

**Auction of Radio Spectrum in the 600 MHz,
700 MHz, 850MHz, 2.5/2.6 GHz and 4.9 GHz Bands
for the Provision of Public Mobile Services
- Questions and Answers**

The Communications Authority (the “Authority”) has received questions in relation to the Information Memorandum (“IM”) published on 30 July 2021 for the Auction of Radio Spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz and 4.9 GHz Bands. The Authority hereby sets out under paragraph F.2.1 of the IM its responses to the questions.

Terms not otherwise defined herein shall have the same meaning ascribed thereto in the Notice issued by the Authority on 30 July 2021 for the Auction, or as the case may be, in Annex E “Glossary of Terms” of the IM.

AUCTION ARRANGEMENTS AND LOGISTICS (AL)

AL.1 Are Successful Bidders who elect to pay the Spectrum Utilization Fee (“SUF”) in annual instalments permitted to subsequently pay off the remaining SUF in one lump sum after the first year’s instalment has been paid?

Ans. According to section 9 in Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation (Cap. 106AG), Successful Bidders may pay the SUF either in a lump sum or annually in 15 instalments. The option of having a combination of the two payment methods is not available.

AL.2 Does the Authority have a guideline as to what Round Price increments will be adopted?

Ans. The Authority will adjust the Round Price as it thinks appropriate, taking into account the actual bidding situation from Round to Round and the overall bidding process.

AL.3 When will the auctioned frequency bands, particularly the 600 MHz, 850 MHz and 4.9 GHz Bands which are readily assignable and are not affected by any coordination issues with the Mainland, be assigned?

Ans. Subject to the date of completion of the Auction, and fulfilment of the relevant requirements by the Provisional Successful Bidders, including payment of the SUF and submission of the Performance Bond for network and service rollout requirement, the Authority targets to assign the spectrum in the 600 MHz Band and 4.9 GHz Band and re-assign the spectrum in the 850 MHz Band by end of December 2021.

AL.4 What is the estimated date of assignment for the radio spectrum in the 700 MHz Band (i.e. Frequency Blocks B1 to B7)?

Ans. As relocation of digital terrestrial television channels out of the 700 MHz Band is being arranged in both Hong Kong and Guangdong Province, the actual date of assignment will be subject to completion of the channel relocation by both sides. Based on the latest progress of such channel relocation, it is expected that spectrum in the 700 MHz Band (i.e. Frequency Blocks B1 to B7) will be assigned to the relevant Successful Bidders in 2022. OFCA is closely monitoring the development of the matter and will inform the relevant Successful Bidders of the actual assignment date when it is in a position to do so.

AL.5 If the spectrum in the 700 MHz Band is not ready for assignment by end 2021, how much notice will the Successful Bidders be given to pay the SUF and provide the Performance Bond for network and service rollout requirement?

Ans. Once the date of assignment can be confirmed, the Successful Bidders will be required, within two months upon notification by the Authority, to pay the SUF either in a lump sum or the first instalment of the SUF with a rolling Performance Bond to guarantee subsequent SUF instalments, and provide the Performance Bond to guarantee network and service rollout requirement.

Attention should also be paid to paragraph D.5.3(b)(ii) of the IM, which states that if Frequency Blocks B1 to B7 are not ready for assignment by end 2021, the relevant Provisional Successful Bidders shall “*provide to the Authority a one-year recurring*

Letter of Credit in full amount of the Spectrum Utilization Fee payable by it from a Qualifying Bank to guarantee payment of the Spectrum Utilization Fee until payment of the Spectrum Utilization Fee is made upon notification by the Authority when the actual date for assignment of the Frequency Blocks B1 to B7 is fixed” within 20 Business Days after publication of the Provisional Successful Bidder Notice or the Revised Provisional Successful Bidder Notice, as the case may be.

AL.6 Does the 15 years assignment term start from the actual assignment date?

Ans. Yes.

AL.7 If Frequency Blocks B1 to B7 are not ready for assignment for a prolonged period, would there be an option for the Successful Bidders of Frequency Blocks B1 to B7 to withdraw without penalty?

Ans. No. There is no option of withdrawal for Successful Bidders after conclusion of the Bidding Stage.

LICENSING (LG)

Special Condition (“SC”) referred here under means the special condition given in Appendix 1 of the Notice.

LG.1 Do the account practices specified in SC 5.1 refer to the accounting practices in Hong Kong?

Ans. Subject to direction by the Authority, the licensee shall adopt accounting practices, consistent with accounting principles generally accepted in Hong Kong, that the Authority specifies in the Accounting Manual.

LG.2 Will SC 50, SC 51 and SC 52 apply to all UCL holders or only to the Successful Bidders of the Auction?

Ans. The three new SCs will be incorporated into the new UCLs to be granted to the Successful Bidders for the provision of public mobile services.

As a next step, the Authority is considering introduction of these new SCs as standard special conditions applicable to all UCLs to be issued in the future. For any existing licensee which is not a Successful Bidder of the Auction, any new licence condition will either be imposed on it upon renewal of its licence or subject to its consent to the licence amendment before renewal.

LG.3 In March 2012, the former Telecommunications Authority issued a consultation paper on “Inclusion of a ‘Fit and Proper Person’ Criterion as one of the Licensing Criteria for Public Telecommunications Services” (“Consultation”), but there was no conclusion published for the Consultation. What is the need to introduce SC 50 on “Fit and Proper Person” now and why is it relevant to telecommunications licensees (who do not deal with “content” but are merely operators of the network infrastructure which carries the content of other licensed service provider)?

Ans. Telecommunications networks and services nowadays are essential for the efficient and effective functioning of an information society and smart city. With the launch of 5G services and the increasing number of Internet of Things applications powered by 5G, the integrity of telecommunications network has become more important than ever, for any network failure may result not only in suspension of telecommunications services but also interruption of other essential operations and services that rely on the proper functioning of telecommunications networks. It is hence of paramount importance that the telecommunications networks are managed by reliable and trustworthy persons.

The fit and proper person (“FAPP”) requirement is not new to bidders of radio spectrum for providing public mobile services. In the series of auction of 5G spectrum (in the 3.3 GHz, 3.5 GHz and 4.9 GHz bands) conducted in 2019, each bidder was required by the relevant auction rules to submit a duly signed bidder compliance certificate to undertake on matters relating to, among others, FAPP obligation.

Given the growing importance of telecommunications infrastructure operated by mobile network operators (“MNOs”), it would be in the public interest to impose the FAPP obligation on an on-going basis by incorporating a new SC into the UCL for issue to Successful Bidders of the Auction. In this regard, the Authority has decided to streamline such an obligation in SC 50 that the licensee shall provide a statutory declaration on FAPP to the Authority only upon request during the validity period of the UCL (in addition to the statutory declaration needed before the UCL is granted).

LG.4 Why SC 50 is added to UCL without consultation?

Ans. At present, the new SC 50 will only be prescribed in the UCL issued to Successful Bidders of the Auction for the reasons set out in its response to LG.3 above, and is not applicable in general for all operators in the industry. Under section 7A of the Telecommunications Ordinance (“TO”) (Cap. 106), the Authority is empowered to attach special conditions to licences including carrier licences. There is no provision in the TO mandating that the Authority has to consult before imposing any new licence condition.

LG.5 The existing licence conditions already enable the Authority to monitor the licensee’s compliance with the TO and its licence when providing telecommunications services, i.e. General Condition 5 (Provision of Service), SC 1 (Compliance with Codes of Practice), SC 6 (Requirement to Furnish Information to the Authority). Why is the addition of SC 51 on “Testing and Monitoring” necessary?

Ans. The new SC 51 is introduced in view of the increasing reliance on telecommunications services by the public for carrying out all sorts of personal and business activities as well as access to smart city applications in the information society. It is hence necessary for the Authority to enhance regulatory oversight through monitoring and testing of those telecommunications networks, systems and services operated by network operators and service providers, as any disruption to the provision of

telecommunications services could have a significant impact on the general public.

LG.6 For licensees which only offer a “wholesale” service, and whose retail service is provided via other licensees, how is SC 51 to be satisfied? Will the Authority be requesting that the licensee provide it with a wholesale service?

Ans. Where the Authority has to verify compliance of any aspect of a service that is delivered by or under the control of a UCL licensee at the wholesale level, the Authority may require that licensee to perform demonstration and provide relevant means for testing and monitoring purposes, as is appropriate in the circumstances.

LG.7 Why does OFCA require MNOs to provide SIM cards free of charge, but not to subscribe to the MNOs’ services, for testing and monitoring at its own cost?

Ans. The requirement under new SC 51 is in line with the existing arrangement for mobile virtual network operators holding the Services-Based Operator Licences which have been providing SIM cards to OFCA free of charge for testing and monitoring purposes. This is also in line with the licence condition on the provision of testing facilities and services for regulatory purposes in domestic television programme service licences.

LG.8 Is SC 51 relating to the testing of radio spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz and 4.9 GHz Bands only?

Ans. The requirement on testing and monitoring is applicable to all relevant services provided under the UCL to be granted for assignment of spectrum in the aforementioned frequency bands as well as other frequency bands specified in Schedule 3 of the same UCL.

LG.9 Will there be a limit on the number of SIM cards that OFCA intends to use for testing and monitoring of services and how

long will OFCA use the services for testing and monitoring of the services?

Ans. Only a reasonable number of SIM cards will be required by the Authority to perform testing and monitoring of the licensee's services where necessary. Pursuant to new SC 51.3(c), the services provided under the SIM cards shall be continuous and of the same types and levels as offered by the licensee to its customers.

LG.10 An Emergency Alert System ("EAS") has already been set up by each of the existing MNOs and they have each charged the Government for an agreed initial period of operation. However, SC 52.1 requires the establishment, maintenance and operation of the EAS to be at the licensee's own expense. Would it be unfair to the licensees who have already set up the EAS for the Government as they will continue to incur maintenance and operating costs which cannot be recovered? Would it also be unfair to new licensees who are required to establish an EAS but are not permitted to recover any costs from the Government?

Ans. The current EAS, as funded by the Anti-epidemic Fund, was established in 2020 so that the Government may send time-critical public announcements and messages to alert the general public of emergency situations, including urgent developments and measures arising from the novel coronavirus pandemic. Under the respective agreements signed between the Government and the existing four MNOs ("EAS Agreements"), the Government made commercial arrangements with the MNOs for establishing the EAS and for ongoing operation and maintenance of the EAS for a specified period.

Given that the EAS is also an important public communication platform to disseminate public announcements on other emergency situations such as extreme weather and serious public safety issues on an on-going basis, the new SC 52 is introduced to ensure that there will be continuous operation of the EAS in the long run.

As with compliance with the existing licence conditions, introduction of new licence conditions would invariably involve

compliance costs. As in any previous auction exercises, Qualified Bidders would have to make their own bidding decisions in the Auction having regard to all applicable compliance costs involved.

LG.11 Under SC 52, (1) can the existing MNOs continue to charge the Government for the use of the EAS after the initial period of operation has expired, and (2) will new licensees be required to establish an EAS completely free of charge for the Government?

Ans. Under the EAS Agreements, the MNOs charged the Government for establishing the EAS and for ongoing operation and maintenance of the EAS for a specified period. If the same MNOs acquire spectrum in the upcoming auction, they will be required to ensure continual maintenance and operation of the EAS for the duration of the term of licence (i.e. beyond the period specified in the EAS Agreements) in accordance with the requirements under the new SC 52 of the UCL at their own cost. Except for the fees paid in accordance with the EAS Agreements, they are not entitled to charge any fees with respect to the establishment, operation and maintenance of the EAS. As for any Successful Bidders who are new entrant to the market, they will be required under the new SC 52 of the UCL to establish, maintain and operate the EAS at their own cost from the launch of public mobile services in accordance with their licences.

LG.12 What standards or requirements are referred to in SC 52.2 that licensees shall meet? What guidelines shall licensees comply with in relation to the establishment, maintenance, operation and testing of the EAS?

Ans. The EAS which is set up, maintained and operated pursuant to new SC 52 shall be in compliance with the same or similar standards and requirements of the EAS governed by the EAS Agreements signed between the Government and the existing four MNOs. Among others, the EAS shall support the provision of cell broadcast service as defined in the relevant technical specifications of 3rd Generation Partnership Project or equivalent standards developed by other standard bodies. The Authority may specify and update such standards and requirements from time to time as may be necessary.

Under the new SC 52.3, the Authority may issue guidelines, as may be revised or updated from time to time as necessary, in relation to the establishment, maintenance, operation and testing of the EAS as well as other related tasks, which may cover working procedures on the operation and maintenance of the EAS similar to those currently followed by the four existing MNOs.

Office of the Communications Authority
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