

EXPLANATORY STATEMENT

Radiocommunications (Transmitter Licences - Auction) Determination 2006

Issued by the Authority of the Australian Communications and Media Authority

Legislative Provisions

This instrument is the *Radiocommunications (Transmitter Licences - Auction) Determination 2006* (the Determination).

Subsection 106 (1) of the *Radiocommunications Act 1992* (the Act) allows the Australian Communications and Media Authority (ACMA) to use price-based allocation in respect of the issue of specified kinds of transmitter licences.

Background

The Determination is a measure designed to provide an equitable and transparent allocation of apparatus licences for wireless access services (WAS) in regional and remote areas in the 1.9 GHz band and the 2010–2025 MHz band. The components of the package are:

- Radiocommunications (Transmitter Licences - Auction) Determination 2006;
- Regulation Impact Statement.

Under paragraph 3(a) of the *Radiocommunications Act 1992*, ACMA must maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the spectrum. The use of a price-based allocation method for apparatus licences allows ACMA to efficiently allocate apparatus licences for WAS services in regional areas to those who place the greatest value on the licence.

Purpose and Operation

The Determination provides ACMA with an efficient method of apparatus licence allocation for relatively low value licences that may be subject to excess demand in some areas. It has been applied to point to multipoint licences in the 1.9 GHz band and the 2010–2025 MHz band, but the determination has been designed to allow for other licence types to be added by amendment. The point to multipoint licences in the two bands are used for WAS, the wireless connection of business and households to the internet and the phone system. The licences are only available in regional and remote areas as other areas in these bands have been reallocated for spectrum licensing. The bands were released to satisfy demand for spectrum by small regional service providers.

The Determination changes the allocation method for WAS apparatus licences to:

- provide an inexpensive and administratively simple method of allocating licences where there is only one application in an area; and
- use an open-outcry auction to equitably and transparently distribute licences in areas where spectrum demand exceeds supply.

Impact and Effect

The Determination will provide ACMA with the authority to begin allocation of WAS apparatus licences in the 1.9 GHz band and the 2010–2025 MHz band using the price-based allocation method.

Prospective applicants will apply for licences in accordance with the provisions of the Determination. The impact on clients is that they must complete applicant packages similar to the forms completed when applying for over the counter licences. The time taken to process and allocate the licences will be longer than an over-the-counter methodology, but the process will be much more transparent and equitable where there are competing applications for the same area.

The auction has been designed to minimise costs where there is no competition for licences. If lots are contested, and an auction occurs, prices will be higher. The amount any bidder is prepared to pay at an auction is a matter for their own commercial judgment. Whilst this may be more than an over-the-counter allocation, an auction remains the fair and transparent method of allocation where there is excess demand.

Attachment 2 contains the Regulation Impact Statement (RIS) for the apparatus licence fee adjustments. It has been approved by the Office of Regulation Review (reference: 3876). The RIS contains details of the impacts and effect of the Determination.

Consultation

Industry has been consulted in this process, by being able to provide comments on the Wireless Access Services (WAS) discussion paper issued by ACMA in March 2006, and by providing feedback to ACMA staff at the WAS conference in April 2006.

Details of consultation undertaken in relation to the Determination are discussed in the RIS and the Office of Regulation Review has approved the consultation process.

Detailed description of the Determination

Details of the Determination are in Attachment 1.

Notes on the instrument

Section 1.1 Name of Determination

This section states that the Determination is the *Radiocommunications (Transmitter Licences – Auction) Determination 2006*.

Section 1.2 Commencement

This section provides for the commencement of the Determination on the day after registration.

Section 1.3 Purpose

This section defines the purpose of the *Radiocommunications (Transmitter Licences - Auction) Determination 2006*, which is to set out a price-based allocation process for transmitter licences.

Section 1.4 Application of Determination

This section states the Determination will apply to point to multipoint licences in the 1900–1920 MHz range and the 2010–2025 MHz range.

Section 1.5 Definitions

This section provides definitions of terms used in the Determination.

In particular, a lot is formed from competing applications for licences and the winner of a lot at auction has the right to be allocated the licences for which they applied in the lot. The reserve price is the minimum bid at an auction for a lot. Applicants must pay an auction deposit if they are to compete in the auction. If they are unsuccessful, the deposit is returned; if they are successful, they pay the balance of the bid price (the bid price less the deposit) to be allocated licences in the lot.

If a licence application is not contested, the licence is issued at the pre-determined price without an auction.

Section 2.1 Publication of notice by ACMA

This section sets out the method ACMA will use to publicise a price-based allocation. An allocation cannot be held without ACMA publishing a notice inviting applications to apply for licences. The notice must contain basic information including the closing date and time for applications and a brief description of the process.

Section 2.2 Entry fee, closing date, reserve price, auction deposit amount and pre-determined price

This section states that ACMA must set in writing entry fees, pre-determined prices, reserve prices and deposits. ACMA must also set the closing date and time for the applications and the number of days within which ACMA must assess the applications and tell applicants either the date of the auction or that they will be allocated the licence for a pre-determined price. The amounts and times may be different for different types of licences.

Section 2.3 Applicant Information Package

This section provides details of the material included in the Applicant Information Package which is required to be used by prospective applicants as a guide to submitting licence applications to ACMA. The package contains all the information needed by applicants to assess whether to apply for licences and to submit an application.

Section 2.4 Approval of Forms and documents

This section provides that ACMA must approve the forms required for a price-based allocation. These are the application form; the Deed of Acknowledgment, which affirms the legislative obligations imposed upon applicants; and the Form of Authority, which allows individuals to represent an applicant at an auction.

Section 2.5 Payments of monies due to ACMA

This section provides details of the methods used to pay monies to ACMA arising from a price-based allocation authorised under this Determination. Applicants must pay by cheque or bank transfer.

Section 3.1 Applications

This section sets out the required documents, forms and fees that a prospective applicant must submit to ACMA to be considered for an apparatus licence under this Determination. The documents include enough information for ACMA to assess each application and decide whether an auction is to be held. Applicants must supply a completed application form, a Deed of Acknowledgment and pay the entry fee.

Section 3.2 Lodgement of applications

This section states prospective applicants must lodge their applications with the Canberra Office of ACMA and ACMA must confirm receipt in writing.

Section 3.3 Register of applicants

This section discusses the register of applicants for apparatus licences and the details of each licence applicant that ACMA must maintain. The register contains all the information ACMA requires for the running of an allocation.

Section 3.4 Registration of applicants

This section advises that applicants can only be registered if they have completed registration documents and paid relevant fees. It requires ACMA to confirm registration.

Section 3.5 Initial assessment of potential transmitter licence

This section advises that ACMA must consider each licence application in isolation against the assignment model specified in the Applicant Information Pack. This will consist of an assessment of whether a licence, if granted, would cause interference to existing licences in the band. This assessment is commonly referred to as a frequency assignment, and determines whether an application can proceed to the next stage.

Section 3.6 Determination of lots

This section advises that if an application conforms with the assignment model in the initial assessment under section 3.5, but conflicts with other applications, a lot number is assigned. These lots proceed to auction. Each lot will consist of potential licences that cannot be all granted without causing interference to each other. The exact model for determining lots is detailed in the Applicant Information Pack.

If an application passes the initial assessment under section 3.5 and does not conflict with other applications, it is issued under Part 5 for the pre-determined price without an auction.

Section 4.1 Application of Part 4

This section states that Part 4 of this Determination is applied when there is more than one application for a lot and therefore will proceed to auction.

Section 4.2 Holding an auction

This section advises that an auction will be held for the allocation of lots in accordance with the Determination.

Section 4.3 Appointment of an auctioneer

This section advises that ACMA must appoint an auctioneer.

Section 4.4 Eligibility of applicants to bid for a lot

This section advises that registered applicants can bid only on lots that include a licence they applied for. The winner of a lot will be allocated only the licences that they applied for in that lot.

Section 4.5 Notice to registered applicant

This section advises that ACMA will notify applicants of auction details and send Forms of Authority to each applicant which allow individual to represent an applicant at an auction. The notice will tell each applicant the lot numbers for which they are entitled to bid and the licence applications that make up the lots. The section sets out what details ACMA may change after this notice, and how it must notify applicants of changes.

Section 4.6 Payment of auction deposit

This section advises that applicants must pay deposits on lots prior to auction, that deposits are refunded on withdrawal or failure to win, but forfeited if an applicant that wins a lot at auction defaults on its financial obligations to ACMA. Sub-subsection 4.6(6) advises that if a registered applicant fails to pay the deposit, the application will be taken to be withdrawn.

Section 4.7 Withdrawal from the allocation process

This section outlines how an applicant may withdraw from an allocation once they have received notice that an auction is to be held. ACMA must acknowledge the application for withdrawal. The application fee is not refundable, but any auction deposit must be refunded. The application fee is not refunded because it recovers ACMA's costs in assessing the initial application.

Section 4.8 Allocation of licences if only 1 applicant remains

This section advises what occurs when a withdrawal leads to only one applicant for licences remaining in a lot. If the withdrawal occurs in time for ACMA to avoid most of the expenses of holding an auction, then the licences in the lot applied for by the remaining applicant are allocated at the pre-determined price. If withdrawal occurs after all auction deposits were due to be paid, then the licences in the lot are allocated at the reserve price for the lot, which would generally be higher than the pre-determined price, because the reserve price is intended to cover ACMA's costs of running an auction.

Section 4.9 Confirmation of registration for auction

This section states that applicants will be notified by ACMA confirming they paid the auction deposit, each lot the applicant is eligible to bid for, and whether ACMA will allow telephone bidding.

Section 4.10 Telephone bidding

This section states that telephone bidding may be allowed by ACMA for auction of lots. Telephone bidders are issued passwords to identify the applicant at the auction.

Section 4.11 Lodgment of Form of Authority

This section outlines the steps required for a person to represent the applicant at an auction for a lot. The applicant must give ACMA a completed Form of Authority by a date specified by ACMA. The section allows another Form of Authority to be submitted up to two hours before the commencement of an auction in case the individual previously nominated cannot attend the auction because of sickness or other reasons. This section may also be used by corporations to nominate a representative individual.

Section 4.12 Bidder identification as registered bidder

This section advises that registration and identification is required from bidders. After identification, ACMA gives the bidder a bidder's paddle to enable the individual to be recognised by the auctioneer.

Section 4.13 Bidding in an auction

This section outlines the open outcry, English style auction used to allocated lots. Only registered bidders may bid for a lot. In the event of a disputed bid the auctioneer is the sole arbiter and the auctioneer's decision is final. The successful applicant is the one making the highest bid, provided it is at least equal to the reserve price.

Section 4.14 Identification and verification to ACMA

This section advises that a successful applicant at auction or their registered bidder under a Form of Authority must identify themselves to ACMA.

Section 4.15 Close of auction

This section describes the actions to be taken by ACMA and the successful applicant at the end of an auction. The auction is closed after the successful applicant has identified themselves to ACMA. ACMA notifies each successful applicant of the balance of the bid price, which must be paid within 10 days.

Section 4.16 Lots offered at auction but not allocated

This section advises that if at auction a lot is not allocated the applications for that lot cease to have effect. However, if a lot is not allocated because the successful applicant defaults on its financial obligations, ACMA may treat the registrations documents of an unsuccessful applicant as valid registration documents in any future allocation.

Section 4.17 Refund of auction deposit to unsuccessful applicant(s)

This section states that ACMA will refund deposits to all unsuccessful applicants for a lot.

Section 5.1 Application of Part 5

This section sets out that Part 5 of this Determination is applied when an application for a licence does not conflict with other applications.

Section 5.2 Allocation

This section advises that the licence will be made available to the applicant at a pre-determined price and that no auction will be held.

Section 5.3 Notice to registered applicant

This section advises that the registered applicant for the licence will be advised by ACMA of their allocation. The applicants must pay the pre-determined price for the licence within a date specified by ACMA, or withdraw their application.

Section 5.4 Default by successful applicant

This section advises that if a successful applicant fails to pay the pre-determined price, the application ceases to have effect and the apparatus licence is not issued.

Section 6.1 Form of licences

This section states the licence must substantially accord with the sample licence set out in the Applicant Information Pack. Licences may be issued for periods of up to five years.

Section 6.2 Issue of licences to successful applicant

This section states licences will be issued to successful applicants once they have paid the amount due under this Determination and the transmitter licence tax. The transmitter licence tax is payable by all holders of apparatus licences and is proportional to the duration of the licence.

Section 6.3 Liability for failure to comply with auction payment requirements

This section states what action ACMA will take if a successful applicant for a lot does not comply with payment requirements. If a bidder outbids other applicants at auction and then defaults on paying the amounts due, then the auction deposit is forfeited and a debt is owed to the Commonwealth equal to 10% of the bid price.

Section 7.1 ACMA not liable on behalf of the Commonwealth under the allocation system

This section advises that ACMA bears no liability for damages or costs arising from the allocation procedures in the Determination.

Section 7.2 Information provided by applicant

This section states that all documents provided to ACMA by applicants for the purposes of allocation become the property of the Commonwealth.

Section 7.3 Recovery of damages by ACMA

This section advises that ACMA retains the right to seek damages from an applicant.

Section 7.4 Giving of information by ACMA

This section advises that ACMA may publish results of allocations and all prices.

Section 7.5 Termination of advertised price-based allocation system

This section states that ACMA may terminate an allocation.

Section 7.6 Refund of payments to ACMA

This section states that ACMA must refund all payments if it terminates an allocation.

Schedule 1 Deed of Acknowledgment

Schedule 1 contains a Deed of Acknowledgment. This must be lodged by applicants under sub-subsection 3.1(2). The Deed of Acknowledgment affirms the legislative obligations imposed on applicants by the Determination by deed. The applicant undertakes to comply with its obligations in the Determination and provides a release an indemnity to ACMA and the Commonwealth.