may have in acquiring new credits, the Authority, after due consideration, has decided to reduce the amount of the Performance Bond from HK\$50 million to HK\$25 million for every 5 MHz of the radio spectrum assigned to the Licensee. The Authority considers that the revised level of the Performance Bond will be sufficient to deter any hoarding of radio spectrum. Moreover, the lowering of the bonded sum will not affect adversely the public revenue from the auction of radio spectrum since the Performance Bond will be discharged when the Licensee fulfils the specified network and service rollout requirements. The Authority has published in the Gazette on 14 November 2008 a modification notice to amend the Annexe to Schedule 9 of Appendix 1 of the Notice.

Office of the Telecommunications Authority
14 November 2008