

G.N. 6727

Telecommunications Ordinance (Cap.106)
and
Telecommunications (Determining Spectrum Utilization Fees
by Auction) Regulation (Cap.106AC)

By this Notice, the Telecommunications Authority, in exercise of the powers conferred by section 32I of the Telecommunications Ordinance, the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation and all other powers enabling him for this purpose, specifies the terms and conditions of the auction of the right to use the frequency bands specified in this Notice and the payment of the spectrum utilization fees. This Notice shall, where appropriate, also constitute guidelines issued under section 6D of the Telecommunications Ordinance indicating the manner in which the Telecommunications Authority proposes to perform his function of determining applications for licences which may be issued by him pursuant to section 7 of the Telecommunications Ordinance including the licensing criteria and other relevant matters he proposes to consider.



Marion LAI CHAN Chi-Kuen
Telecommunications Authority
3 October 2008

Part 1 – Introduction

1.1 Commencement

1.1.1 This Notice shall come into effect on the date of issue.

1.2 Purpose of Notice

1.2.1 The purpose of this Notice is to specify:

- (a) the terms and conditions of the Auction and the payment of Spectrum Utilization Fees; and
- (b) the Bidders which may be considered for the grant of a Licence.

1.3 Stages of the Auction

1.3.1 This Notice provides for four stages of the Auction:

- (a) Application Stage as specified in Part 2;
- (b) Qualification Stage as specified in Part 3;
- (c) Bidding Stage as specified in Part 4; and
- (d) Grant Stage as specified in Part 5.

1.4 Definitions

1.4.1 In this Notice, unless the context otherwise requires:

“**Activity Level**” has the meaning given in paragraph 4.8.5;

“**Application**” means an application submitted by a Bidder to the Authority in writing in accordance with Part 2;

“**Application Dates**” means 15 December 2008 and 16 December 2008;

“**Application Form**” means the form specified in Appendix 4 of this Notice;

“**Application Stage**” means the stage specified in Part 2;

“**Approval**” means any shareholder approval which is required by law or any regulatory authority before a Licence is granted to a Bidder and which is not capable of being reasonably obtained prior to the date on which the Application by that Bidder is submitted in accordance with Part 2;

“**Approval Date**” means ten Business Days after the date of the Provisional Successful Bidder Notice;

“**Auction**” means the procedure specified in this Notice;

“**Authorised Representative**” means the person authorised by a Bidder to submit a Bid in the Auction whose name and signature have been provided to the Authority in the Application submitted by the Bidder under Part 2 or in a notification under paragraph 7.7.1;

“**Authority**” means the Telecommunications Authority appointed under the Ordinance;

“**Authority’s Account**” means the designated account of the Authority at the Deposit Bank, namely the account 012-899-1-003883-3 at Bank of China or the account 004-048-203558-292 at HSBC;

“**Authority’s Office**” means Office of the Telecommunications Authority, 26th Floor / 29th Floor / 36th Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong;

“**Banking Ordinance**” means the Banking Ordinance (Cap.155, Laws of Hong Kong);

“**Bid**” means the amount of Spectrum Utilization Fee a Bidder wishes to offer in relation to a Frequency Band or Frequency Bands in the Auction;

“**Bidder**” means a body corporate which submits or has submitted an Application;

“**Bidder Compliance Certificate**” means the certificate specified in Appendix 5 of this Notice;

“**Bidder Notice**” means the notice published by the Authority in accordance with paragraph 3.1.1;

“**Bidding Stage**” means the stage specified in Part 4;

“**Bidding Stage Notice**” means the notice published by the Authority in accordance with paragraph 4.3.1;

“**Business Day**” means a full day other than a Saturday or a Sunday on which banks in Hong Kong are open for general business;

“**Commission**” means the Securities and Futures Commission established under the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);

“**Companies Ordinance**” means the Companies Ordinance (Cap.32, Laws of Hong Kong);

“**Conditions**” means the General Conditions and Special Conditions to which the Licence is subject, substantially in the form set out in Appendix 1 of this Notice;

“**Confidential Information**” has the meaning given in paragraph 6.5.6;

“**Connected Bidder**” means a Bidder that is closely connected to another Bidder and, for these purposes, a Bidder (Bidder A) is a Connected Bidder in relation to another Bidder (Bidder B) if:

- (a) Bidder A holds a material interest in Bidder B,
- (b) Bidder B holds a material interest in Bidder A, or
- (c) a person who is not a Connected Bidder in relation to Bidder A or Bidder B holds a material interest in both Bidder A and Bidder B;

“**Connected Bidder Statutory Declaration**” means the statutory declaration referred to in paragraph 3.1.2 and in the form specified in Appendix 7;

“**Connected Provisional Successful Bidders**” has the meaning given in paragraph 4.13.3;

“**Connected Provisional Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 4.13.3;

“**Connection**” has the meaning given in paragraph 1.6.1;

“**Deposit**” means a sum in cash or by a Letter of Credit from a Qualifying Bank;

“**Deposit Bank**” means Bank of China Hong Kong Branch at Ground Floor, Wu Chung House, 213 Queen’s Road East, Wanchai, Hong Kong (“Bank of China”) or The Hongkong and Shanghai Banking Corporation Limited, Hopewell Centre Branch at Ground Floor, Hopewell Centre, 183 Queen’s Road East, Wanchai, Hong Kong (“HSBC”);

“**Deposit Interest**” means interest (if any) earned in respect of a Bidder’s Deposit in accordance with paragraphs 2.2.7 to 2.2.9;

“**Eligibility Points**” has the meaning given in paragraph 4.8;

“**Exempt Security Interest**” has the meaning given in the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong);

“**Frequency Band**” means a frequency band specified in Appendix 2;

“**Frequency Band Selection Form**” means the form specified in Appendix 8 of this Notice;

“**Government**” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Government’s Adviser**” means DotEcon Ltd and Allen & Overy LLP who have been retained by the Government to provide it with advice regarding the Auction;

“**Grant Stage**” means the stage specified in Part 5;

“**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Hong Kong Dollars**” and “**HK\$**” means the valid currency for the time being of Hong Kong;

“Insider” means, in relation to a Bidder, any person to whom Confidential Information is disclosed directly or indirectly:

- (a) by any person who is an officer, employee, agent, adviser or associate of that Bidder;
- (b) by any person who controls, or is controlled by, or is under common control with, that Bidder, or the officer, employee, agent, adviser or associate, partner or co-partner of that person; or
- (c) by any person who is an Insider in relation to that Bidder;

“Letter of Credit” means a letter of credit in the form specified in Appendix 6 of this Notice;

“Licence” means a unified carrier licence issued by the Authority under the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public in Hong Kong and operating in a Frequency Band or Frequency Bands incorporating the Conditions;

“Losing Bidder” has the meaning given in paragraph 4.15.1;

“Minimum Fee” means the minimum amount of Spectrum Utilization Fee specified by the Secretary for Commerce and Economic Development and set out in Appendix 2;

“Ordinance” means the Telecommunications Ordinance (Cap.106, Laws of Hong Kong);

“Penalty” means a sum representing the whole or part of a Bidder’s Deposit which may be forfeited by the Authority from that Deposit under the terms and conditions of this Notice;

“Performance Bond” means a performance bond in the form determined by the Authority substantially in the form specified in Schedule 9 to Appendix 1 of this Notice and which is to be provided to the Authority in accordance with paragraph 5.2.1;

“Prevention of Bribery Ordinance” means the Prevention of Bribery

Ordinance (Cap.201, Laws of Hong Kong);

“**Provisional Successful Bidder**” has the meaning given in paragraph 3.4.2 or in paragraph 4.12.1, as the case may be;

“**Provisional Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 3.4.2 or paragraph 4.13.1, as the case may be;

“**Qualification Stage**” means the stage specified in Part 3;

“**Qualified Bidder**” means a Bidder determined as such in accordance with Part 3;

“**Qualified Bidder Notice**” means the notice published by the Authority in accordance with paragraph 3.3.1;

“**Qualifying Bank**” means an institution holding a full banking licence under the Banking Ordinance which long term issuer rating is, or is higher than:

- (a) one or more of the following:
 - (i) Moody’s A2;
 - (ii) Standard & Poor’s A;
 - (iii) Fitch Ratings’ A; or
- (b) a rating of a body other than a body listed in subparagraph (a) which, in the opinion of the Authority, is equivalent to one or more of the ratings in that paragraph;

“**Regulation**” means the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap.106AC, Laws of Hong Kong)

“**Revised Provisional Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 4.14.7;

“**Round**” means a period of time specified by the Authority during which Qualified Bidders are entitled to submit a Bid, a Withdrawal or a Waiver in accordance with the procedure set out in Part 4;

“**Round Price**” means an amount of Spectrum Utilization Fee in Hong Kong Dollars specified by the Authority at which Qualified Bidders are invited to offer for a Frequency Band in a Round;

“**Spectrum Cap**” means a total amount of 30MHz, being the maximum amount of spectrum among the Frequency Bands that may be assigned to a Bidder or a group of Connected Bidders;

“**Spectrum Utilization Fees**” means the sum payable in respect of the use of a Frequency Band as determined in accordance with this Notice;

“**Standing Highest Bid**” means, in respect of a Frequency Band, the Valid Bid determined in accordance with paragraph 4.7.1;

“**Standing Highest Bidder**” means, in respect of a Frequency Band, the Qualified Bidder which submitted the Standing Highest Bid;

“**Sub-Auction**” means the procedures specified in paragraphs 4.14.2 to 4.14.6;

“**Successful Bidder**” has the meaning given in paragraph 5.4.1;

“**Successful Bidder Notice**” means the notice published by the Authority in accordance with paragraph 5.4.1;

“**Valid Bid**” has the meaning given in paragraph 4.6.1;

“**Waiver**” shall be construed in accordance with paragraphs 4.10.1 to 4.10.4

“**Withdrawal**” has the meaning given in paragraph 4.9.1;

1.5 Interpretation

1.5.1 In this Notice, unless the context otherwise requires:

- (a) subject to subparagraph (c), a person has a material interest in relation to a body corporate if the person, directly or indirectly,

(alone, jointly or in concert with other person)

- (i) holds or is beneficially entitled to or has the right to acquire or subscribe for more than 25% of the issued share capital of the body corporate; or
- (ii) possesses or has the right to acquire voting power in respect of more than 25% of the issued share capital of the body corporate; or
- (iii) controls the body corporate;

- (b) any reference to shares shall be construed as a reference to issued share capital excluding any part of that capital which, neither as respects dividends nor capital, carries any right to participate beyond a specified amount in a distribution but including such part of that capital which, in the opinion of the Authority, possess sufficient of the characteristics of equity share capital so as to make it nearly equivalent to equity share capital;
- (c) any reference to a person's holding of shares, or possession of voting power, in a body corporate shall be construed so as to disregard that holding or possession if or to the extent that:
 - (i) he holds the shares concerned:
 - (aa) as a nominee;
 - (bb) as a custodian (whether under a trust or by a contract);
 - or
 - (cc) under an arrangement pursuant to which he has issued, or is to issue, depository receipts in respect of the shares concerned; or
 - (ii) he is not entitled to exercise, or control the exercise of, voting rights in respect of the shares concerned;
- (d) for the purpose of subparagraph (c)(i)(cc), "depository receipt" means a certificate or other record (whether or not in the form of a document):
 - (i) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular body corporate; and
 - (ii) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the

same kind, which shall include the right to receive those shares (or evidence of the right to receive those shares) from the person mentioned in subparagraph (i);

- (e) for the purpose of subparagraph (c)(ii):
 - (i) a person is not entitled to exercise, or control the exercise of, voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another; and
 - (ii) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for so long as they continue;

- (f) a body corporate is controlled by a person if:
 - (i) he has a controlling interest in it;
 - (ii) he has a controlling interest in any body corporate which has a controlling interest in the body corporate; or
 - (iii) although he does not have such an interest in the body corporate, or in any body corporate with a controlling interest in the body corporate, it is reasonable, having regard to all the circumstances, to expect that he will be able, by whatever means and whether directly or indirectly, to achieve the result that the affairs of the body corporate are conducted in accordance with his wishes;

and, for this purpose, a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, or has a right to acquire or subscribe for, 50 per cent or more of the share capital in the body corporate, or possesses, or has a right to acquire, 50 per cent or more of the voting power in it and a person shall be deemed to control a body corporate where that person controls another person which controls that body corporate;

- (g) for the purpose of determining whether a person has a material interest indirectly in a Bidder, the extent of the interest of the

person in the Bidder is:

- (i) where there is one interposed person, the percentage arrived at by multiplying the percentage representing the extent of the interest of the person in the interposed person (where the percentage representing the extent of the interest of the person in the interposed person referred to in this subparagraph (i) exceeds 50 per cent, such percentage shall be treated as a percentage of 100 per cent) by the percentage representing the extent of the interest of the interposed person in the Bidder;
 - (ii) where there is a series of two or more interposed persons, the percentage arrived at by multiplying the percentage representing the extent of the interest of the person in the first interposed person in the series by:
 - (aa) the percentage representing the extent of the interest of each interposed person (other than the last interposed person) in the series in the next interposed person in the series (where any percentage referred to in this subparagraph (ii)(aa) exceeds 50 per cent, such percentage shall, in each case, be treated as a percentage of 100 per cent); and
 - (bb) the percentage representing the extent of the interest of the last interposed person in the series in the Bidder;
- (h) for the purpose of any reference to “material interest” or “control” in this paragraph:
- (i) a beneficial entitlement to shares, interest in shares or right to acquire or subscribe for shares or right to any voting power shall be taken into account whether or not it is a conditional entitlement, interest or right;
 - (ii) notwithstanding subparagraph (i), no account shall be taken of an interest to the extent that (if it were an interest in shares) it would be an Exempt Security Interest; and

- (iii) a conditional entitlement shall include the right of a beneficiary under a trust including, without limitation, a discretionary trust unless the relevant Bidder satisfies the Authority that none of the reasons for establishing that discretionary trust was to avoid or circumvent any of the terms and conditions of this Notice;

- (i) for the purposes of subparagraph (h)(ii), an interest in shares shall cease to be an Exempt Security Interest and the person holding the interest in the shares by way of security (the “lender”) shall be taken to have acquired that interest, when:
 - (i) the lender:
 - (aa) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and
 - (bb) has evidenced an intention to exercise the voting rights or control their exercise or taken any step to exercise the voting rights or control their exercise;or
 - (ii) the power of sale in respect of the interest in shares held as security becomes exercisable, and the lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale;

- (j) a “person” includes any individual, body corporate, unincorporated association or body (including, without limitation, a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separately legal personality and includes its successors in title, permitted assigns and permitted transferees;

- (k) any reference in this Notice to a period to be determined in terms of a number of Business Days shall be calculated from midnight on the Business Day of notification or expiry of another time period, as the case may be, and expire at midnight on the last of the relevant number of Business Days and any reference to “midnight” in relation to a particular day shall be read as 11.59 p.m. on that

day;

- (l) any reference to an ordinance, whether the word is used by itself or as part of any title to an ordinance, shall mean that ordinance for the time being in force as well as any modification or substitution of that ordinance, in whole or in part, and all the subsidiary legislation, regulations, directions, codes of practice and instruments made under that ordinance and for the time being in force;
- (m) where any word or expression is defined in this Notice, that definition shall extend to the grammatical variations and cognate expressions of that word or expression;
- (n) the singular includes the plural and vice versa and words and expression importing each gender shall include the others;
- (o) references to this Notice shall include references to the Schedules and the Appendices and references to any “paragraph” , “Schedule” or “Appendix” are to paragraph, Schedule or Appendix of this Notice;
- (p) expression of time shall be references to Hong Kong time; and
- (q) the headings do not affect its interpretation.

1.6 Connection

1.6.1 Notwithstanding any other terms and conditions of this Notice, where the Authority determines that, in relation to circumstances which cause or would cause a Bidder to be a Connected Bidder in relation to another Bidder (the “Connection”), all of the following conditions are satisfied:

- (a) the Connection is, or would be, of a temporary nature;
- (b) the transaction or event or series of transactions or events which brought about the Connection was or were, as the case may be, bona fide commercial transactions not designed for the purpose of avoiding or circumventing any of the terms and conditions of this Notice relating to Connected Bidders; and

- (c) arrangements satisfactory to the Authority have been made or will be made such that:
 - (i) no Bidder is or will in practice be able to achieve the result that the affairs of another Bidder are conducted in accordance with its wishes;
 - (ii) no person is or will in practice be able to achieve the result that the affairs of two or more Bidders are conducted in accordance with its wishes;
 - (iii) there is no appreciable risk that Confidential Information relating to one Bidder has been obtained or will be obtained by another Bidder; and
 - (iv) there is no appreciable risk that both Confidential Information relating to one Bidder and Confidential Information relating to another Bidder has been obtained or will be obtained by any person,

the Authority may at any time, if he thinks fit, determine that the Connection shall be disregarded for all purposes, or for the purposes as he may determine, under this Notice.

1.6.2 A determination by the Authority under paragraph 1.6.1 may be revoked by him at any time in event of any change of circumstances which he considers to be material to that determination and a Bidder to which that determination relates shall inform the Authority immediately after it becomes aware of any change in the circumstances to which the determination relates (without prejudice to the generality of paragraph 6.4.1).

1.6.3 Notice of any determination by the Authority under paragraph 1.6.1 and any revocation of a determination under paragraph 1.6.2 shall be given to all Bidders.

Part 2 – Application Stage

2.1 Application

2.1.1 No person other than a company formed and registered under Companies Ordinance may make an Application. A company may make no more than one Application.

- 2.1.2 An Application must consist of the following documents duly completed in English language and in accordance with such instructions and accompanied by such documentary proof as may be required or specified therein:
- (a) an Application Form;
 - (b) a Bidder Compliance Certificate; and
 - (c) a Deposit
- 2.1.3 An Application must be:
- (a) addressed, sealed and enclosed in the manner as may be specified by the Authority;
 - (b) delivered by hand to Assistant Director (Regulatory) at the Authority's Office
- 2.1.4 Subject to paragraph 2.1.5, an Application must be received by the Authority between 9.00 am and 5.00 pm on either of the Application Dates.
- 2.1.5 If a tropical cyclone warning signal number 8 or above or a "black" rainstorm warning signal is in force in Hong Kong during any of the times specified in paragraph 2.1.4, Applications must be received by the Authority between 9.00 am and 5 pm on the immediately following Business Day on which none of the signals remains in force.
- 2.1.6 A Bidder shall be subject to, and obliged to comply with, the terms and conditions of this Notice from the time its Application is received by the Authority.

2.2 Deposit

Reference to Deposit

- 2.2.1 Any reference in this Notice to the Deposit shall, unless otherwise stated, be construed as referring to:
- (a) the Deposit which has been paid or delivered, as the case may be, to the Authority by the Bidder; and
 - (b) any Deposit Interest that has been credited to a Bidder in accordance with paragraphs 2.2.7 to 2.2.9.

2.2.2 Any reference in this Notice to the Deposit shall be construed so as not to include any amount which has been forfeited by way of Penalty.

Deposit

2.2.3 The Deposit shall be in such amount as specified in Appendix 3, which shall be taken into account by the Authority in accordance with paragraph 4.8.3 for the purpose of determining the number of Eligibility Points to be attributed to a Bidder for the first Round. The Deposit shall be payable or delivered, as the case may be, to the Authority in accordance with paragraph 2.2.6.

2.2.4 Where a Bidder provides its Deposit in cash, the Authority may notify that Bidder that its Application is invalid if funds representing that Bidder's Deposit are not cleared by 4 pm on the later of the Application Dates.

2.2.5 Where a Bidder provides its Deposit by a Letter of Credit, the Bidder shall ensure that the Letter of Credit remains valid and fully effective until the Deposit is returned to that Bidder in accordance with the terms and conditions of this Notice.

Method of payment or delivery of Deposit

2.2.6 Where the Deposit is:

- (a) in cash, it shall be payable to the Authority by telegraphic transfer to the Authority's Account at the Deposit Bank and shall be accompanied by an identifier for the Bidder which shall consist of the registered name of the Bidder;
- (b) a Letter of Credit, it shall be addressed to the Authority and be delivered to the Authority's Office.

Deposit Interest

2.2.7 Where the Deposit is in cash, it shall earn interest at the rate available to the Authority from the Deposit Bank in which the cash is deposited.

2.2.8 Subject to paragraph 2.2.9, where the Deposit is in cash and the Deposit, or part of the Deposit, is returned to a Bidder under any of the terms and conditions of this Notice, then the Deposit, or part of the Deposit, which is returned shall include all Deposit Interest as has been earned on that

Deposit, or part of that Deposit, from (and including) the date on which it was received by the Authority up to (but excluding) the date on which it is returned.

- 2.2.9 Where the Deposit or part of the Deposit is forfeited under any of the terms and conditions of this Notice by way of Penalty, any Deposit Interest which has been earned on the forfeited part of the Deposit shall form part of the total amount which is forfeited.

Penalties

- 2.2.10 If a Bidder is notified under any of the terms and conditions of this Notice that all or part of its Deposit is forfeited by way of Penalty, the deduction from that Bidder's Deposit shall be deemed to have occurred at the time of that notification by the Authority notwithstanding:
- (a) where the Deposit is in cash, that the sums specified in the notification, and any interest earned or to be earned on the Deposit, remain for a further period of time in the Authority's Account; or
 - (b) where the Deposit is a Letter of Credit, that the Authority has not made a claim under the Letter of Credit for the sums specified in the notification.
- 2.2.11 If a sum which has been forfeited by way of Penalty is re-instated as all or part of the Bidder's Deposit:
- (a) where the Deposit is in cash, the sum (including Deposit Interest on that sum) shall be paid into the relevant Authority's Account and shall be deemed to be so re-instated from the date of notification of its re-instatement to the Bidder and any interest which has been earned on that sum shall also be deemed to be re-instated as part of the Deposit from (and including) that date; and
 - (b) where the Deposit is a Letter of Credit, the sum shall be paid to the Bidder.

Withdrawal of Applications

- 2.3.1 A Bidder which has submitted an Application shall not be entitled to withdraw its Application or from the Auction other than in accordance with the terms and conditions of this Notice.

Acceptance of terms and conditions and Conditions

- 2.4.1 A Bidder which has submitted an Application shall be deemed to have agreed with, and accepted, the terms and conditions of this Notice and any amendment made to any of the terms and conditions of this Notice.
- 2.4.2 A Bidder which has submitted an Application shall be deemed to have agreed with, and accepted, the Conditions and any amendment made to any of the Conditions by the Authority prior to the grant of a Licence to that Bidder provided that the amendment is made:
- (a) to correct any manifest error;
 - (b) to correct any inconsistency; or
 - (c) to address circumstances not contemplated by the Authority on or before the date of this Notice but which are nevertheless within the overall purpose of the Conditions, the Ordinance, the Regulation and this Notice.

Part 3 – Qualification Stage

3.1 Procedures for dealing with Connected Bidders

- 3.1.1 Without prejudice to the determination of the Authority under paragraph 3.2, the Authority shall publish a notice (a “Bidder Notice”) which shall state the identity of each Bidder which has submitted an Application and shall specify a date on or before which each Bidder must notify the Authority whether it is a Connected Bidder in relation to another Bidder. The Authority may disclose such information contained in the Applications of the Bidders as he considers necessary for each of the Bidders to assess whether it is a Connected Bidder in relation to another Bidder.
- 3.1.2 Each Bidder must notify the Authority whether it is a Connected Bidder in relation to another Bidder by completing and submitting a Connected Bidder Statutory Declaration on or before the date specified by the Authority under paragraph 3.1.1.
- 3.1.3 If the Authority determines that two or more Bidders are Connected Bidders either following a notification to him by a Bidder under paragraph 3.1.2 or as a result of his review of the Applications, the Authority shall publish the identities of the Connected Bidders. The Connected Bidders shall, on or before a date specified by the Authority make one or more of the following arrangements:

- (a) reorganise themselves so that they cease to be Connected Bidders;
- (b) withdraw their respective Applications such that only one or none of the Connected Bidders remains a Bidder;

and the Connected Bidders shall jointly submit to the Authority a notification of the reorganisation or the withdrawal of Applications (as the case may be) duly signed by two Authorised Representatives of each of the Connected Bidders.

3.1.4 If the Connected Bidders elect to reorganise themselves in accordance with paragraph 3.1.3(a), each of them must, by the date specified by the Authority in accordance with that paragraph, submit to the Authority a revised Application Form and a revised Bidder Compliance Certificate.

3.1.5 If the Connected Bidders withdraw all of their respective Applications in accordance with paragraph 3.1.3(b), none of the Connected Bidders shall be permitted to submit a new Application.

3.1.6 If the Connected Bidders fail to submit a joint notification in accordance with paragraph 3.1.3, the Authority may determine that they are not Qualified Bidders.

3.2 Determination as a Qualified Bidder

3.2.1 The Authority shall determine whether a Bidder is a Qualified Bidder in accordance with paragraph 3.2.2.

3.2.2 Subject to paragraphs 7.2.1 and 7.8.1, a Bidder shall not be determined as a Qualified Bidder:

- (a) unless the Bidder has submitted an Application in compliance with all the requirements of paragraph 2.1.2 to the satisfaction of the Authority;
- (b) if there is reasonable ground for the Authority to believe that the Bidder does not comply with or is not capable of complying with all the undertakings given in the Bidder Compliance Certificate;
- (c) unless the Authority is satisfied that the Bidder is not a Connected Bidder in relation to another Bidder.

3.3 Notification as a Qualified Bidder

3.3.1 The Authority shall, after making his determination under paragraphs 3.2.1

and 3.2.2, publish a notice (a “Qualified Bidder Notice”) which shall state the identity of each Bidder which has been determined to be a Qualified Bidder.

3.3.2 Subject to paragraph 3.3.3, on, or as soon as practicable after, the publication of the Qualified Bidder Notice, the Authority shall return, to each Bidder which has not been determined to be a Qualified Bidder and to each Bidder which has withdrawn its Application pursuant to paragraph 3.1.3(b), that Bidder’s Deposit provided:

- (a) that there is no outstanding investigation being carried out by the Authority against that Bidder in respect of any suspected contravention of the terms and conditions of this Notice; and
- (b) that, if any amounts have been forfeited by way of Penalty by the Authority in accordance with the terms and conditions of this Notice with respect to that Bidder,
 - (i) where the Deposit is in cash, the Deposit shall be returned less the aggregate amount of those Penalties; and
 - (ii) where the Deposit is a Letter of Credit, the Authority shall make a claim under the Letter of Credit to the extent of the aggregate amount of those Penalties.

3.3.3 Notwithstanding the return to a Bidder of its Deposit in accordance with paragraph 3.3.2, that Bidder shall continue to comply with those terms and conditions of this Notice as are specified by the Authority. If the Authority does not specify any terms and conditions in accordance with this paragraph, the Bidder shall be required to comply with all of the terms and conditions of this Notice as appropriate.

3.4 No Bidding Stage where there is no more than one Qualified Bidder

3.4.1 If at any time before the start of the Bidding Stage, there is no more than one Qualified Bidder, the Authority shall publish a notice that the Bidding Stage shall not take place.

3.4.2 Where, at any time before the start of the Bidding Stage, there is only one Qualified Bidder, the Authority shall notify that Qualified Bidder and that Qualified Bidder shall select, subject to the restriction of Spectrum Cap, in the Frequency Band Selection Form the Frequency Band or Frequency

Bands it wishes to be assigned. The Frequency Band Selection Form shall be duly completed in accordance with the instructions specified therein, signed on behalf of the Qualified Bidder by two Authorised Representatives and submitted to the Authority within the period specified by the Authority. A Frequency Band Selection Form shall not be approved by the Authority if it is not duly completed in accordance with the instructions specified therein or is otherwise unclear, or if it contains a selection of Frequency Bands exceeding the Spectrum Cap. Upon approval of the Frequency Band Selection Form by the Authority, the Qualified Bidder shall be the Provisional Successful Bidder of the Frequency Band or Frequency Bands it selects in the Frequency Band Selection Form and the Spectrum Utilization Fee payable by the Provisional Successful Bidder shall be the sum of the Minimum Fees for the Frequency Bands selected by the Provisional Successful Bidder. The Authority shall publish a notice (“Provisional Successful Bidder Notice”) to announce the identity of the Provisional Successful Bidder and the Spectrum Utilization Fee payable for the relevant Frequency Band or Frequency Bands.

- 3.4.3 The Authority may, at his discretion, request the Qualified Bidder to make such clarification as may reasonably be required if the Frequency Band Selection Form is not duly completed in accordance with the instructions specified therein or is otherwise unclear. If the Qualified Bidder fails to select a Frequency Band by submitting the Frequency Band Selection Form within the period specified by the Authority or fails to make such clarification as required by the Authority in relation to the Frequency Band Selection Form, the Qualified Bidder shall not be entitled to the grant of a Licence and the Authority may forfeit an amount (up to the full amount of the Qualified Bidder’s Deposit) by way of Penalty from the Qualified Bidder’s Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

Part 4 – Bidding Stage

4.1 Reference to a Bidder

- 4.1.1 Any reference to a Bidder in this Part shall be a Qualified Bidder.

4.2 Purpose and Structure of Bidding Stage

- 4.2.1 The purpose of the Bidding Stage is to provide a procedure to determine
- (a) which of the Bidders shall become a Provisional Successful Bidder of each Frequency Band; and
 - (b) the amount of Spectrum Utilization Fee that shall be payable for each Frequency Band.
- 4.2.2 The Bidding Stage in respect of all Frequency Bands shall be conducted simultaneously and shall consist of one or more Rounds in which Bidders may submit Bids for the Frequency Bands.

4.3 Bidding Stage Notice

- 4.3.1 At least two Business Days before the commencement of the Bidding Stage, the Authority shall issue to each Bidder a notice (“Bidding Stage Notice”) which shall provide details of the date on which and the time at which the Bidding Stage shall commence.
- 4.3.2 If the Authority is of the opinion that it is impractical for the Bidding Stage to commence on the date or at the time referred to in the Bidding Stage Notice, he may notify each Bidder of a different date or time, as the case may be. If a different date or time is to be notified, the date or time shall not be earlier than that originally notified as the relevant date or time.

4.4 Information to be provided to Bidders prior to each Round

- 4.4.1 Prior to the start of each Round, the Authority shall notify each Bidder of:
- (a) the date on and the time at which the Round shall start and end,
 - (b) the Round Price for each Frequency Band,
 - (c) the Frequency Band, if any, in respect of which the Bidder is the Standing Highest Bidder,
 - (d) the amount, if any, of the Standing Highest Bid for each Frequency Band,
 - (e) the total number of Waivers that may be exercised by the Bidder, and
 - (f) the total number of Withdrawals that may be exercised by the Bidder.

4.5 Submission of Valid Bids

4.5.1 In the first Round, each Bidder must submit to the Authority a Valid Bid for at least one Frequency Band. If a Bidder fails to submit a Valid Bid in the first Round, the Authority shall disqualify that Bidder from the Auction and forfeit an amount (up to the full amount of that Bidder's Deposit) by way of Penalty from that Bidder's Deposit where the Deposit is in cash or make a claim under the Letter of Credit to the extent of the relevant amount where the Deposit is a Letter of Credit.

4.5.2 In each Round other than the first Round, each Bidder may:

- (a) (i) subject to paragraphs 4.6 and 4.8, elect to submit or not to submit a Valid Bid in respect of any Frequency Band;
- (ii) subject to paragraphs 4.8 and 4.9, submit a Withdrawal in respect of a Frequency Band for which the Bidder is a Standing Highest Bidder; or
- (b) subject to paragraphs 4.8 and 4.10, submit a Waiver.

4.5.3 For the avoidance of doubt, where a Bidder is a Standing Highest Bidder in respect of a Frequency Band in a Round, it may elect to submit or not to submit a Valid Bid for that Frequency Band in the immediately following Round.

4.6 Valid Bid

4.6.1 A Valid Bid, in relation to each Round, is a Bid:

- (a) subject to paragraph 4.12.1(b), equal to the Round Price specified by the Authority prior to the Round;
- (b) submitted in accordance with the requirements given in paragraph 4.11.1; and
- (c) that complies with the requirements given in paragraph 4.8.2.

4.7 Determination of Standing Highest Bid for each Round

4.7.1 At the end of each Round, the Authority shall determine the Standing Highest Bid among the Valid Bids for each Frequency Band as follows:

- (a) (i) where no Valid Bid is received in a Round in respect of a Frequency Band but there was a Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, that Standing Highest Bid shall remain as the Standing Highest Bid in respect of that Frequency Band

- (unless that Standing Highest Bid has been subject to a Withdrawal);
- (ii) where no Valid Bid is received in a Round in respect of a Frequency Band and there was no Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round, there shall be no Standing Highest Bid in respect of that Frequency Band;
 - (iii) where no Valid Bid is received in a Round in respect of a Frequency Band and the Standing Highest Bid in respect of that Frequency Band at the end of the immediately preceding Round has been subject to a Withdrawal, there shall be no Standing Highest Bid in respect of that Frequency Band;
- (b) if only one Valid Bid is received in a Round in respect of a Frequency Band, that Valid Bid shall be the Standing Highest Bid for that Frequency Band;
 - (c) if two or more Valid Bids are received in a Round in respect of a Frequency Band, the Authority shall determine by random which of them shall be the Standing Highest Bid for that Frequency Band.

4.8 Eligibility Points and Activity Level

- 4.8.1 A number of points (“Eligibility Points”) shall be attributed to each Frequency Band in accordance with Appendix 2.
- 4.8.2 The Activity Level of a Bidder in a Round shall not exceed the number of Eligibility Points attributed to that Bidder for that Round.
- 4.8.3 For the first Round, the number of Eligibility Points attributed to each Bidder shall be determined in accordance with Appendix 3.
- 4.8.4 For each Round other than the first Round, the number of Eligibility Points attributed to a Bidder shall be equal to the Activity Level of the Bidder in the immediately preceding Round as determined in accordance with paragraph 4.8.5.
- 4.8.5 The Activity Level of a Bidder in a Round shall be the aggregate of the number of Eligibility Points attributed to the Frequency Bands in respect of which the Bidder:
 - (a) submits a Valid Bid in that Round; and

- (b) was the Standing Highest Bidder at the end of the immediately preceding Round (except where the Bidder submits a Valid Bid for that Frequency Band in which case Eligibility Points are attributed under subparagraph (a) or where the Bidder submits a Withdrawal for that Frequency Band in that Round in which case Eligibility Points are disregarded in accordance with paragraph 4.9.3);

unless the Bidder submits or is deemed to submit a Waiver in that Round, in which case the Activity Level of the Bidder shall be the Activity Level of the Bidder in the most immediately preceding Round in which the Bidder did not submit or was not deemed to have submitted a Waiver.

4.9 Withdrawal

4.9.1 In any Round after the first Round, a Bidder may submit a withdrawal (a “Withdrawal”) for which the Bidder holds the Standing Highest Bid in respect of a Frequency Band at the end of the immediately preceding Round. A Withdrawal must be submitted in accordance with the requirements given in paragraph 4.11.1.

4.9.2 In case a Bidder makes a Withdrawal in respect of a Frequency Band in accordance with paragraph 4.9.1, then:

- (a) where one or more Bidders submit Valid Bids in a subsequent Round for that Frequency Band but all the subsequent Valid Bids are lower than that Standing Highest Bid (irrespective of whether the subsequent Valid Bids are also withdrawn), that Bidder is liable to pay the Government the difference between that Standing Highest Bid and the amount of the next subsequent highest Valid Bid (which is in any case lower than that Standing Highest Bid) (irrespective of whether that next subsequent highest Valid Bid is withdrawn or whether it is determined as the Spectrum Utilization Fee), subject to a maximum amount of 30% of that Standing Highest Bid;
- (b) where no other Bidder submits a Valid Bid in any subsequent Round for that Frequency Band, that Bidder is liable to pay the Government 30% of that Standing Highest Bid.

The Authority may deduct from the Deposit of a Bidder or make a claim