

*Radiocommunications (Spectrum Licence Allocation - 500MHz Band)
Determination 1996*

Commonwealth of Australia

Radiocommunications Act 1992

**Radiocommunications (Spectrum Licence Allocation - 500
MHz Band) Determination 1996**

I, CHRISTINE MARY GOODE, Spectrum Manager, on behalf of the Spectrum Management Agency, under section 60 of the *Radiocommunications Act 1992* determine the following procedures to be applied in allocating spectrum licences by auction.

Dated 6th November 1996.

CHRISTINE M. GOODE
Spectrum Manager

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Summary of allocation system

Parts of the 500 MHz band have been designated under s.36 of the *Radiocommunications Act 1992* as being available for allocation by issuing spectrum licences. Under Part 3.2 of the Act, the SMA proposes to allocate spectrum licences by a simultaneous ascending bid multiple round auction of spectrum allocation lots that then become the subject of spectrum licences. If applicants' needs in an area can be met without going to auction, the licences will be allocated for a pre-determined price. Details of the overall scheme for allocation and issue of spectrum licences are in the Marketing Plan prepared by the SMA under s.39 of the Act.

Each lot covers an area (and therefore a population) and a frequency band - for details, see the Marketing Plan prepared by the SMA. People wishing to obtain a licence in this process must register and make a refundable proportional eligibility payment, based on the population coverage and the amount of bandwidth they wish to acquire. The eligibility payment is held as a performance bond over the applicant.

Registered applicants may bid on any number of lots, in any combination, provided that their bidding activity does not exceed the eligibility (calculated with reference to population and bandwidth) authorised by their eligibility payment. Applicants may nominate to be eligible for all lots, but they must make the necessary eligibility payment. Applicants interested in specific areas, or particular bands, need only make a sufficient eligibility payment to cover these.

Bidding will take place over several rounds with the results of each round being notified to registered applicants by the SMA. Registered applicants may withdraw bids during a bid withdrawal period in each round, but may forfeit some or all of their eligibility payment if the lot ultimately sells for less than the bid that was withdrawn.

Registered applicants will be subject to activity requirements that require them to be active on an increasing percentage of their eligibility (as defined by their eligibility payment). Registered applicants not meeting the activity requirements will have their eligibility proportionally reduced.

At the end of the allocation process, the SMA will aggregate the lots into licences to be issued to the successful applicants.

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PART 1 - INTRODUCTION

Title

1.1 This determination is called the Radiocommunications (Spectrum Licence Allocation - 500 MHz Band) Determination 1996.

Commencement

1.2 This determination commences on 6 November 1996.

Purpose

1.3 This determination sets out the procedures for allocating spectrum licences:

- (a) by a simultaneous ascending bid multiple round auction of spectrum allocation lots that then become the subject of spectrum licences; and
- (b) for a pre-determined price.

Interpretation

1.4 (1) In this determination, unless the contrary intention appears:

Act means the *Radiocommunications Act 1992*.

activity target, in relation to a registered applicant during a stage, means the figure obtained by multiplying the amount of the registered applicant's eligibility for that stage by the percentage fixed by the auction manager under paragraph 4.8(2)(b).

Applicant Information Package has the meaning given by clause 2.2.

Application Form means the document approved by the SMA under paragraph 1.5 (a).

auction means an auction held by the SMA in accordance with this determination to allocate lots in the 500 MHz band.

auction computer system means the computer system operated by the SMA for the purpose of an auction.

auction manager means the person appointed under clause 1.6.

balance of the bid price means the amount worked out in accordance with clause 5.2.

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

bidder identification number means the number assigned to an applicant by the SMA under subclause 2.9(2).

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closing date means the date mentioned as the closing date in the notice published under subclause 2.1(1).

Deed of Acknowledgement means the document approved by the SMA under paragraph 1.5 (c).

Deed of Guarantee means the document approved by the SMA under paragraph 1.5 (b).

eligibility, in relation to a registered applicant, means the registered applicant's initial eligibility as varied during the auction.

eligibility payment means the eligibility payment paid under clause 2.6.

initial eligibility means an applicant's initial eligibility determined in accordance with clause 2.5.

lot means a part of the spectrum identified by the SMA in the Marketing Plan.

lot rating has the meaning given by the Marketing Plan.

[Note: the lot rating is determined by reference to the frequency band covered by the lot and the notional population assigned by the SMA to the area covered by the lot.]

pre-determined price, in relation to a lot, means the price for the lot determined under subclause 3.2.

register means the register of applicants maintained by the SMA under clause 2.8.

registered applicant means an applicant registered under clause 2.9.

Results Nomination Form means the document approved by the SMA under paragraph 1.5(d).

stage means a group of successive rounds of an auction to which the same percentage of eligibility, fixed under paragraph 4.8(2)(b), applies.

starting bid has the meaning given by subclause 2.10(2).

successful applicant has the meaning given by clause 5.1.

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Marketing Plan means the Radiocommunications Spectrum Marketing Plan (500 MHz Band) 1996 prepared by the SMA under section 39 of the Act for allocation of the 500 MHz band.

[Note: Copies of the marketing plan are available from the SMA.]

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500 MHz band means the following frequency bands:

- (a) 500.99375 MHz - 504.99375 Mhz;
- (b) 510.99375 MHz - 514.99375 Mhz.

[Note: The following terms, used in this determination, are defined in the *Radiocommunications Act 1992* and have the meanings given to them by that Act:

frequency band	SMA
marketing plan	spectrum licence]

(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 dollars; and
- (c) the range of numbers that identifies a frequency band includes the higher, but not the lower, number.

(3) If a calculation made under this determination results in other than a whole number, it is to be rounded to the nearest whole number.

(4) A registered applicant is active on a lot in a round when:

- (a) the registered applicant makes a bid on a lot in that round that exceeds the minimum bid on the lot, worked out in accordance with clause 4.9, and does not withdraw the bid in the same round; or
- (b) the registered applicant holds the highest bid on the lot from the previous round.

Approval of forms

1.5 The SMA must approve, in writing, the following documents:

- (a) an Application Form;
- (b) a Deed of Guarantee, that includes a statement to the effect that the guarantor named in the Deed guarantees to pay the balance of the bid price to the SMA in the circumstances described in the Deed;
- (c) a Deed of Acknowledgement, that includes a statement to the effect that, if the applicant is the successful applicant in respect of a lot, he or she agrees to pay the SMA the balance of the bid price for the lot as required by clause 5.3;
- (d) a Results Nomination Form.

Auction manager

1.6 The SMA must appoint in writing a person (the *auction manager*) to manage the auction.

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Giving of information

1.7 The SMA may give any information to a person for the purposes of this determination:

- (a) by telephone; or
- (b) by fax; or
- (c) if the person is using the auction computer system - by making the information available on the system.

Communicating with SMA

1.8 Once an auction has started, a form or notice required to be given to the SMA in relation to the auction must be given by fax.

[NOTE: Bidding must be on-line or by telephone - see clause 4.1]

PART 2 - PREPARING FOR THE AUCTION

Publication of notice by SMA

2.1 (1) At least one month before holding an auction, the SMA 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 SMA to take part in the auction; and
- (d) stating the closing date and time for applications; and
- (e) stating that licences will be auctioned in accordance with this determination; and
- (f) stating that further information (the *Applicant Information Package*) can be obtained from the SMA at the address given in the notice.

[Note: Under s.36 of the Act, the Minister has designated parts of the 500 MHz band of the spectrum to be allocated by issuing spectrum licences.]

(2) If a matter mentioned in the notice changes, the SMA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.

(3) The SMA may publish other information about auctions and may publish that information, and the notices mentioned in subclauses (1) and (2), in other ways.

Applicant Information Package

2.2 (1) The Applicant Information Package must contain:

- (a) a guide to the auction process; and
- (b) a copy of the Marketing Plan; and
- (c) a copy of this determination; and
- (d) a copy of the Application Form, with instructions for completing the form; and
- (e) a copy of the Deed of Guarantee; and

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- (f) a copy of the Deed of Acknowledgement; and
- (g) the increments set by the auction manager under clause 2.10; and
- (h) the closing date and time for applications; and
- (j) the address of the SMA's office in Canberra.

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

Applications

2.3 (1) A person who wants to obtain a spectrum licence under this determination must apply to the SMA for registration.

(2) The person must give the SMA the following documents (the “**application documents**”):

- (a) a completed Application Form; and
- (b) a completed Deed of Guarantee, if required by clause 2.7; and
- (c) a completed Deed of Acknowledgement.

(3) The application documents must have with them:

- (a) an eligibility payment, worked out in accordance with clause 2.6; and
- (b) an entry fee of \$250.00.

(4) The eligibility payment and entry fee must be paid by bank cheque.

Lodging of applications

2.4 (1) The application documents, eligibility payment and entry fee must be lodged with the SMA, at the SMA's office in Canberra, by the closing date.

(2) As soon as practicable after receiving the application documents, the SMA must confirm by fax or, if the SMA does not know the applicant's fax number, by letter, to the applicant the details shown on the Application Form.

(3) If the applicant wishes to change these details, the applicant must do so by written notice to the SMA (accompanied by a further eligibility payment if this is required) within 5 working days of the date of the fax or letter.

Initial eligibility

2.5 (1) When completing the Application Form, an applicant must work out his or her initial eligibility, as follows:

- aggregate the amounts of bandwidth, expressed in MHz, the applicant has nominated for an area;
- multiply this by the notional population for the area shown in the Marketing Plan;
- divide this by 100.

Subject to subclause (2), the result is the applicant's initial eligibility.

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(2) If an applicant is interested in acquiring bandwidth in more than one area, the applicant's initial eligibility is the aggregate of the amounts calculated in accordance with subclause (1).

(3) The applicant's initial eligibility cannot be increased during the auction process.

[NOTES: 1. An applicant cannot bid so as to exceed his or her eligibility - see clause 4.14 - but nothing prevents an applicant from obtaining eligibility to cover all lots on offer at the auction, as long as the applicant pays the eligibility payment based on this.

2. Subject to the limits set by clause 4.14, an applicant may bid on any combination of lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the Application Form.]

Eligibility payment

2.6 (1) The amount of eligibility payment payable by an applicant is the amount in dollars worked out by multiplying 25 cents by the amount of the applicant's initial eligibility.

(2) In spite of subclause (1), the minimum eligibility payment is \$250.00.

Deed of Guarantee

2.7 (1) A company (other than a foreign company) that wishes to be registered as an applicant must give the SMA a Deed of Guarantee unless:

- (a) the company satisfies the SMA that it has a paid-up capital of at least \$5,000,000; or
- (b) the company satisfies the SMA that it is an authority of the Commonwealth, a State or a Territory; or
- (c) the company satisfies the SMA that it is a subsidiary, within the meaning of the Corporations Law, of an authority of the Commonwealth, a State or a Territory; or
- (d) the SMA decides, under paragraph (2)(a), that the company need not give the SMA a Deed of Guarantee.

(2) If a company (other than a foreign company) satisfies the SMA that it does not carry on business for profit, the SMA:

- (a) may decide that the company need not give the SMA a Deed of Guarantee; and
- (b) must notify the company in writing of the decision as soon as practicable after making the decision.

(3) A foreign company that wishes to be registered as an applicant must give the SMA a Deed of Guarantee.

(4) A Deed of Guarantee must be signed by the person named in the Deed as the guarantor.

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(5) If a company gives the SMA a Deed of Guarantee that is signed by an individual as guarantor, the company must satisfy the SMA that the guarantor is a director of the company.

(6) If a company gives the SMA a Deed of Guarantee that is not signed by an individual as guarantor, the company must satisfy the SMA that the guarantor is:

- (a) a company (other than a foreign company) that has a paid-up capital of at least \$5,000,000; or
- (b) a body corporate established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
- (c) a body corporate:
 - (i) incorporated under a law of the Commonwealth, a State or a Territory; and
 - (ii) in which the Commonwealth, a State or a Territory has a controlling interest.

Register of applicants

2.8 (1) The SMA must maintain a register of applicants. The register may be in electronic form.

(2) The register must contain:

- (a) the name and address of each applicant; and
- (b) the applicant's eligibility; and
- (c) the applicant's bidder identification number.

(3) The register may also contain any other information that the SMA thinks necessary for the running of the auction.

(4) The SMA must make the changes to the register that the SMA considers necessary or convenient as soon as practicable after:

- (a) an applicant notifies the SMA of any change in the information on the register about the applicant; or
- (b) the SMA becomes aware that any information on the register is not correct.

(5) Except as authorised by clause 2.11, the SMA must ensure that applicants' names and addresses are not disclosed until the auction is closed.

Registration of applicants

2.9 (1) The SMA must register an applicant only if:

- (a) the applicant has lodged completed application documents, and paid the entry fee and eligibility payment, as required by clause 2.3; and
- (b) if a Deed of Guarantee is required - the SMA is satisfied that the guarantor under the Deed of Guarantee is a person who complies with clause 2.7.

(2) The SMA must assign to each registered applicant:

- (a) a bidder identification number; and

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- (b) for a registered applicant who proposes to bid on-line - a password and encryption code keys; and
- (c) for a registered applicant who proposes to bid by telephone, or who bids by telephone under subclause 4.1(3) - a set of transaction code keys.

(3) At least 10 working days before the start of the auction, the SMA must in writing notify each registered applicant:

- (a) that the applicant has been registered; and
- (b) the applicant's initial eligibility, as shown on the register; and
- (c) the starting date and time of the first round of the auction; and
- (d) the SMA's telephone and fax numbers available for use by registered applicants; and
- (e) the applicant's bidder identification number and password or transaction code keys.

Increments and starting bids

2.10 (1) The auction manager must set three increments:

- (a) the dollar increment; and
- (b) the price per lot rating increment; and
- (c) the percentage of high bid increment.

(2) The starting bid for each lot is the higher of:

- (a) the dollar increment; and
- (b) the amount calculated by multiplying the price per lot rating increment by the lot rating for the lot.

(3) The SMA will include the increments in the Applicant Information Package.

Publication of bidder identification numbers

2.11 (1) After the closing date, the SMA must publish a notice in a newspaper circulating in Australia setting out:

- (a) each applicant's name, if the applicant is:
 - (i) a company; or
 - (ii) an individual who has consented to the publication of his or her name; and
- (b) the initial eligibility of all applicants; and
- (c) the bidder identification numbers of all applicants.

(2) After the notice has been published, the SMA may disclose the information in the notice.

Preparation for bidding

2.12 (1) The SMA must make an auction guide available to each registered applicant to help the applicant take part in the auction.

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(2) A registered applicant who wishes to bid on-line must use software made available by the SMA.

PART 3 - ALLOCATION FOR A PRE-DETERMINED PRICE

Allocation for a pre-determined price without an auction

3.1 (1) If, for each area available for allocation, the total amount of bandwidth nominated for the area by all applicants for the area is equal to or less than the bandwidth available for that area, the SMA will offer to allocate licences for the area for a pre-determined price, as set out in this Part.

(2) The offer of the licence will be conditional on payment of the pre-determined price.

The pre-determined price

3.2 (1) The predetermined price for a licence is to be worked out as follows:

- the SMA will identify each lot to be included in the licence
- the SMA will work out the starting bid for each lot
- the SMA will add up the starting bids for each lot.

This amount is the pre-determined price for the licence.

(2) The balance of the pre-determined price payable by an applicant is the pre-determined price less the amount of the eligibility payment paid by the applicant.

Offer of licence

3.3 (1) The SMA will offer each applicant a licence for a bandwidth in the area nominated by the applicant.

(2) The SMA will send each applicant, by receipted mail:

- (a) a draft of the licence; and
- (b) a notice stating:
 - (i) that the applicant is offered a licence for a bandwidth in the area nominated by the applicant; and
 - (ii) the amount of the pre-determined price payable for the licence; and
 - (iii) the amount of the eligibility payment made by the applicant and held by the SMA; and
 - (iv) the balance of the pre-determined price payable for the licence; and
 - (v) that the offer is conditional on each other applicant accepting the licence offered to him or her.

(3) The licence offered will cover the lots that include the bandwidth nominated by the applicant.

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(4) An applicant who wishes to accept the SMA's offer must do so by notifying the SMA in writing within 10 days of receiving the offer, agreeing to pay the pre-determined price.

(5) If every applicant accepts the licence offered to him or her, each applicant is entitled to be allocated the licence offered on payment of the balance of the pre-determined price in accordance with this determination. The SMA will write to each applicant confirming this.

[NOTE: For the issue of licences, see s. 62 of the *Radiocommunications Act 1992*.]

Payment of balance of pre-determined price

3.4 The balance of the pre-determined price is payable:

- (a) at an area office of the SMA within 10 working days of the date of the letter; and
- (b) in one payment by bank cheque.

Withdrawal of offers

3.5 If an applicant does not accept the licence offered to him or her:

- (a) the offer of all other lots is taken to be withdrawn; and
- (b) all lots will be allocated by auction, in accordance with this determination.

Default

3.6 If an applicant does not pay the balance of the pre-determined price for a licence in accordance with clause 3.4:

- (a) the applicant ceases to be entitled to be allocated the licence; and
- (b) the eligibility payment made by the applicant is forfeited to the Commonwealth; and
- (b) the allocation of licences under this Part to other applicants is not affected; and
- (c) the lots included in the licence are to be treated as unsold lots under clause 6.1.

PART 4 - THE AUCTION

Ways of bidding

4.1 (1) A registered applicant may only bid at an auction in the following ways:

- (a) by on-line bidding, using the software made available by the SMA; or
- (b) by on-line bidding, using a computer terminal in an area office of the SMA and the software made available by the SMA; or
- (c) by telephone to the SMA, on a telephone number made available by the SMA and notified by the auction manager under subclause 2.9(3).

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- (2) A registered applicant who wishes to bid:
- (a) in an area office of the SMA; or
 - (b) by telephone;

must state on the Application Form that he or she wishes to bid in that way.

(3) With the agreement of the SMA, any registered applicant may bid by telephone if, because of an emergency, the registered applicant is unable to bid on-line. The telephone bidding limits in clause 4.2 do not apply to a registered applicant who bids by telephone in these circumstances.

Telephone bidding limits

4.2. (1) A registered applicant who wishes to bid by telephone (a *telephone bidder*) may not make more than 10 bids in a round. If a telephone bidder attempts to exceed this limit, the SMA will reject any further bids that would result in the telephone bidder exceeding the limit.

(2) A telephone bidder may from time to time nominate to the SMA, using the Results Nomination Form, no more than 20 lots on which he or she wishes to be given results during a round. The SMA will not give results for a round on lots other than those nominated for that round.

Electronic Bidding Procedure

4.3 (1) The procedure for electronic bidding is as follows:

- a registered applicant will use the bidding software available from the SMA to prepare his or her bid or withdrawal file for the round;
- the file will be encrypted for transmission and digitally signed to authenticate the file as having been created by the registered applicant;
- the bidding software will permit the registered applicant to print out a report of the bidding instructions contained in the bid file before transmission;
- the registered applicant will use the software to connect to the SMA's auction computer system;
- the registered applicant will initiate a file transfer of the file to the SMA's auction computer system;
- once the file is authenticated the SMA's auction centre computer will generate a receipt file which will be returned to the registered applicant during the connection;
- the SMA's auction computer system will process the file and record the bids.

[NOTE: Details of the auction procedure are in Clause 4.6.]

(2) Details of bid transmission and authentication requirements for electronic bidding are in Schedule 1.

Telephone bidding procedure

4.4 (1) The procedure for telephone bidding is as follows:

- a registered applicant will use the telephone number notified by the auction manager as the number for telephone bidding;

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- the registered applicant's call will be taken by an SMA operator;
- the registered applicant will quote the bidder identification number and transaction code key, as described in Schedule 2, assigned to him or her by the SMA;
- the registered applicant must meet any additional identification requirements imposed by the SMA, as set out in Schedule 2;
- the SMA will enter bids, as dictated by the registered applicant, into the auction computer system;
- the SMA will print out a confirmation of the bid from the auction computer system;
- the SMA will fax this to the registered applicant on the fax number nominated to the SMA and held in the register.
- the SMA will process the bid in the same way as it processes the bids made by registered applicants bidding on-line.

[NOTE: Details of the auction procedure are in Clause 4.6.]

(2) Details of the bid transmission and authentication requirements for telephone bidding are in Schedule 2.

Auction manager to set schedule and notify registered applicants

4.5 (1) The auction manager:

- (a) must set the schedule for the first round and notify all registered applicants of this, and of the telephone numbers available for bidding, at least 10 working days before the start of the first round; and
- (b) must set the schedule for the next round, and notify all registered applicants of this, as mentioned in subclause 4.6(2), before the end of the current round; and
- (c) during a round, may give registered applicants any other information that the auction manager thinks necessary for the smooth running of the auction.

(2) In setting the schedule for a round, the auction manager must take into account any comments received from registered applicants under subclause 4.6(3).

(3) The schedule set for each round must:

- (a) include the starting date and time, and the time when each round ends; and
- (b) be in accordance with clauses 4.6 and 4.7.

Auction procedure

4.6 (1) An auction is to consist of a number of rounds. The auction opens, and the first round starts, at the starting date and time set under clause 4.5.

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(2) Each round of an auction is made up of the following periods and activities:

1. The bidding period - registered applicants make their bids.
2. The first calculation period - the auction manager works out the highest bids on each lot offered, using the auction computer system. At the end of the first calculation period, the auction manager notifies all registered applicants of the preliminary results for the round.
3. The result analysis period - registered applicants analyse the results.
4. The withdrawal period - registered applicants may withdraw their bids, as set out in clause 4.18.

[NOTE: Withdrawal may be subject to penalties, as set out in clause 4.20.]

5. The second calculation period - the auction manager works out the highest bids on each lot offered, ignoring withdrawn bids. At the end of the second calculation period, the auction manager notifies all registered applicants:

- (a) the final results for the round; and
- (b) for the next round:
 - the schedule for the next round; and
 - the minimum bid on each lot; and
 - each registered applicant's eligibility; and
 - any information about the next stage of the auction that is required by clause 4.8; and
- (c) any other information necessary for the proper running of the auction.

(3) A registered applicant may comment on the proposed schedule for the next round at any time until the close of the bid withdrawal period.

(4) In this clause:

preliminary results for the round means:

- (a) for registered applicants bidding on-line:
 - all bids made during the round; and
 - the amount of the highest bid on each lot as a result of that bidding period, and the Bidder Identification Number of each highest registered applicant; and
 - the minimum bid on each lot for the next round; and
 - the proposed schedule for the next round; and
- (b) for telephone bidders:
 - (i) in relation to each lot nominated by the registered applicant under clause 4.2:
 - all bids made on those lots during the round; and
 - the amount of the highest bid on each of those lots as a result of that bidding period, and the Bidder Identification Number of each highest bidder; and
 - the minimum bid on each of those lots for the next round; and
 - (ii) the proposed schedule for the next round.

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final results for the round means:

- (a) for registered applicants bidding on-line:
 - all bids made during the round; and
 - all bids withdrawn during the round; and
 - the amount of the highest bid on each lot, and the Bidder Identification Number of each highest bidder; and
 - the minimum bid on each lot for the next round; and
 - each registered applicant's eligibility in the next round; and
- (b) for telephone bidders, in relation to each lot nominated by the registered applicant under clause 4.2:
 - all bids made on those lots during the round; and
 - all bids withdrawn on those lots during the round; and
 - the amount of the highest bid on each of those lots, and the Bidder Identification Number of each highest bidder; and
 - the minimum bid on each of those lots for the next round; and
 - each registered applicant's eligibility in the next round.

Auction schedule

4.7 (1) Once the auction opens, there will be at least 1 round each day (other than a day that is a Saturday, Sunday or a public holiday in the Australian Capital Territory).

(2) No round on a day will start before 10.00 a.m.

(3) The minimum length of each period described in clause 4.6 is 30 minutes.

(4) A round ends at the time set by the auction manager under clause 4.5. The next round will not start until at least 30 minutes after the end of the previous round.

(5) If after the end of a round the auction manager thinks that there will be time to finish another round before 5.30 pm on that day, he or she may decide to hold another round for that day.

(6) The auction manager may vary the schedule at any time if he or she considers it is necessary, because of unforeseen circumstances, to do so to ensure the smooth running of the auction. In doing so, the auction manager:

- (a) must give registered applicants as much notice of the variation as possible; and
- (b) must not reduce the amount of time allocated for a period below the minimum set out for the period in subclause (2).

[NOTE: The auction manager must notify all registered applicants of the schedule for a round before the end of the previous round - see clause 4.6.]

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Stages of auction, eligibility percentage and waivers

4.8 (1) An auction consists of a number of stages. Each stage consists of a number of rounds.

(2) After the closing date but at least 10 working days before the start of the auction, the auction manager must:

- (a) fix the number of stages for the auction; and
- (b) fix a percentage of eligibility as the percentage to be applied during each stage of the auction; and
- (c) fix the number of waivers for each registered applicant, being the same number for all applicants; and
- (d) notify all registered applicants of these matters.

(3) The auction manager may at any time propose that the auction should move to the next stage.

(4) If the auction manager proposes this, he or she must:

- (a) notify the registered applicants, when notifying the final results of a round (the *current round*), that he or she proposes that the auction will move to the next stage at the start of the round he or she specifies (the *specified round*); and
- (b) ask for registered applicants' comments on this; and
- (c) take registered applicants' comments into account in deciding whether to move to the next stage; and
- (d) if the auction manager decides to move to the next stage - notify all registered applicants, at the end of the round after their comments are made, that the auction will move to the next stage:
 - (i) at the start of the specified round; or
 - (ii) at the start of the next round.

(7) The specified round must be at least 2 rounds later than the current round.

Starting and minimum bids

4.9 (1) In the first round, a bid on a lot below the starting bid for that lot will not be accepted. In each later round, a bid on a lot below the minimum bid for that lot for that round will not be accepted.

[NOTE: For starting bids, see clause 2.10.]

(2) In each round of an auction after the first, the minimum bid for a lot is the total of the highest bid on that lot in the previous round and the highest of the following:

- (a) the dollar increment, set under clause 2.10;
- (b) the price per lot rating set under clause 2.10, multiplied by the lot rating for the lot;
- (c) the percentage of high bid increment set under clause 2.10, multiplied by that highest bid.

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(3) A registered applicant who had the previous highest bid on a lot in a round is not required by subclause (2) to raise his or her own highest bid, but may do so.

Changing starting and minimum bids

4.10 (1) In spite of clause 4.9, at any time during the auction the auction manager may change the increments fixed under clause 2.10:

- (a) to vary the amount of the starting bid on a lot, if there are no bids on the lot; or
- (b) to vary the minimum bid on a lot.

(2) Before doing this, the auction manager must:

- (a) notify registered applicants of the proposed change; and
- (b) give registered applicants the opportunity to comment on the proposal.

(2) In changing an increment, the auction manager must have regard to registered applicants' comments.

(3) The auction manager must notify all registered applicants of the new increments for a round before the close of the previous round.

All lots on offer simultaneously

4.11 All of the lots on offer at an auction will be open for bidding in each round of the auction, except for the limits imposed on telephone bidders by clause 4.2.

Identification of registered applicants

4.12 (1) A registered applicant must use his or her bidder identification number when bidding, and must comply with the other identification requirements set out in Schedule 1 or 2, as the case requires.

(2) If the auction manager decides that registered applicants should use additional identification, they must do so.

General rules

4.13 (1) Subject to clauses 4.14 and 4.15, a registered applicant may bid on any combination of lots. In particular, an applicant is not restricted to bidding only on the lots that relate to the areas the applicant nominated on the Application Form.

(2) In a round, a registered applicant may bid only once on each lot. A registered applicant must lodge all bids at the one time.

(3) The SMA will enter a telephone bid as soon as practicable after the bid is received by the SMA.

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(4) If 2 or more registered applicants make identical bids on the same lot, the registered applicant whose bid is recorded in the auction computer system as being made first is the highest bidder on the lot for that round.

- (5) If a bid is disputed:
- (a) the auction manager is the sole arbiter; and
 - (b) the auction manager's decision is final.

- (6) If a person who is not a registered applicant makes a bid for a lot:
- (a) the bid is to be ignored; and
 - (b) the bid does not, by itself, affect further bidding on that lot or the validity of the licence that includes that lot.

Bidding cap

4.14 A registered applicant is not entitled to bid in such a way that the total of the lot ratings of the lots on which he or she is active in any one round exceeds his or her eligibility at the time of the bid. Bids that in total exceed this eligibility will not be accepted.

Bidding activity targets

4.15. Subject to the waiver provisions in clause 4.17, a registered applicant must bid in such a way during a round that the total of the lot ratings on the lots on which he or she is active in that round is equal to or greater than his or her activity target for the round.

[NOTE: A registered applicant who does not do so is liable to lose eligibility, in accordance with clause 4.16.]

Loss of eligibility

4.16 (1) If:

- (a) a registered applicant does not meet his or her activity target in a round; and
 - (b) the registered applicant does not exercise a waiver in that round;
- the registered applicant's eligibility for the next round will be reduced to an amount worked out in accordance with subclause (2).

(2) The amount of a registered applicant's eligibility for the next round is to be worked out as follows:

$$E = \frac{R}{P},$$

where:

E is the registered applicant's eligibility for the next round; and

R is the sum of the lot ratings of the lots on which the registered applicant was active in the current round; and

P is the percentage of eligibility (fixed by the auction manager under clause 4.8) that applied in the round.

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Example: A registered applicant's eligibility at the start of a round is 20,000 units. The activity requirement for the round is 60%, (i.e. 12,000 units). In the round, the registered applicant's activity is only 10,000 units and he or she has not exercised a waiver, so eligibility will be reduced as a penalty for under-activity.

The registered applicant's new eligibility will be current activity (10,000) multiplied by the inverse of the current activity requirement (1/0.6). This equals 10,000 multiplied by 1.6667, which is 16,667 units. There is nothing the registered applicant can do once the auction is underway to recover eligibility.

(3) A registered applicant who loses eligibility in a round is only entitled to bid in future rounds in such a way that the total lot ratings of the lots on which he or she is active does not exceed his or her eligibility as reduced in accordance with this clause.

Waiver

4.17 (1) During the bidding period or bid withdrawal period of a round, a registered applicant who would otherwise not meet his or her activity target may exercise a waiver. A registered applicant may continue to exercise waivers until he or she has used all his or her waivers fixed by the auction manager under clause 4.8.

(2) A registered applicant who exercises a waiver will not lose eligibility in that round.

(3) If:

- (a) a registered applicant bids in such a way that, but for this clause, he or she would not meet his or her activity target; and
- (b) all the waivers fixed by the auction manager for the registered applicant have not been exercised;

the auction manager will exercise a waiver on the registered applicant's behalf unless the registered applicant notifies the auction manager, during the bidding period or withdrawal period of that round, that the waiver is not to be exercised.

(4) If:

- (a) there are no bids in a round (and, as a result, the round would be regarded as the final round); and
- (b) a registered applicant exercises a waiver in that round;

the round will not be regarded as the final round.

Withdrawal of bids

4.18 (1) A registered applicant may withdraw his or her bid during the bid withdrawal period for a round if the bid is the highest bid on that lot. A registered applicant must lodge all withdrawals for a round at the one time.

(2) If a registered applicant withdraws a bid in a round:

- (a) the SMA is taken to be the highest bidder in that round for the lot, at the next highest bid (whether the next highest bid was made in that round or a previous round); and

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- (b) the minimum bid for the lot in the next round is equal to that next highest bid; and
- (c) the registered applicant may bid again on that lot in a later round; and
- (d) the registered applicant may lose eligibility, as set out in clause 4.19.

Loss of eligibility on withdrawal

4.19 If a registered applicant withdraws a bid in a round:

- (a) the bid is taken never to have been made; and
- (b) if the bid was made in the same round, the applicant will not be regarded as being active on that lot; and
- (c) because of this, the applicant may lose eligibility.

Withdrawal penalty

4.20 (1) If:

- (a) a registered applicant withdraws a bid on a particular lot; and
- (b) the successful bid price on the lot at the close of the auction is less than the withdrawn bid;

the applicant is liable to a penalty (the *withdrawal penalty*) equal to the difference between the withdrawn bid and the successful bid price.

(2) If:

- (a) a registered applicant withdraws a bid on a particular lot; and
- (b) the bid is the highest bid for the lot; and
- (c) the lot is not sold at the auction;

the applicant is liable to a withdrawal penalty equal to the difference between the withdrawn bid and:

- (d) the next highest bid for the lot made by another bidder; or
- (e) if there is no other bid for the lot - zero.

(3) A registered applicant may withdraw a bid on a particular lot more than once, but he or she is liable to a withdrawal penalty each time.

(4) The amount of all withdrawal penalties imposed on an unsuccessful applicant is to be deducted from the applicant's eligibility payment before it is refunded. If the amount exceeds the eligibility payment, the balance is a debt due to the Commonwealth.

[NOTE: If a withdrawal penalty is incurred by a successful applicant, the amount of the penalty is to be added to the balance of the bid price payable by the applicant under clause 5.2.]

Suspension or cancellation of auction

4.21 (1) The SMA or the auction manager may suspend or cancel an auction, or a round of an auction, at any time:

- (a) if the Minister directs the SMA or the auction manager to do so; or

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- (b) because of technical failure of the auction computer system or of the telecommunications system being used for the auction, or an event outside the control of the SMA; or
- (c) if the SMA is satisfied that there has been, or is likely to be, a breach of these auction procedures of a kind that could compromise the auction; or
- (d) if the auction manager is satisfied that in the circumstances it is appropriate to do so.

(2) If the SMA suspends the auction, the SMA may:

- (a) resume the auction from the start of the round during which it was suspended; or
- (b) resume the auction from the start of a previous round; or
- (c) cancel the auction.

(3) If the auction is suspended, the SMA or the auction manager may:

- (a) resume the auction from the start of the round during which it was suspended; or
- (b) resume the auction from the start of a previous round; or
- (c) cancel the auction.

(4) If the auction is cancelled:

- (a) all eligibility payments paid by registered applicants will be refunded; and
- (b) the entry fee will not be refunded; and
- (c) the SMA may allocate the lots:
 - (i) by another auction; or
 - (ii) by tender; or
 - (iii) by allocation for a pre-determined price or a negotiated price.

[NOTE: The SMA may make determinations under s.60 of the Act about allocations other than by auction.]

Closing of auction

4.22 (1) The rounds of the auction are to continue until:

- (a) the auction is in its last stage; and
- (b) no bid is made on any lot on offer; and
- (c) no bidder exercises a waiver.

Once this happens, the auction is considered closed, and the auction manager must notify all registered applicants of this.

[Note: For suspension and cancellation of the auction, see clause 4.21. For the exercise of waivers, see clause 4.17.]

(2) If bidding is continuing after 20 rounds, the auction manager may consider it necessary, to achieve a result, to close the auction at the end of a round he or she specifies (the *specified round*). In this case, the auction manager must:

- (a) at least 2 rounds before the proposed closing time, notify all registered applicants that he or she proposes to close the auction after the specified round, and ask for their comments on this by the close of the next round; and

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- (b) take registered applicants' comments into account in deciding whether to close the auction, or close the auction at the end of the specified round; and
- (c) if the auction manager decides to close the auction:
 - (i) at the end of a round other than the specified round - notify all registered applicants at least 2 rounds before the proposed closing time; or
 - (ii) at the end of the specified round - notify all registered applicants; and
- (d) at the end of the round after which the auction is to be closed, notify all registered applicants that the auction is closed.

(3) If the auction is closed under subclause (2), the registered applicant who is the highest bidder on a lot at the close of the auction is taken to have made the highest final bid on the lot and to be the successful applicant in relation to that lot.

PART 5 - AFTER THE AUCTION

Allocation of licence to highest bidder

5.1 The registered applicant who makes the highest final bid on a lot (the *successful applicant*) is entitled to be allocated a licence that includes that lot if the applicant pays the balance of the bid price, calculated in accordance with clause 5.2, due to the SMA in accordance with clause 5.3.

Calculation of balance of bid price

5.2 (1) The balance of the bid price to be paid by a successful applicant is to be worked out as follows:

- the SMA will add up the highest final bids made by the successful applicant
- the SMA will add up the value of the bid withdrawal penalties imposed on the applicant under clause 4.20
- the SMA will add the total of the highest bids and the total of the bid withdrawal penalties
- the SMA will deduct the applicant's eligibility payment from this total.

The amount remaining is the balance of the bid price.

(2) If the applicant's eligibility payment is greater than the total of the highest bids and bid withdrawal penalties:

- (a) the SMA will refund the difference; and
- (b) the applicant is entitled to be allocated a licence without further payment to the SMA.

Payment of balance of bid price

5.3 (1) The SMA will notify each successful applicant, by receipted mail, of the balance of the bid price.

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(2) A successful applicant must pay the balance of the bid price to the SMA as follows:

- (a) 20 per cent of the balance of the bid price no later than 10 working days after the auction is closed; and
- (b) the remainder no later than 20 working days after that tenth working day.

(3) Each payment is to be made:

- (a) at an area office of the SMA; and
- (b) in one payment by bank cheque.

[NOTE: For the issue of licences, see s. 62 of the *Radiocommunications Act 1992*.]

Default

5.4 If a successful applicant does not pay the balance of the bid price for a lot (a *defaulted lot*) in accordance with clause 5.3:

- (a) the applicant ceases to be entitled to be allocated a licence at the auction (whether the licence would include the defaulted lot or not); and
- (b) all highest bids made by the applicant will be treated as withdrawn bids and the applicant will be penalised in accordance with clause 4.20; and
- (c) the eligibility payment made by the applicant, and any amount paid by the applicant under paragraph 5.3(2)(a), is forfeited to the Commonwealth; and
- (d) all withdrawal penalties incurred by the applicant during the auction and the withdrawal penalties referred to in paragraph (b) are a debt due to the Commonwealth.

Allocation of defaulted lots

5.5 To allocate defaulted lots, the SMA will treat the defaulted lots as unsold and offer them for allocation at another time under clause 6.1.

Refunds to unsuccessful applicants

5.6 An unsuccessful applicant is entitled to a refund of his or her eligibility payment, less the amount of any withdrawal penalty imposed in accordance with clause 4.20.

PART 6 - MISCELLANEOUS

Unsold lots

6.1 A lot offered at an auction but unsold may be allocated by the SMA, as the SMA determines:

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

[NOTE: The SMA may make determinations under s.60 of the Act about allocations other than by auction.]

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Liability of Commonwealth and SMA

6.2 (1) The Commonwealth 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.

(2) This determination does not affect any right of the Commonwealth to recover an amount of damages from:

- (a) a registered applicant or any other person, in relation to the failure to pay the balance of the bid price in accordance with clause 5.3; or
- (b) a person allocated a licence for a pre-determined price or any other person, in relation to the failure to pay the balance of the pre-determined price in accordance with clause 3.4.

Giving of information by SMA

6.3 Before the SMA allocates a licence, it may announce, or publish a notice of:

- (a) the name of the person to whom the licence is to be allocated; and
- (b) the highest final bid price for the lots included in the licence, or the pre-determined price for the licence, as appropriate.

Information provided by applicant

6.4 (1) A document given to the SMA 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 Commonwealth. This does not apply to a document that establishes an individual's identity.

(2) The Commonwealth may use information provided by an applicant for the purposes of the Commonwealth.

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SCHEDULES

SCHEDULE 1

Clauses 4.3 and 4.12

**ELECTRONIC BIDDING: PROCEDURES FOR BID TRANSMISSION AND
AUTHENTICATION**

The aim of these procedures is to ensure that information purporting to represent the instructions of a registered applicant during bidding has actually come from that registered applicant.

1. Connection to the auction computer system

Each registered applicant will connect with the auction computer system through the SMA's public network interface using a telephone number supplied to registered applicants by the auction manager.

To establish a connection, the auction software will transmit the registered applicant's bidder identification number (4 characters) and password (8 characters) as issued by the SMA.

Once connection is established, the registered applicant will be able to:

- download from the auction computer system a file containing auction results and any messages from the auction computer system; or
- upload to the auction computer system its bid file and bid withdrawal file during a round.

A registered applicant may need to connect a number of times during a round:

- to bid;
- to obtain results after the bidding period;
- to withdraw bids; and
- to obtain the final results of the round after the bid withdrawal period.

The auction schedule will provide information to registered applicants about when to make these connections.

2. Encryption of Files for Transmission

The SMA will use "public key" encryption to secure the privacy and integrity of each registered applicant's bid file as its transmitted to the SMA. Public key encryption also offers scope to provide sophisticated digital authentication procedures for files that are mathematically improbable to compromise.

[NOTE: Public key encryption works on the basis of two complementary keys (very large numbers). The two keys are mathematically related, but in a way that cannot be easily deduced. One key must be kept secret, while the other can be made public. A message encrypted with one part of the key pair can ONLY be decrypted with the other part.

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Public key cryptography is implemented by users freely distributing their public key, so that other people can encrypt messages to them with that key. The message can then only be decrypted using the person's secret key which they alone hold and which they must protect.]

SCHEDULE 1 - *continued*

For the auction, the SMA will prepare all pairs of encryption keys. Each registered applicant will be given a copy of the SMA's public key and a copy of their own secret key. The SMA will retain a copy of all public and secret keys distributed in the auction.

The SMA will store encryption keys under appropriate security arrangements in the auction centre set up by the SMA.

The SMA will specify 1024 bit keys.

3. Bid Files

Each bid file will be prepared in the form of a database following the Microsoft Access 2.0 specification. Before transmission, the file will be digitally signed with a 128 bit digital signature. The signature will then be encrypted with the registered applicant's secret encryption key.

[NOTE: The digital signature will be calculated by a checksum algorithm that calculates a 128 bit number expressing the whole file. It is so sensitive that the change of one full-stop to a comma will result in a substantially different checksum.]

The file itself will then be encrypted using the SMA's public encryption key. The file and the attached signature will then be transmitted to the auction computer system.

On receipt of the file by the auction computer system, the SMA's auction software will automatically decrypt the file that has been received using the SMA's secret encryption key. It will recalculate the digital signature of the file received, decrypt the digital signature attached to the file with the registered applicant's public encryption key and compare the two signatures. A true comparison will certify that the file has not been subject to tampering in transit, or corrupted during transmission.

Once a file has been received, the SMA auction computer system will generate a receipt and transmit it to the registered applicant over the connection while it is held open.

A bid file bearing an authentic signature, prepared with one of the encryption keys provided by the SMA to a registered applicant, will be taken by the SMA as having originated from that registered applicant and from no other person.

Any bid file that is not in the format described above will not be accepted for processing under any circumstances.

[NOTE: In the Deed of Acknowledgement, each applicant will acknowledge that the mechanisms described above and implemented by the SMA are acceptable to authenticate a bid, and that they will be bound by any bid in a bid file that passes the authentication checks using the key provided to them, until they notify the SMA that their keys may have been compromised.]

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SCHEDULE 1 - *continued*

4. Key Handling

When an applicant is registered to participate in an auction, the SMA will assign a 4 digit bidder identification number and a randomly generated 8 character password.

The SMA will generate an encryption key pair for the registered applicant, using a pass-phrase mathematically derived from the registered applicant's password. The secret part of the encryption key pair will be copied to a floppy disk and distributed to the registered applicant, together with the bidder identification number and password. These materials will be distributed by receipted mail to the address nominated by the applicant.

If the registered applicant has any suspicion that the integrity of the encryption keys have been compromised in transit, he or she must advise the SMA immediately so that new encryption keys can be prepared. Depending on the nature of the tampering, replacement encryption keys may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. They may also be held for collection at an SMA office, where they may be collected by the person nominated by the registered applicant as the contact person for the auction on presentation of :

- photographic evidence of identity, being a driver's licence or passport; or
- 2 forms of other identification (such as a birth certificate or credit card), one of which bears the signature of the person presenting the identification.

5. Key Storage

Each registered applicant is responsible for the physical protection of his or her password and the encryption keys. Registered applicants must notify the SMA immediately they become aware of any reason to suspect that the integrity of their encryption keys may have been compromised so that replacement keys can be issued.

The SMA will issue replacement encryption keys on request whenever there is suspicion that the integrity of the security of an encryption key pair has been breached. Any suspected breach of the integrity of the keys must be reported as soon as practicable to the SMA.

[NOTE: Any deliberate attempt to compromise the integrity of an encryption key pair will be referred to the Australian Federal Police for investigation.]

In the period between a registered applicant notifying the SMA that the encryption keys have been compromised and the registered applicant gaining access to replacement keys, the registered applicant's participation in the auction will be suspended, without incurring a waiver.

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SCHEDULE 2

Clauses 4.4 and 4.12

**TELEPHONE BIDDING : PROCEDURES FOR BID TRANSMISSION AND
AUTHENTICATION**

1. One-Time Transaction Code Keys

For each registered applicant who applies to bid by telephone, the SMA will prepare a list of "one-time" transaction code keys for use by that registered applicant only in authenticating his or her bids.

Each list will contain a minimum of 100 transaction code keys. No two lists will be the same. No two codes will be the same, except as generated by chance.

Each key will consist of 8 randomly generated letters. The case of the letters will not be significant to their use.

Each key will be used once, in the order in which the keys are listed. The SMA will retain a copy of each list and identify that list as having been issued to the registered applicant.

2. Using Transaction Code Keys

Registered applicants bidding by telephone must identify each bid, or withdrawal instructions, to the SMA using the next available transaction code key. Telephone registered applicants must quote the key to the SMA operator when asked.

Once a transaction code key is used, the registered applicant will strike through that key on the list and note the round and the date and time that it was used.

When the SMA receives bid or withdrawal instructions from a registered applicant, the SMA will authenticate the instructions using the transaction code key by:

- looking up the list of keys for that registered applicant; and
- comparing the key provided by the registered applicant with the next available key on the list.

If the key matches, the communication will be regarded as authentic.

Once a transaction code key is used by a registered applicant, the SMA will note the round and the time and date that the key was used.

Registered applicants may not re-use a transaction code key or use a key other than the next key in the sequence. Any other key will be regarded as invalid. Any communication containing an invalid key will be ignored. The SMA will advise the registered applicant by telephone that the communication has been ignored, and may suspend the registered applicant's participation until new transaction code keys can be delivered.

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SCHEDULE 2 - continued

3. Distributing Transaction Code Keys

Transaction code keys will be distributed by receipted mail to the address nominated by the applicant.

If the registered applicant has any suspicion that the integrity of the keys have been compromised in transit, he or she must advise the SMA immediately so that new keys can be prepared. Depending on the nature of the tampering, replacement keys may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. They may also be held for collection at an SMA office, where they may be collected by the person nominated by the registered applicant as the contact person for the auction on presentation of the following evidence of identity:

- photographic evidence, being a driver's licence or passport; or
- 2 forms of other identification (such as a birth certificate or credit card), one of which must include the signature of the person presenting the identification.

4. Storing Transaction Code Keys

Registered applicants will be responsible for protecting the transaction code keys from unauthorised use.

The SMA will protect its copy of each registered applicant's transaction code keys by appropriate internal security arrangements. The SMA will restrict access to the area where the keys are being used to authenticate bids to all but persons authorised by the SMA or escorted by person authorised by the SMA.

If a registered applicant discovers that his or her transaction code keys have been compromised (through break-in, unauthorised access or any other reason), the registered applicant must immediately inform the SMA. The SMA will then prepare a new list of keys for that registered applicant and forward them to the registered applicant.

The SMA may at any time issue new transaction code keys to a registered applicant, or to all registered applicants, if it comes to believe that the integrity of the auction may have been compromised.

In the period between a registered applicant notifying the SMA that the keys have been compromised and the SMA providing the registered applicant with replacement keys, the registered applicant's participation in the auction will be suspended, without incurring a waiver.