

Auction of Spectrum for CDMA2000
Questions and Answers

The Telecommunications Authority (the “Authority”) has received the following questions in relation to the Information Memorandum. As mentioned in Section F.2.1 of the Information Memorandum, the Authority now 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 31 August 2007 (the “Notice”), or as the case may be, in Appendix D “Glossary of Terms” of the Information Memorandum.

Q1. Must an application be made by a company registered in Hong Kong? May the application be made under a memorandum of understanding?

A1. Under Paragraph 2.1.1 of the Notice, an applicant must be a company formed and registered under the Companies Ordinance (Cap.32). A memorandum of understanding itself, which is not a legal entity, cannot be an applicant.

Q2. Is an application from a shelf company acceptable? If acceptable, how would the Authority assess at the Pre-qualification Stage whether the applicant is fit and proper and financially capable of taking up the Licence?

A2. Any company formed and registered in Hong Kong (including a newly set up company or a shelf company) may make an application.

In its Application, a Bidder must provide a Deposit of HK\$76 million and a Bidder Compliance Certificate as requirements for pre-qualification. The Bidder is required to confirm in the Bidder Compliance Certificate, inter alia, that it is financially capable of satisfying the Conditions including the coverage requirement and

the obligation to provide the Performance Bond.

Under paragraph 7.2.1 of the Notice, the Authority may disqualify any Bidder if, in his opinion, that Bidder is not a fit and proper person to hold the Licence. For this purpose, the Bidder is also required to confirm in the Bidder Compliance Certificate that there are no winding up petition, civil or criminal proceedings commenced against the Bidder etc., which might reasonably be expected to adversely affect the Bidder's business or materially affect its ability to participate in the Auction or to satisfy the Conditions.

Q3. Is there any requirement and/or restriction on local / Mainland / foreign ownership of the Bidder? In case of a joint venture, is there any restriction on the percentage of Mainland / foreign ownership?

A3. No. The applicant may be owned by a local / Mainland / foreign entity. It may be wholly owned by one company or jointly owned by two or more companies. In case of a joint venture, there is no restriction on the percentage of Mainland / foreign ownership.

Q4. If the applicant wants to change the ownership structure after the application, are there any rules that the applicant should observe?

A4. In its Application, a Bidder has to provide detailed information on its corporate and shareholding structure including relationships with immediate / intermediate / ultimate holding companies, subsidiaries and other group companies. The information to be provided should also include the latest annual report and accounts of the Applicant and the listed companies in the ownership structure.

If any change of ownership structure in respect of a Bidder occurs during the period between the Application and the grant of the

Licence, the Bidder shall immediately notify the Authority and, within two Business Days after that change, submit to the Authority a revised Application Form and a new Bidder Compliance Certificate in accordance with paragraph 6.4.2 of the Notice. Paragraph 6.4.1 of the Notice provides that no change in the contents of a Bidder's Application Form is allowed except as a result of a person ceasing to be a shareholder of that Bidder, or merge or acquisition activity of, or affecting, a Bidder or any of its direct or indirect shareholders (which shall be deemed to include the establishment of a new body corporate) provided that such Bidder has demonstrated to the reasonable satisfaction of the Authority that none of the purposes of that activity is related to the Auction, for example, for circumventing the rules of the Auction. The rule prescribed in this paragraph shall apply to all Bidders before the Auction Stage and to the Provisional Successful Bidder after the Auction Stage.

If, after the Licence is issued, there is substantial change of shareholding and control of the Licensee, section 7P of the Ordinance may be triggered where the prescribed thresholds are exceeded. If the change has or is likely to have the effect of substantially lessening competition in the telecommunications market and does not have overwhelming public interest, the Authority may direct the change be reversed or other remedies to be implemented in order to remove the anti-competitive effect.

Further, all Bidders must, at all times, observe the competition provisions of the Ordinance. Anti-competitive conduct is prohibited under section 7K. A change in relation to an existing carrier licensee may be subject to ex post regulation under section 7P.

Q5. Will the Authority defer the Application Dates?

A5. The Authority will not defer the Application Dates. The Application Dates remain to be 11 and 12 October 2007.

Q6. Can the Licence or its assets be transferred to another company or joint venture?

A6. Under General Condition 2 of the Licence, prior written consent from the Authority must be obtained for transfer of the Licence. The Authority may impose such reasonable conditions as he thinks fit. For disposal of assets of more than 10% of the net asset value, prior written consent from the Authority is also required pursuant to Special Condition 4 of the Licence.

Q7. What is the amount of Minimum Bid Specification? Will there be a pre-fixed amount for Minimum Bid Specification?

A7. In the first Bidding Round, a Bidder must submit a Valid Bid at or above the Minimum Fee of HK\$76 million. For each subsequent Bidding Round, a Bidder must submit a Valid Bid at or above the Minimum Bid Specification. The amount of Minimum Bid Specification of each Bidding Round will be set by the Authority at an amount of at least HK\$100,000 higher than the highest Valid Bid of the preceding Bidding Round (i.e. Minimum Bid Specification \geq the highest Valid Bid of the preceding Bidding Round + HK\$100,000). Please refer to paragraph 4.4 of the Notice.

Q8. In the sample Bidding Form, there are two options of "Bid Notification" and "No Bid Notification" in "Part B - Notification from Bidder to Auctioneer". As there is no such option as "withdrawal" in the Bidding Form, how can a Bidder withdraw from the Auction?

A8. There is no explicit "withdrawal" in the Bidding Form. A Bidder may submit a No Bid Notification to notify the Authority that it does not wish to submit a bid equal to or higher than the Minimum Bid Specification applicable to that Bidding Round. Further, if a Bidder fails to submit a Valid Bid or a No Bid

Notification in a Bidding Round subsequent to the first Bidding Round, it will be deemed to have submitted a No Bid Notification.

A Bidder who has submitted (or who is deemed to have submitted) a No Bid Notification will be deemed to have withdrawn from the Auction only if other Bidder(s) have submitted Valid Bid(s) in that Bidding Round.

If all the Bidders submit No Bid Notifications in a Bidding Round, all the Bidders will not be deemed to have withdrawn from the Auction and that Bidding Round will be deemed to have never been conducted. The Authority will re-conduct that Bidding Round.

Q9. If the network and service coverage milestones are not met, what are the consequences?

A9. The Licensee is required to provide to the Authority a Performance Bond of HK\$150 million to guarantee compliance with the network and service coverage obligation. If the Licensee is not able to comply with the obligation in accordance with the network and service coverage milestones, the Authority may make a claim of the relevant bonded sum(s) under the Performance Bond.

Further, the Licensee may also be in breach of Special Condition 1 of its Licence. The Authority may impose financial penalty on the Licensee under section 36C of the Ordinance. The Authority may also issue under section 36B of the Ordinance a direction to the Licensee requiring it to take such action as the Authority considers necessary in order for the Licensee to comply with the relevant term and condition of the Licence. The Authority may even cancel, withdraw or suspend the Licence as the case so warrants.

If the Licensee has in fact endeavoured to comply with the obligation but failed due to unforeseen factors beyond its control,

the Licensee may apply to the Authority for a waiver. The Authority will take into account all relevant factors in considering whether the waiver should be granted.

Q10. Can the Licensee implement CDMA2000 1x standard for providing territory-wide coverage, while using CDMA2000 1xEV-DO Revision A in niche areas?

A10. The Conditions require that the Licensee shall provide CDMA2000 1xEV-DO Release 0 standard, or other standard approved by the Authority, in the specified areas including the Golden Bowl Area, MTR, KCR, Airport Express Railway stations, the Hong Kong International Airport Passenger Terminals and the border control points. The exact locations of the specified areas are given in Schedule 4 of the Licence.

The Licensee may make application to the Authority with justifications if the Licensee intends to adopt other CDMA2000 standards in the specified areas. The Authority may consider the application depending on the circumstances of the case. For use of other more advanced versions of the CDMA2000 standard, the Authority will in general consider the application favourably.

For locations other than the specified areas, the Licensee can provide service using any standard under the family of CDMA2000 standards based on its own commercial considerations.

Q11. How is the compliance with the network and service coverage obligations verified?

A11. At the time specified by the Authority, the Licensee is required to submit to the Authority the Network and Service Coverage Report and to conduct Field Audit Tests to demonstrate compliance with the network and service coverage obligations. After the issue of the Licence, OFTA will provide detailed guidelines to the

Licensee on the procedures and methods for verifying the compliance with the network and service coverage obligations.

The Network and Service Coverage Report shall provide the coverage information of the network established by the Licensee in the specified areas as well as the other parts of Hong Kong. The following information may be required:-

- (a) Coverage map showing the predicted signal strength of the network by computer simulation;
- (b) The radio propagation models and simulation tools used for the prediction of field strength and production of the coverage map;
- (c) Field measurement results conducted by the Licensee; and
- (d) Full list of the address of the base stations constructed and operated by the Licensee with major transmission parameters.

In the Field Audit Tests, the Licensee shall, with the presence of OFTA officers, conduct field tests in a certain number of sample outdoor public locations in the specified areas to verify the coverage of its network and service. The Licensee will be required to demonstrate that the users located in the specified areas are able to access the various services provided by the Licensee.

Q12. Do the network and service coverage obligations include indoor locations? What is the requirement for outdoor coverage?

A12. Except for the locations stipulated in List 2 in Schedule 4 of the Licence, there is no licence obligation to serve indoor locations. The requirements for network and service coverage are specified in Schedule 4 of the Licence.

Q13. Regarding the locations specified in List 2 in Schedule 4 of the Licence, commercial negotiations with the relevant landowners may take time. What is the consequence if the commercial negotiations fail?

A13. As stated in paragraph C4.3 of the Memorandum, compliance with the network and service obligation to the locations specified in List 2 in Schedule 4 of the Licence will only be checked against the availability of necessary site and ancillary facilities of the concerned locations. The Licensee will only be required to provide and maintain network and service coverage to these strategic locations within 12 months from the date when the necessary sites and ancillary facilities are made available by the relevant authorities or entities, or on or before 20 November 2010, whichever is earlier.

Based on past experience, the specified timeframe should be sufficient for the Licensee and the respective landowners to reach commercial agreements in relation to the provision of network and service coverage to the specified locations. If the Licensee is unable to conclude the commercial negotiation with the landowners by the relevant deadline, the Licensee may apply to the Authority with justifications for an extension of the deadline. Alternatively, the Licensee may make an application to the Authority, who may grant an authorization under section 14(1A) of the Ordinance for the Licensee to place and maintain radio communications installations on the concerned land and specify the amount of interim fee payable by the Licensee to the landowner involved.

**Office of the Telecommunications Authority
5 October 2007**