

Additional Notes on Auction Mechanics and Disclosure of Information in relation to the Powerpoint Presentation

Administration's Responses to Bills Committee's and Sub-Committee's Requests for Information

A. Introduction

1. The Bills Committee on the Telecommunications (Amendment) Bill 2001 and the Sub-Committee on Draft Telecommunications (Method of Determining Spectrum Utilization Fees)(Third Generation Mobile Services) Regulation requested that the Administration provide further information on the following topics:

- General overview of the auction mechanics
- Disclosure of information on the progress of the Auction.

These two matters are considered below.

B. Auction mechanics: general overview

Applications

2. Applicants will be informed in advance (in the Information Memorandum) of the deadline by which applications must be submitted, and the location to which they must be delivered. If, for any reason, the deadline needs to be changed, bidders will be given reasonable notice on OFTA's website. Procedures will also be put in place to cope with *force majeure* situations that make submission of bids impossible. Notwithstanding such measures, it remains bidders' responsibility to deliver applications by the deadline, or they will not be accepted. Submission of an application commits a bidder to a bid at the reserve price, subject only to pre-qualification.

3. The application will consist of:

- an application form providing details of the bidder, its representatives, its shareholders and those parties who are in possession of information regarding the application and bid, together with necessary supporting documentation;
- certifications of current and future compliance with the auction rules;

- certifications of ability to meet the terms of the licence;
 - certification of ability to meet the roll-out conditions; and
 - acceptance of various conditions of entry (such as acceptance by existing operators of an obligation to provide mandatory roaming to any new entrant and the open network requirement).
4. A deposit will also need to be provided by the same deadline, either by way of cash or letter of credit from a bank with a specified rating.
5. Applications will need to be complete in all respects and to provide all information requested. Incomplete applications will not be accepted.

Pre-qualification

6. It is intended that pre-qualification should happen very rapidly (within a few days). The form of the application is intended to provide bidders with a high level of certainty that they will pre-qualify. The process should therefore be relatively straight forward.
7. Each bidder will be notified of whether or not it has successfully pre-qualified. Unsuccessful applicants' deposits will be returned shortly after this notification. The process will then proceed rapidly to the First Phase. Bidders' representatives will need to remain on call for this short period, as there may be very little notice before the start of the auction.

Auction First Phase

8. The First Phase of the auction will select four provisional winners from the bidders, and determine the common royalty percentage which will apply to them.
9. Bidders will be notified of the time by which their representatives must report to a specific location from which they will bid. Bidders will be assigned to separate locations. At their designated location, the representatives will be invited to an auction room in which they will be required to remain until the auction has been concluded.
10. The room will contain equipment that will inform bidders of the rising increments in the auction, and equipment with which each

bidder can inform the auctioneer of its withdrawal. Each room will also contain Government observers to help with the equipment and any problems that may arise. Extensive back-up systems will also be available for communications from and to the auctioneer.

11. No external communications will be permitted except with the auctioneer. This is vital in order to preserve the confidential nature of the auction and to prevent collusion.

12. When the First Phase has been concluded, bidders will be informed of whether they have been successful or not, and the highest common royalty percentage that has resulted. Although the First Phase is likely to be very rapid, bidders will be assisted by the publication of the Bidding Schedule, setting out the bid increments, in the Gazette and Information Memorandum. The simplicity of the bidding system (a single withdrawal) will also assist bidders in preparations.

13. The auctioneer and his team will also be confined to a central auction room, from which the First Phase will be conducted. Staff at this location will be limited to those whose presence is absolutely necessary for the smooth functioning of the auction (the auctioneer and assistants, equipment operators and advisers). The ICAC will also observe the proceedings so as to maintain the highest standards of accountability.

Second Phase

14. The Second Phase checks whether provisional winners are connected, and determines whether one or both of any such connected bidders will be able to take a licence. This is a back-stop measure as bidders will have provided a certificate at pre-qualification concerning any connections with other bidders.

15. After the conclusion of the First Phase, each successful bidder will be issued with the shareholding structures of the other successful bidders. They will have a short period in which to identify whether any connections exist with the other provisional winners, and to certify to the auctioneer whether or not they are connected with any other provisional winner.

16. If no connections are identified, the auction will proceed directly to the Third Phase. If a connection is identified, those provisional winners will need to provide an irrevocable undertaking to disconnect. The undertaking will need to be provided by the party (or parties) creating or controlling the connection (which may or may not be one of the bidders). If the bidders are not able to provide the commitment to

disconnect, they will be given a short period in which to submit sealed bids (for up-front cash sums) to decide which of the connected bidders should be eliminated. If they fail to submit a bid, they will be deemed to have bid at the reserve price (expected to be zero).

17. If a provisional winner is eliminated from the auction in this fashion, the next highest bidder from the First Phase will take the place of the eliminated bidder, subject to the procedure for determining whether that reactivated bidder is connected to one of the other provisional winners. However, if it is connected, it will not be given the chance to replace the eliminated bidder – the separation undertaking must be provided, or the reactivated bidder will be automatically eliminated.

Third Phase

18. The Third Phase allows the winners of licences to select which licence they will actually receive.

19. Following the conclusion of the Second Phase, the identified winners of the auction will be given the deadline by which they must submit bids for the Third Phase. Shortly after opening the bids (probably on the same day), the auctioneer will establish the order in which the choice of licence will be made, and will invite, in turn, each winner to choose a licence.

C. Disclosure of Information

20. The objective of the Government in releasing information on the auction is to provide for maximum transparency, within the restrictions necessary to the auction design. The need to preserve confidentiality means that some information cannot be released until after the auction, or the relevant phase, is concluded. However, a full account of the auction will be made available at the earliest possible stage. Further, the Administration expects that the following information will be made available to the public during the auction.

First Phase

21. The progress in bidding increments (with a slight delay from real-time) will be published on OFTA's website. At the end of the First Phase, the royalty percentage on which it ended will be publicly announced, together with the identities of the provisional winners.

Second Phase

22. During the Second Phase, the identity of connected bidders will be published and whether they commit to separate or must bid. If bidding is necessary, the identity of the winning bidder, together with the sum bid, will be announced after bids have been received and opened.

23. At the end of the Second Phase, a full account of the auction process to date will be published:

- The identities of all of the winners, and the applicable royalty percentage
- The identities of the unsuccessful bidders, and the bids at which they withdrew from the First Phase
- The outcome of the Second Phase, the identities of connected bidders (if any) and the commitments to disconnect or cash bids received

24. This approach is generally much more open than e.g. a normal tender. In Land tenders, for instance, the identities or bids of losing bidders are not published. Some public tenders may publish losers' identities, but not their bids. The process above seeks to make available to public scrutiny all information as soon as the proper functioning of the auction allows. This achieves a balance between the confidentiality requirement (for anti-collusion purposes) and transparency and accountability.

Third Phase

25. At the end of the Third Phase the following information will be published:

- The amounts bid by each licensee
- The licence allocated to each licensee
- An account of the process of choosing of licences