

EXPLANATORY STATEMENT

Australian Communications and Media Authority Act 2005

Australian Communications and Media Authority (Allocation Procedures – Reserve Prices) Direction No. 2 of 2012

Issued by the authority of the Minister for Broadband, Communications and the Digital Economy

Authority

Section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act) provides that the Minister for Broadband, Communications and the Digital Economy (the Minister) may give written directions to the Australian Communications and Media Authority (ACMA) in relation to the performance of its functions and the exercise of its powers.

Purpose

The purpose of this Direction is to direct the ACMA that it must commence the auction of relevant spectrum by the date specified by the Minister in this Direction. The Direction also requires the ACMA to set the reserve price in relation to the auction of the 700 MHz spectrum in accordance with the amount specified by the Minister in this Direction and for the ACMA to proceed to set the reserve price for the auction of the 2.5 GHz spectrum.

Background

On 1 November 2011, the Minister declared spectrum in the following bands to be re-allocated by issuing spectrum licences:

- the 700MHz band – in the ranges 703 MHz to 748 MHz and 758 MHz to 803 MHz (*Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011*); and
- the 2.5GHz band – in the ranges 2500 MHz to 2570 MHz and 2620 MHz to 2690 MHz (*Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011*).

From April to September 2012 the ACMA undertook several public consultation rounds on the following draft instruments, in relation to both the 700 MHz band and the 2.5 GHz band:

- marketing plans for issuing spectrum licences, under section 39A of the *Radiocommunications Act 1992* (the Act); and
- procedures to apply in allocating the relevant spectrum, under section 60 of the Act.

Timing of auction

On 19 November 2012, the Minister directed the ACMA that it must first offer the relevant spectrum for allocation by way of auction. (*Australian Communications and Media Authority (Allocation Procedures – Reserve Price) Direction No.1 of 2012*) (the Reserve Prices Direction).

This Direction confirms the announced timing of the auction, by requiring the ACMA to ensure the auction for the relevant spectrum (as required by the Reserve Prices Direction) is to commence by no later than 30 April 2013. On 19 June 2012 the Minister announced that the auction will take place in April 2013, based on the ACMA's advice that an April 2013 auction will maximise product certainty for bidders prior to the auction and provide new licensees with adequate lead time to plan and deploy networks before their licences commence.

Reserve Prices

In the Reserve Prices Direction, the Minister further directed the ACMA that it must deal with reserve prices in the allocation procedures it will make under section 60 of the Act (Allocation Procedures) but that it must not set the reserve prices until the day after a further ministerial direction is given to the ACMA regarding reserve prices for the relevant spectrum or sixty days after the ACMA publishes a notice advertising the auction, whichever is earlier.

A reserve price is also commonly referred to as a 'starting price' or an initial price; it is the price below which an applicant may not place a bid for the spectrum at the auction. The draft Allocation Procedures provide for the ACMA to set the initial price for the lots of each product for the first clock round. This initial price is equivalent to the reserve price for each lot, such that an applicant is not able to place a bid for an amount below this price.

This Direction requires the ACMA to set the reserve price for the 700 MHz spectrum band at the amount specified in this Direction and for the ACMA to proceed to set the reserve price for the 2.5 GHz spectrum band. Subsequent to this Direction, since paragraph 6(3)(a) of the Reserve Prices Direction has now been met, the ACMA may now proceed to set the reserve prices to apply at the auction for both the 700 MHz and the 2.5 GHz spectrum bands in accordance with the Allocation Procedures to be determined by the ACMA.

This Direction is a legislative instrument under the *Legislative Instruments Act 2003* but it is not subject to disallowance: item 41 of the table in subsection 44(2) of that Act specifies that ministerial directions to any person or body are not subject to disallowance.

Consultation

The ACMA has been consulted in relation to this Direction.

Regulatory impact

The Office of Best Practice Regulation has agreed that the regulatory changes arising from the instrument are minor or machinery in nature and that no further regulatory impact analysis is required.

Notes on Sections

Section 1 provides for the title of the Direction.

Section 2 provides that the Direction commences on the day it is made. It is anticipated that the Direction will be issued to the ACMA on that same day.

Section 3 provides that the Direction ceases 12 months after it commences.

Section 4 provides that the Direction only applies to the parts of the spectrum specified in the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* and the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011* (i.e. the ‘relevant spectrum’).

Section 5 defines the terms used in the Direction.

Section 6 specifies the direction. It requires the ACMA to commence the auction of the relevant spectrum by no later than 30 April 2013 and to set the reserve price for the 700 MHz band at the amount specified by the Minister in the Direction. It also directs the ACMA to set the reserve price for the 2.5 GHz band. This Direction specifies as the reserve price a unit amount in \$/MHz/Pop which formula the ACMA will need to apply (based on the size in MHz of each lot and the population of the geographic area) when determining an initial price as an amount in dollars for each lot in the 700 MHz band.

In setting the prices, the Minister has been mindful that the relevant spectrum is highly valued spectrum and it is important for the evolution of mobile networks in Australia. The 700 MHz and 2.5 GHz bands have been harmonised internationally for the use of long term evolution technology, being the next generation of mobile communication services. Whilst both these bands are suitable for wireless broadband services, they have different propagation characteristics with the 700 MHz band suited to providing coverage over a wide area with high in-building penetration, as compared to the 2.5 GHz band which is more suited to densely populated, high-demand areas.

In setting the prices, the Minister has taken into consideration expert advice regarding the value of the spectrum and consultations with other relevant agencies, including the ACMA. The Minister has also been guided by the objects of the Act (in particular the object to maximise the overall public benefit derived from the spectrum by ensuring the efficient allocation and use of the spectrum). Following these consultations, the decision has been made by the Minister that it is appropriate to direct the ACMA as to the reserve price for the 700 MHz band and for the ACMA to remain responsible for setting the reserve price for the 2.5 GHz band.