

# AUSTRALIAN COMMUNICATIONS AUTHORITY

*Radiocommunications Act 1992*

## **Radiocommunications (Spectrum Licence Allocation Open Outcry Auction—800 MHz Band) Determination 2000**

The Australian Communications Authority, under sections 60 and 294 of the *Radiocommunications Act 1992*, determines the following procedures to be applied in allocating spectrum licences by a price-based allocation system.

Dated 12 December 2000.

A J Shaw  
Chair

R Horton  
Deputy Chair

Australian Communications Authority

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*Radiocommunications Act 1992*

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Allocation Open Outcry Auction—800 MHz  
Band) Determination 2000**

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*Radiocommunications (Spectrum Licence Allocation Open  
Outcry Auction—800 MHz Band) Determination 2000*

**PART 1—PRELIMINARY**

**Name of Determination**

**1.1.** This Determination is the *Radiocommunications (Spectrum Licence Allocation Open Outcry Auction—800 MHz Band) Determination 2000*.

**Commencement**

**1.2.** This Determination commences on 12 December 2000.

**Purpose**

**1.3** This determination sets out a system for allocating spectrum licences by an open outcry auction.

**Definitions**

**1.4 (1)** In this Determination:

*ACN* or *ARBN* means the relevant registration numbers for a company or body under the Corporations Law.

*Act* means the *Radiocommunications Act 1992*.

*applicant* means a person who applies to take part in an auction for the allocation of a spectrum licence under this Determination.

*auction centre* means the auction centre located at the Canberra office of the ACA.

*auctioneer* means the person engaged as auctioneer under section 4.1.

*balance of the bid price* means the highest bid made by the successful applicant, less the total of the deposit.

*bank cheque* means a bank cheque issued by a bank licensed to operate in Australia.

*bank transfer*, for a payment, means making the payment by electronic transfer.

*Bidder Identification Form* means the document approved by the ACA under paragraph 2.4 (e).

*Bidder's Acknowledgment* means the document approved by the ACA under paragraph 2.4 (f).

*bid price* means the amount bid by or on behalf of the successful applicant.

*closing date* means the date and time advertised in the notice published by the ACA under subsection 2.2 (1) as the date and time by which a person may give the ACA an application form.

*corporation* has the same meaning as in the Corporations Law.

***Deed of Acknowledgment*** means the document approved by the ACA under paragraph 2.4 (b).

***Deed of Financial Security*** means the document approved by the ACA under paragraph 2.4 (c).

***entry fee*** means the entry fee payable by an applicant set by the ACA under paragraph 2.1 (a).

***financial security amount*** means the amount set by the ACA under paragraph 2.1 (b) as the amount required by a Deed of Financial Security or a performance payment.

***Form of Authority*** means the document approved by the ACA under paragraph 2.4 (d).

***lot*** means a part of the spectrum identified as a lot in the Marketing Plan.

***Marketing Plan*** means the *Radiocommunications Spectrum Marketing Plan (800 MHz Band) 2000*.

*Note:* Copies of the Marketing Plan are available from the ACA.

***performance payment*** means a payment made to the ACA under section 3.3.

***registered applicant*** means an applicant who is registered under section 3.8.

***registered bidder*** means an individual who is registered under section 4.3.

***reserve price*** means the price set for the lot by the ACA under section 3.11.

***successful applicant*** has the meaning given by subsection 4.4 (4).

*Note* A number of expressions used in this Determination are defined in the Act, the *Radiocommunications (Interpretations) Determination 2000* and the *Radiocommunications Regulations 1993*. Some of these are:

- |                    |                  |
|--------------------|------------------|
| • ACA              | • frequency band |
| • spectrum licence | • space station  |

(2) In this determination:

- (a) a reference to time is a reference to that time in the Australian Capital Territory; and
- (b) a reference to an amount of money is a reference to that amount in Australian currency; and
- (c) the range of numbers that identifies a frequency band includes the higher, but not the lower, number.

## **PART 2—PREPARING FOR THE AUCTION**

### **Entry fee and financial security amount**

**2.1.** Before the ACA publishes a notice inviting applications for an auction, it must, by writing, set:

- (a) the amount of the entry fee for participating in the auction; and
- (b) the financial security amount; and
- (c) the closing date and time for applications.

### **Publication of notice by ACA**

**2.2. (1)** Before holding an auction, the ACA must publish a notice in a newspaper circulating nationally in Australia:

- (a) describing the parts of the spectrum to be auctioned; and
- (b) giving a brief description of the way the auction will be conducted; and
- (c) inviting people to apply to the ACA to take part in the auction; and
- (d) stating the closing date and time for applications; and
- (e) stating that licences will be allocated in accordance with this Determination; and
- (f) stating that further information (the *Applicant Information Package*) can be obtained from the ACA at the address given in the notice.

**(2)** If there is a change in a matter mentioned in the notice, the ACA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.

**(3)** The ACA may also publish other information about auctions and may publish that information, and the notices mentioned in subsections (1) and (2), in other ways.

### **Applicant Information Package**

**2.3. (1)** The Applicant Information Package must contain the following information and documents:

- (a) the spectrum re-allocation declaration by the Minister under section 153B of the Act;
- (b) a guide to the auction process;
- (c) the Marketing Plan;

- (d) this Determination;
- (e) the application form, with instructions for completing and lodging the form;
- (f) the Deed of Financial Security;
- (g) information about the performance payment as an alternative to providing a Deed of Financial Security;
- (h) the Deed of Acknowledgment;
- (i) the Form of Authority;
- (j) the amount of the entry fee for the auction set by the ACA under paragraph 2.1 (a);
- (k) the financial security amount set by the ACA under paragraph 2.1 (b);
- (l) the closing date and time for applications set by the ACA under paragraph 2.1 (c);
- (m) the address of the auction centre.

(2) The Applicant Information Package may also contain other information about the auction.

### **Approval of forms**

**2.4.** The ACA must, in writing, approve the following documents:

- (a) an application form;
- (b) a Deed of Acknowledgment for paragraph 3.1 (2) (c);
- (c) a Deed of Financial Security that complies with section 3.3;
- (d) a Form of Authority for paragraph 3.1 (2) (d);
- (e) a Bidder Identification Form for section 3.10;
- (f) a Bidder's Acknowledgment for section 4.3.

*Note* Subsection 3.3 (5) sets out who may give the Deed of Financial Security.

### **Payments of monies due to ACA**

**2.5. (1)** All payments to the ACA must be made in Australian currency.

(2) Monies due to the ACA for the following purposes must be paid by the date required by this determination and in accordance with this determination:

- (a) entry fee;
- (b) monies payable under a performance payment;
- (c) 10% of the bid price;
- (d) the balance of the bid price.

**(3)** Monies due to the ACA for the purposes set out in paragraphs (2) (a), (b) and (d) must be paid:

- (a) by bank cheque; or
- (b) by bank transfer.

**(3A)** Monies due to the ACA for the purposes set out in paragraph (2) (c) must be paid by cheque.

**(4)** If a payment is required to be made by a required date, it is sufficient if, by that date, that either:

- (a) the applicant gives the ACA a bank cheque for the amount of the payment; or
- (b) if paying by bank transfer, the applicant:
  - (i) does everything necessary to make the payment; and
  - (ii) gives the ACA evidence that the payment has been made.

**(5)** A payment by bank transfer must be paid into the ACA's bank account, details of which are as follows:

- (a) Bank — Reserve Bank of Australia;
- (b) Branch — Canberra City;
- (c) BSB number — 092-009;
- (d) Account number — 92276-5;
- (e) Account name — Australian Communications Authority Clearing Account.

**(6)** Any payment by bank cheque or bank transfer must be received in the ACA's bank account within 5 working days after the required date. If it is not, the person's application ceases to have effect and the person is not entitled to take part in the auction or to obtain a spectrum licence for the lot.

**(7)** The applicant must pay all bank charges and Government duties imposed on a payment, and a payment will not be regarded as having been made unless the full amount is received by the ACA, after the deduction of all bank charges and duties.



### **PART 3—BEFORE THE AUCTION**

#### **Applications**

**3.1. (1)** A person who wants to obtain a spectrum licence under this determination must apply to the ACA for registration and pay the entry fee.

**(2)** The person must give the ACA the following documents (the *application documents*):

- (a) a completed application form; and
- (b) a completed Deed of Financial Security, if required under section 3.3, or notification in writing that the person has lodged a performance payment; and
- (c) a completed Deed of Acknowledgment; and
- (d) a completed Form of Authority for each person authorised by the applicant to bid in the auction.

**(3)** The entry fee and performance payment must be paid in accordance with section 2.5.

*Note:* By section 2.5, the entry fee may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account within 5 working days of the application date, the application ceases to have effect.

#### **Lodging of applications**

**3.2 (1)** The application documents and entry fee must be lodged with the ACA at the Canberra office of the ACA by the advertised closing time on the advertised closing date.

**(2)** If the application is lodged by fax, the originals of the documents lodged by fax must be received by the ACA no later than 2 working days after the advertised closing date. If they are not, the person's application ceases to have effect and the person is not entitled to take part in the auction or be allocated a licence.

**(3)** As soon as practicable after receiving the application documents, the ACA must confirm receipt by fax or by letter (if the ACA does not know the applicant's fax number) noting particulars of the applicant's:

- (a) name; and
- (b) address; and
- (c) if the applicant is a company or a registrable body—the applicant's ACN or ARBN.

### **Deed of Financial Security or performance payment**

**3.3. (1)** A person who wishes to be registered as an applicant must give the ACA a Deed of Financial Security or a performance payment unless:

- (a) the applicant satisfies the ACA that it is an authority of the Commonwealth, a State or a Territory; or
- (b) the applicant satisfies the ACA that it is a subsidiary, within the meaning of the Corporations Law, of an authority of the Commonwealth, a State or a Territory; or
- (c) the ACA decides, under subsection (2), that the applicant need not give the ACA a Deed of Financial Security or a performance payment.

**(2)** If a company (other than a company which is incorporated outside of Australia) satisfies the ACA that it does not carry on business for profit, the ACA:

- (a) may decide that the company need not give the ACA a Deed of Financial Security or a performance payment; and
- (b) must notify the company in writing of the decision as soon as practicable after making the decision.

**(3)** The amount payable to the ACA under the Deed of Financial Security, or the performance payment, is the amount set by the ACA under paragraph 2.1 (b).

**(4)** A person giving a Deed of Financial Security must be:

- (a) a bank licensed to operate in Australia; or
- (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
- (c) if Part VII of that Act has not ceased to have effect—a Lloyd's underwriter.

**(5)** For this section, a corporation makes a Deed of Financial Security by executing the deed in accordance with section 127 of the Corporations Law.

**(6)** If a Deed of Financial Security is made under a power of attorney for a corporation, the applicant must give the ACA a copy of the power of attorney with the Deed.

### **Failure to lodge Deed of Financial Security**

**3.4 (1)** This section applies if the ACA is not satisfied that the person giving the Deed is a person who complies with subsection 3.3 (5).

**(2)** The applicant's registration is of no effect.

(3) The applicant is excluded from taking part (or any further part) in the auction and from obtaining a spectrum licence.

(4) The applicant's entry fee is not refundable.

### **Performance payment**

**3.5 (1)** This section applies if an applicant gives the ACA a performance payment instead of a Deed of Financial Security.

(2) Performance payment monies lodged with the ACA may be dealt with in accordance with this determination as security for the timely discharge of the applicant's financial obligations to the ACA under this determination.

(3) If an applicant defaults in making payment for a successful bid, the performance payment is forfeited to the ACA in relation to any undischarged liability to the ACA in accordance with section 5.2.

(4) The ACA must account to the applicant for the performance payment monies after completion of the auction.

### **Forfeiture and refund of secured monies**

**3.6. (1)** To meet any undischarged liability owed by the applicant to the ACA for the matters mentioned in subsection (2), monies will be forfeited to the ACA that:

- (a) are secured by the performance payment; or
- (b) are secured by, and paid to the ACA under, the Deed of Financial Security; or
- (c) have been paid by the promisor to the ACA under clause 1.4 of the Deed of Financial Security.

(2) For subsection (1), the matters include:

- (a) any act or omission by the applicant, its officers, employees, agents, volunteers, subcontractors or associates in connection with the applicant's participation in an allocation system conducted under this Determination; or
- (b) any breach or default by the applicant of its obligations or warranties under the Deed of Acknowledgment, this Determination, or both.

### **Register of applicants**

**3.7. (1)** The ACA must maintain a register of applicants.

- (2) The Register may be in electronic form.
- (3) For each applicant, the register must contain details of:
  - (a) the name and address of the applicant; and
  - (b) the applicant's telephone and fax numbers; and
  - (c) if the applicant is a company or a registrable body—the applicant's ACN or ARBN.
- (4) The register may also contain any other information that the ACA considers necessary for the running of the auction.
- (5) The ACA must make the changes to the register that the ACA considers necessary or convenient as soon as practicable after:
  - (a) an applicant tells the ACA of any change of name, address, or telephone or fax numbers; or
  - (b) the ACA becomes aware that any information on the register is not correct.
- (6) Except as authorised by this determination, or as otherwise authorised by law, the ACA must ensure that any details about applicants are not disclosed until the auction is closed.

### **Registration of applicants**

- 3.8. (1)** The ACA must register an applicant only if:
- (a) the applicant has:
    - (i) lodged completed application documents; and
    - (ii) paid the entry fee in accordance with section 2.5; and
    - (iii) lodged a Deed of Financial Security, or paid a performance payment in accordance with section 2.5; and
  - (b) if a Deed of Financial Security is required—the ACA is satisfied that the person who made the Deed is a person who complies with subsection 3.3 (5).
- (2) At least 5 working days before the start of the auction, the ACA must, in writing, tell each registered applicant:
- (a) that the applicant has been registered; and
  - (b) the starting date and time of the auction; and
  - (c) the place of the auction.
- (3) The ACA:
- (a) may change the details of information mentioned in paragraphs (2)(a), (b) and (c); and
  - (b) must tell all registered applicants of the change, in writing, as soon as practicable after making the change.

(4) The ACA must not change the starting date of the auction notified to an applicant under subsection 3.8(2) to an earlier date.

### **Lodgment of another Form of Authority**

**3.9. (1)** This section applies if:

- (a) a registered applicant wishes to have an individual represent the applicant at an auction; and
- (b) the individual is not a person for whom the applicant has given the ACA a Form of Authority under paragraph 3.1 (2) (d).

(2) The applicant must give the ACA a duly completed Form of Authority for the individual no later than 2 hours before the time the auction starts.

### **Bidder Identification Forms**

**3.10. (1)** The ACA must give each registered applicant a Bidder Identification Form for each individual for whom the applicant has given the ACA a Form of Authority.

(2) The ACA must also give a Bidder Identification Form to each registered applicant who is an individual.

(3) The ACA may, at any time, replace a Bidder Identification Form if it is satisfied that the form has been lost, destroyed or cannot reasonably be made available to the ACA.

### **Reserve prices**

**3.11.** After the closing date for applications, the ACA must by writing set a reserve price for each lot.

## **PART 4—CONDUCT OF THE AUCTION**

### **Appointment of auctioneer**

**4.1.** The ACA must engage a person as auctioneer to conduct the auction.

### **Holding an auction**

**4.2.** The ACA must hold an auction for allocation of the lots in accordance with this Determination.

### **Registration of bidders by ACA**

**4.3. (1)** If an individual for whom the ACA has issued a Bidder Identification Form wishes to bid in the auction, the individual must register as a bidder.

*Note* Under subsection 4.4 (1), a bid for a lot may only be made by a registered bidder.

- (2)** The individual must register:
  - (a) in the period of 1 hour that ends 30 minutes before bids are expected to be invited for the lot; or
  - (b) if the ACA extends that period—before the end of the period set by the ACA.
- (3)** When registering, the individual must:
  - (a) either:
    - (i) show the ACA the Bidder Identification Form issued for the individual; or
    - (ii) satisfy the ACA that the Bidder Identification Form issued for the individual has been lost, destroyed or cannot reasonably be made available to the ACA; and
  - (b) show the ACA the evidence of the individual's identity referred to in the Bidder Identification Form; and

- (c) complete and sign the Bidder's Acknowledgment given to the individual by the ACA.

*Note* Under subsection 3.10 (3), the ACA may, at any time, replace a Bidder Identification Form that it has issued if it is satisfied that the form it issued has been lost, destroyed or cannot reasonably be made available to the ACA.

(4) If the individual signs a Bidder's Acknowledgment and has not otherwise complied with subsection (3), the Bidder's Acknowledgment is of no effect.

(5) On registering an individual as a bidder, the ACA must give each registered bidder a bidder's paddle.

(6) If an individual shows the ACA more than 1 Bidder Identification Form issued for the individual, or satisfies the ACA that the ACA has issued more than 1 Bidder Identification Form for the individual, the ACA must:

- (a) register the individual separately for each Bidder Identification Form; and
- (b) give the individual a different bidder's paddle for each Bidder Identification Form.

## **Bidding**

**4.4. (1)** Only a registered bidder may bid for a lot.

(2) The auctioneer will:

- (a) invite bids for each lot in turn; and
- (b) identify the registered bidder who makes the highest bid for the lot.

(3) In the event of a disputed bid:

- (a) the auctioneer is the sole arbiter; and
- (b) the auctioneer's decision is final.

(4) If the highest bid made for a lot is at least equal to the reserve price for the lot, the registered applicant by or for whom the highest bid is made is the successful applicant (the *successful applicant*) for the lot.

(5) If an unregistered bidder bids for a lot, the bid does not, by itself, affect:

- (a) the identification of the registered bidder who makes the highest bid for the lot; or
- (b) the validity of the allocation of that lot, or of any other lot.

### **Meeting with ACA and tender of deposit**

- 4.5. (1)** Immediately after all lots have been sold or passed in:
- (a) if the successful applicant for a lot is a registered bidder—the successful applicant must meet with the ACA; or
  - (b) if the successful applicant for a lot is not a registered bidder—the successful applicant's registered bidder must meet with the ACA.
- (2)** The person who meets with the ACA must, as directed by the ACA:
- (a) identify himself or herself by:
    - (i) showing the ACA the correct Bidder Identification Form; or
    - (ii) showing the ACA the correct bidder's paddle; or
    - (iii) verifying the bidder's name and signature as they appear on the relevant Bidder's Acknowledgment; and
  - (b) tender, by cheque, a deposit of 10% of the amount of the bid price for each lot for which the person is the successful applicant, or the registered bidder of the successful applicant.

*Note* Subsection 2.5 (1) provides that all payments must be made in Australian currency.

### **Applicant not entitled to a lot if deposit not tendered**

- 4.6.** If a successful applicant does not tender the deposit in accordance with section 4.5 for a lot:
- (a) the applicant is not entitled to be allocated any lot at the auction; and
  - (b) the lot may be re-offered at the auction, or treated as an unsold lot under section 5.3; and
  - (c) if the lot is re-offered—the applicant is not entitled to bid again for the lot; and
  - (d) the allocation of lots under this determination to other applicants is not affected.

*Note:* The applicant is also liable to financial penalties—see section 5.2.

### **Close of auction**

- 4.7** The auction is closed after:
- (a) all lots have been sold or passed in; and
  - (b) all successful applicants have tendered the deposit.



## **PART 5—AFTER THE AUCTION**

### **Allocation of licence to successful applicant**

**5.1.** The successful applicant for a lot is entitled to be issued a licence that includes that lot if the applicant pays the deposit and the balance of the bid price for all lots for which the applicant is successful within 20 working days after the auction and in accordance with sections 2.5.

*Note:* In issuing the licence, the ACA must comply with Chapter 3 of the Act.

### **Liability for failure to comply with requirements of this Determination**

**5.2 (1)** If a successful applicant does not pay the deposit for a lot in accordance with this Determination:

- (a) the applicant ceases to be entitled to be allocated a licence for any lot; and
- (b) the applicant remains liable to pay the ACA the deposit; and
- (c) if the lot is treated as unsold under section 5.3, or re-offered at the auction but not sold—the applicant is liable to pay the ACA the balance of the bid price; and
- (d) if the lot is re-offered at the same auction and sold for a lower price—the applicant is liable to pay the ACA the difference between the highest price bid by the applicant and the highest price for which the lot was subsequently sold; and
- (e) the applicant is taken to be in default of its financial obligations to the ACA under this Determination; and
- (f) the following amounts are forfeited to the ACA in relation to any undischarged liability:
  - (i) the performance payment (if any) held by the ACA; and
  - (ii) any amount received by the ACA under the Deed of Financial Security.

**(2)** If a successful applicant does not pay the balance of the bid price in accordance with this Determination:

- (a) the applicant ceases to be entitled to be allocated any licence; and
- (b) the applicant's deposit is forfeited to the ACA; and
- (c) the applicant is liable to pay the ACA the balance of the bid price; and
- (d) the applicant is taken to be in default of its financial obligations to the ACA under this Determination; and
- (e) the following amounts are forfeited to the ACA in relation to any undischarged liability:

- (i) the performance payment (if any) held by the ACA; and
  - (ii) any amount received by the ACA under the Deed of Financial Security; and
- (f) the lot may be treated as an unsold lot under section 5.3.
- (3) The total amount payable to the ACA under this section:
  - (a) is a debt due to the ACA; and
  - (b) is recoverable by the ACA from the successful applicant in a court of competent jurisdiction.

### **Lot offered at auction but not sold**

**5.3** If a lot is not sold at the auction, the ACA may allocate the lot, as the ACA determines:

- (a) at another auction; or
- (b) by tender; or
- (c) for a pre-determined price or a negotiated price.

### **Allocation if only one applicant**

**5.4** If there is only one applicant for each lot, the ACA may allocate the lot to the applicant for the lot for the reserve price.

### **Issue of licence to successful applicant**

**5.5 (1)** The licence must be substantially in accordance with the sample licence in the Marketing Plan.

**(2)** The licence comes into force on the day stated in the licence as the day it comes into force.

**(3)** The licence remains in force for the period stated in the licence, starting on the day stated in the licence as the date it comes into force.

*Note:* The licence period will start on the date of issue and end at the end of 17 June 2013. This is the expiry date of spectrum licences previously issued for the 800 MHz Band.

## **PART 6—MISCELLANEOUS**

### **ACA not liable under the allocation system**

**6.1** The ACA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation procedures set out in this Determination.

### **Information provided by applicant**

**6.2. (1)** A document given to the ACA by a person for the purposes of the allocation system set out in this Determination (including a document that contains intellectual property) becomes the property of the ACA.

**(2)** Subsection (1) does not apply to a document that is given to the ACA to establish an individual's identity.

**(3)** The ACA may use information provided by an applicant for the purposes of the ACA.

### **Recovery of damages by ACA**

**6.3.** This Determination does not affect any right of action or remedy that the ACA has or may have against any person which arose or arises under the Deed of Acknowledgment, Deed of Financial Security, statute, common law, equity or otherwise.

### **Giving of information by ACA**

**6.4.** Before the ACA issues a licence, it may announce, or publish a notice of:

- (a) the name of the person to whom the licence is to be issued; and
  - (b) the highest final price bid for the lots included in the licence.
-