

## **Auction of Spectrum for CDMA2000 Further Questions and Answers**

*The Telecommunications Authority (the “Authority”) has received the following further 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.*

Q14. Would the Authority please confirm that for the entire 15 year licensing period the only lawful use of the relevant spectrum is limited to service using the CDMA 2000 family of standards as adopted by the 3<sup>rd</sup> Generation Partnership Project 2?

A14. The Licensee is required to adopt the CDMA2000 family of standards adopted by the 3<sup>rd</sup> Generation Partnership Project 2, or other standard as approved by the Authority. The Intention is to approve standards within the CDMA 2000 family. For details on the requirements on technical standard, please refer to Special Condition 1, Schedules 3 and 4 of the Licence as contained in Appendix 1 of the Notice issued by the Authority on 31 August 2007.

Q15. Would the Authority please confirm that future re-farming or other rules that may be inconsistent with this technology specific approach will not apply to this spectrum award?

A15. In exercising his statutory powers under the Ordinance in the management of the radio spectrum, the Authority will, in addition to all relevant considerations as required by law, give due regard to the Radio Spectrum Policy Framework promulgated by the Government on 24 April 2007. Please refer to the Radio Spectrum Policy Framework on various spectrum issues.

Q16. The 27 April 2007 Statement at paragraph 18 indicates that if no bid is received during the Auction, the Authority would withdraw the spectrum. Would the Authority please indicate the probable period of time before this spectrum would be re-presented, whether it would be re-presented in a technology neutral or technology specific manner, whether it would be re-presented via a public auction (if at all) and the decision making process?

- A16. As stipulated in paragraph D.7.4 of the Information Memorandum, if there is no Bidder or no Qualified Bidder, no auction will be held. The Authority will review this outcome and the accompanying circumstances to assess the way forward.
- Q17. The 27 April 2007 Statement at paragraph 37 indicates that an independent consultant will be commissioned. Would the Authority please release that consultant report so that all potential bidders and the public might better understand the process and approach of the consultant, the calculation of the minimum reserve price, the terms of reference, etc.?
- A17. OFTA has commissioned an independent consultant to give advice on the level of reserve price. Whilst the consultancy report would not be published, OFTA would like to point out that the consultant has taken into account the current market conditions, international benchmarks as well as historical benchmarks. It should be noted that the reserve price is the minimum fee or the starting price of the Auction. The market forces will determine the level of the actual SUF payable.
- Q18. The 27 April 2007 Statement at Proposal 6 indicates that incumbent 2G and 3G licensees should be fully permitted to take part in the Auction. What is not fully clear is the ability of the same investor to participate in different bidding groups as a minority or majority participant (see pages 41-42 of the Industry Briefing). Would the Authority please clarify this?
- A18. As explained in paragraph D.4 of the Information Memorandum, new entrants and existing carrier licensees are permitted to participate in the Auction. New entrants and existing carrier licensees may participate on their own and/or jointly with others.

Further, there are no ownership rules / bidder association rules to prohibit connected or associated bidders. Even if an investor has shareholding or control over two or more Bidders (in whatever percentage), the Bidders will not be prohibited from participating in the Auction.

Please refer also to the answer to Q3 of the Questions and Answers issued by the Authority on 5 October 2007.

- Q19. Per the Notice, if on 11 October a tropical cyclone warning signal No. 8 or above is hoisted or a “black” rainstorm warning is issued, would 12 October be the only Application filing date?
- A19. In accordance with paragraph 2.1.5 of the Notice, if a tropical cyclone warning signal no. 8 or above, or a “black” rainstorm warning is in force in Hong Kong on the Application Dates, Application Forms must be received by the Authority at the Authority’s Office between 9 am and 5 pm on the next Business Day on which none of the signals remains in force.
- Q20. In the Notice at paragraphs 2.2.10 – 11 a bidder may be subject to various penalties. The Information Memorandum paragraphs D.8.21-22 and Exhibit 4 add some useful detail to this matter. Are there additional probable conduct examples which would warrant a Penalty and if so, what are the probable corresponding amounts to be penalized? How are multiple breaches to be addressed? Can a Penalty be voluntarily or intentionally taken? Would the Authority please address this issue further? (See also Notice paragraphs 4.13, 5.1 and 6).
- A20. Under paragraph 6.1.1 of the Notice, each Bidder must comply with the terms and conditions of the Notice. If a Bidder breaches one or more of the terms and conditions of the Notice, the Authority may at his discretion impose a Penalty on and/or disqualify the Bidder. The power of the Authority to impose a Penalty and/or to disqualify a Bidder under paragraph 6.1.1 of the Notice extends to contravention of any terms and conditions of the Notice.

Without prejudice to the generality of paragraph 6.1.1, paragraph 4.13.1 lists out certain prohibited activities, the breach of which may result in imposition of a Penalty by the Authority. Please note, in particular, that paragraph 4.13.1(j) prohibits the Bidders from acting, without reasonable excuse, in a manner which disrupts the procedure of the Auction Stage, despite the act does not fall within paragraph 4.13.1(a) to(i).

Exhibit 4 of the Information Memorandum is an indicative table of examples of the breaches and the possible penalties that may be imposed by the Authority. For major contraventions, like collusion, the Authority intends to impose a Penalty up to 100% of the deposit and to disqualify the Bidder. For minor and

procedural contraventions, like bringing communication device into the Bidding Room and leaving the Bidding Room without the Authority's consent, the Authority may impose a Penalty of \$200,000 per occurrence. Please note that the table is not exhaustive and is for reference only. The decision whether or not to impose a Penalty and the determination of the appropriate Penalty remains the discretion of the Authority. The Authority will ensure that the Penalty imposed is proportionate to the relevant contravention and reasonable in the circumstances of the case.

- Q21. In the Notice at paragraph 3.2.3, upon return to the Bidder of its Deposit, the Bidder may be required by the Authority to continue to comply with specified terms and conditions. Would the Authority please indicate which terms and conditions are to be covered (or are likely to be covered) by this requirement (See also Notice paragraph 4.15.2).
- A21. After the return to a Bidder of its Deposit, the Bidder is required to continue to comply with the terms and conditions as are specified by the Authority. If the Authority does not specify any terms and conditions, the Bidder is required to comply with all the terms and conditions of the Notice as appropriate. For example, the Bidder must still observe the rules in relation to Confidential Information by this requirement.
- Q22. In the Notice at paragraphs 4.8.2 and 4.8.3 the Authority at his absolute discretion may specify a further period of time to permit a Bidder to make a submission. This may have a substantial impact on the ultimate price paid and who is the winning bidder. Accordingly, would the Authority please indicate the facts that would warrant the exercise of this discretion and the time frames involved? See also the Information Memorandum paragraphs D.9.12-13.
- A22. Under paragraphs 4.8.2 and 4.8.3 of the Notice, the Authority may give a further opportunity to the Bidder to make a submission if the Bidder fails to submit a Valid Bid or No Bid Notification within the specified time. The timeframe will not be more than the original duration allowed for the Bidders to make a submission. Such a further opportunity will be given at the absolute discretion of the Authority. Such a discretion will not be exercised if the Bidder is suspected of abusing or disrupting the procedure.

Further, the bids submitted by all Bidders will not be disclosed at any time of the Auction Stage. Any Bidder who is given further opportunity to make a submission will not be given any information more than that provided to other Bidders. Therefore, the mechanism should not have any impact on the result of the Auction.

- Q23. In the Notice at paragraph 4.11.4 the Authority indicates that a “random method” may be employed to determine which of the Reference Bidding Round Tied Bidders shall be the Provisional Successful Bidder. Would the Authority please indicate what random method would be employed and how it would be employed?
- A23. The Authority is not minded to disclose the random method that will be used. However, to ensure fairness in choosing and implementing the random method, Tied Bidders will be invited to witness the tie breaking event.
- Q24. How does the Authority envision the November 2008 handover of the spectrum from Hutchison to the Licensee occurring or being coordinated? Or will there be a break in service?
- A24. As stipulated in paragraph C.4.2 of the Information Memorandum, the Licensee will be required to provide and maintain network and service coverage starting from 20 November 2008 to the Golden Bowl Area. Subject to the network rollout proposal of the Licensee, the Authority may issue an appropriate licence or permit to authorise the Licensee to install the relevant radiocommunications installations for testing and trial purposes before 20 November 2008. However, the Licensee shall not provide public telecommunications services on a commercial basis before 20 November 2008.
- Q25. The Information Memorandum at paragraph C.4.4. indicates that the Licensee is required to adopt the latest available technology. Is this a one-off or continuing up-grading obligation? In either case what standards will apply, what process will apply, who will decide compliance and what (if any) penalties may be imposed?

- A25. There is no continuing up-grading obligation under the Licence. For details on the network and service coverage obligation, please refer to Special Condition 1, Schedules 3 and 4 of the Licence.
- Q26. As the Licence may be primarily or at least substantially for roaming, will the Authority be regulating any retail, wholesale or inter-carrier rates (and if so which ones)?
- A26. The Licence is not "primarily or at least substantially for roaming". The Licence is a full mobile carrier licence which allows the Licensee to provide mobile services, including roaming service. Whether the Authority will be regulating any retail, wholesale or inter-carrier rates, and if so which one, will depend on the prevailing market conditions and the general regulatory framework that applies to other mobile carriers in general from time to time.
- Q27. The Information Memorandum at paragraph C.15 notes section 7P of the Ordinance. Would the Authority please indicate his current view of the relevant market as it relates to this 15-year technology specific licence?
- A27. As in the previous cases related to section 7P of the Ordinance, the Authority will define the relevant market as and when a "change" occurs in such manner that will best enable the Authority to analyse the competition effects of the change to the market.
- Q28. The Information Memorandum at paragraph D.8.5 appears to indicate that the Authority may set the Minimum Bid Specification at any amount above the highest Valid Bid in the previous Bidding Round, from \$100,000 upward. This could raise issues of fairness, transparency or discrimination if the difference between the highest Valid Bid in the current Bidding Round and the subsequent Minimum Bid Specification in the next Bidding Round varies significantly. That is, subsequent bids may be encouraged or discouraged just by the setting of the Minimum Bid Specification. Would the Authority confirm that the Minimum Bid Specification would consistently be made at about the same amount or percentage above the highest Valid Bid in the previous Bidding Round?

- A28. Minimum Bid Specification will not be consistently fixed at the same amount above the highest Valid Bid received in the immediately preceding Bidding Round. This will give flexibility to the Authority to control the speed of the Auction based on the situation. It should be stressed that Bidders have primary control of their own bid prices.
- Q29. The Information Memorandum paragraph D.8.13 is noted. How long would each Bidding Round last and how many Bidding Rounds will occur in a day? Ten minute 'indicative' Bidding Rounds and ten minutes 'indicative' between Bidding Rounds seem to be quite short. Is it the intention of the Authority to absolutely complete the Auction in one day? It is stated in the industry briefing material that a trial Auction will be conducted the same day as the actual Auction. Would this not be more useful to the Bidders and the Authority to have this trial done several days or weeks before as a learning experience? This approach could help ensure a smooth Auction with the highest maximum price.
- A29. There will not be any pre-specified number of Bidding Rounds in the Auction. The Bidding Round length of 10 minutes is only an estimate.

The trial Auction will consist of a number of trial Bidding Rounds to allow the Bidders to familiarise themselves with the Auction procedures and bidding equipment. It is not necessary to have the trial done on a separate date.

Given only one block of frequencies will be made available for Auction, the Authority targets to complete the Auction within one day. Please note that if the Auction continues for a protracted period of time, the Authority may specify a Bidding Round to be the Final Bidding Round. Please refer to paragraph D.8.13 of the Information Memorandum for details.

- Q30. In Bidding Rounds with no Valid Bids, will the Bidders be told that this has occurred? Exactly what will each Bidder be told after each Bidding Round as to the highest Valid Bid, the identity of the Bidder presenting the highest Valid Bid, the identity of other remaining Bidders, the number of remaining Bidders, timeframes etc.?

A30. After each Bidding Round, each Bidder will be informed of the following information:

- (a) the Bidding Round Number;
- (b) whether or not the Specified Closing Round is announced;
- (c) the highest Valid Bid in the previous Bidding Round;
- (d) whether or not a Bidder is the Leading Bidder of the previous Bidding Round.
- (e) the Minimum Bid Specification;
- (f) the Number of Bidders remaining in the Auction;
- (g) the starting time and ending time of the Bidding Round; and
- (h) other notifications as the Authority deems necessary.

Except for the Leading Bidder itself, the other Bidders will not know the identity of the Leading Bidder for each Bidding Round. The identities of the remaining Bidders will not be disclosed.

Q31. If there are multiple Bidders, can a Bidder withdraw from the Auction without Penalty before the first Bidding Round?

A31. As stated in paragraph D.2.3 of the Information Memorandum and paragraph 2.3.1 of the Notice, a Bidder which has submitted an Application shall not be entitled to withdraw its Application. By the Application, Bidders have made a commitment to place a bid at the Minimum Fee. Unless there is only one Qualified Bidder, Bidders must attend the Auction and must submit a Valid Bid equal to or higher than the Minimum Fee at \$76 million in the first Bidding Round.

Q32. In the Pre-qualification Stage, will an Applicant be given an opportunity to cure any defect? What Penalty would be imposed on a submission which violated paragraph 6.3 of the Notice, i.e. submission of false or misleading information?

A32. Under paragraph 6.3.1 of the Notice, a Bidder must not submit any information in connection with the Auction which that Bidder either knows to be false or misleading or which is false or misleading and which has been provided negligently by the Bidder. If a Bidder submits false or misleading information, the Authority may under paragraph 6.1.1 disqualify and/or impose a Penalty on that Bidder. The decision whether or not to disqualify and/or impose a Penalty remains the discretion of the Authority.

The Authority will ensure that the Penalty imposed and/or disqualification is proportionate to the relevant contravention and reasonable in the circumstances of the case. As such, if a Bidder discovers any errors in any information provided to the Authority, it should immediately inform the Authority. For means of notification to the Authority, please refer to paragraph 7.4 of the Notice.

Q33. A “Bidder” is defined as a body corporate which has submitted an Application. A “Bidder” may not “co-operate, collaborate, conclude or discuss” with any other Bidder or any outsiders (see Notice paragraph 6.5.9). Does this mean that after submitting an Application but prior to the Auction Stage, Bidders may have no discussion relating to possible joint ventures? That is, that all such discussion can only occur before the filing of the Application or post Auction Stage?

A33. Cooperation, collaboration, collusion, discussion or disclosure prohibited under paragraph 6.5.9 of the Notice cover those conduct and activities relating to the Auction or those for the purpose of manipulating the result of the Auction, e.g. discussion on information in connection with Final Offer or bidding strategy of a Bidder. If the discussion between two or more Bidders and their Insiders about formation of a joint venture or other form of cooperation does not relate to the Auction and is not for the purpose of manipulating the result of the Auction, such a discussion will not be prohibited under paragraph 6.5.9 even if it occurs after submission of the Application but before the Auction Stage.

However, to prevent any contravention of the terms and conditions of Notice and the Prevention of Bribery Ordinance or to avoid any unnecessary suspicion of such contravention, it is good practice for the Bidders to refrain from such kind of discussion after submission of the Applications.

Q34. If a Bidding Round is deemed to have never been conducted, can a Penalty be imposed on in such a Bidding Round?

A34. The deeming provision of paragraph 4.9.2 of the Notice relates to the bidding only. The operation of the deeming provision shall not affect any rights and remedies the Authority may have against any Bidder in respect of the conduct and activities of that Bidder in

the Auction and contravention of the terms and conditions of the Notice by that Bidder.

Q35. Is it practical to require the Licensee to rollout to certain road tunnels, e.g. Aberdeen tunnel, when there is no specific requirement to provide service to the roads around and leading up to the tunnel?

A35. The Licensee is required to comply with the network and service coverage obligation as contained in the Licence. For other locations outside the list of locations under the network and service coverage obligation, the Licensee may provide coverage to these locations based on its own business plans and commercial considerations.

Q36. If the rollout obligations are to be imposed in locations such as MTR stations, KCR stations, road tunnels, etc., what steps will OFTA be taking to ensure that the Licensee is able to gain access to such locations at a reasonable cost?

A36. The Licensee shall liaise with the relevant landowners for access to land for placing and maintaining the relevant radiocommunications installations through commercial negotiations. If the Licensee is unable to conclude commercial negotiation with a landowner under a reasonable timeframe, 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 radiocommunications installations on the concerned land and specify the amount of interim fee payable by the Licensee to the landowner involved.

Q37. Why is the Authority not able to specify up front whether the particular Conditions pertaining to dominant service providers will be waived, e.g. requirement for tariff approval? The decision to waive these Conditions should be based on the definition of the market and whether the Licensee will be considered dominant within that market. This can be ascertained by OFTA now since it should not depend on which operator is awarded the spectrum.

A37. Whether the Licensee is required to comply with the Conditions applicable to dominant operators will depend on the prevailing market conditions from time to time. Where in the opinion of the Authority that the Licensee is not in a dominant position with

respect to the relevant telecommunications market for the service within the meaning of section 7L of the Ordinance, the Authority may direct, for examples, that part or whole of Special Conditions 13.4, 14 and 15 shall not apply to the Licensee. As a matter of fact, the Authority has already made such directions to all existing mobile carrier licensees.

Q.38 A.4 of the Application Form requires that the ownership structure diagram of the Applicant be demonstrated by “links” indicating ownership or some other form of control or arrangement between entities. Please clarify if a joint venture agreement for subscription/acquisition of shares in the Applicant (which is subject to the fulfillment of certain conditions precedent) is required to be reflected in the ownership structure diagram?

A.38 In the ownership structure diagram in A.4 of the Application Form, the Applicant must submit information about:

- (a) its immediate, intermediate and ultimate holding companies;
- (b) its subsidiary companies; and
- (c) other companies within its corporate group;

at the time of the Application.

If the conditional joint-venture agreement will not commence until all condition precedents are fulfilled and the potential joint-venture partner of the Applicant does not have any shareholding or control over the Applicant at the time of the Application, the conditional joint-venture arrangement needs not be reflected in the ownership structure diagram.

An Applicant is reminded that, once there is a change in the ownership structure of the Applicant, it must immediately notify the Authority and within 2 Business Days after that change, submit to the Authority a revised Application Form and a Bidder Compliance Certificate. Please refer to paragraphs 6.4.1 and 6.4.2 of the Notice.

Q.39 A law firm engaged by an Applicant has no interest in the Applicant other than their capacity as potential adviser. Is the law firm so engaged “Insider” to be disclosed in A.3 of the Application Form?

A.39 "Insider", in relation to a Bidder, generally refers to any person to whom Confidential Information is disclosed, notwithstanding whether or not that person has an interest in the Applicant or in the Auction.

Any person who has been disclosed with Confidential Information must be named in the list of Insiders in A.3 of the Application Form.

Therefore, law firms, financial advisers, regulatory authorities, cooperation partners, etc. to whom Confidential Information has been disclosed must also be named in the list of Insiders in A.3 of the Application Form. Please note that those listed in A.3 may not necessarily be those appear in A.4.

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