



Radiocommunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012¹

Radiocommunications Act 1992

The Australian Communications and Media Authority makes the following determination under sections 60 and 294 of the *Radiocommunications Act 1992*.

Dated 19th December 2012

Chris Chapman
[signed]
Member

Richard Bean
[signed]
Member/~~General Manager~~

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Part 1 Preliminary

Overview of Part 1

This Part deals with preliminary matters such as the commencement of the determination, and defines terms and concepts used in the rest of the determination.

1.1 Name of determination

This determination is the *Radiocommunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012*.

1.2 Commencement

This determination commences on the day after it is registered.

1.3 Purpose of determination

This determination sets out the procedures to be applied in allocating spectrum licences by a combinatorial clock auction in the parts of the spectrum referred to in the re-allocation declarations, and in fixing spectrum access charges payable by licensees for issuing spectrum licences.

1.4 Definitions

(1) In this determination:

700 MHz product means the product in the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012*.

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

ACN has the meaning given by section 9 of the *Corporations Act 2001*.

Act means the *Radiocommunications Act 1992*.

affiliated: see section 2.3.

allocation limits: see section 2.1.

allocation price means an amount charged for the allocation of a package of lots.

applicant means a person who has applied for registration as a bidder.

applicant information package means a package containing the information, forms and other documents set out in subsection 4.5 (1).

application deadline: see paragraph 4.4 (1) (e).

ARBN has the meaning given by section 9 of the *Corporations Act 2001*.

assignment price means an amount charged for the assignment of a particular frequency range.

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assignment round: see subsection 5.1 (3).

associate: see section 2.2.

auction means an auction of spectrum lots held in accordance with this determination.

auction manager means the person appointed under section 4.1.

auction period means the period from the eligibility deadline to the completion of the assignment stage under subsection 5.6 (3).

auction system means the system provided by the ACMA for bidders to participate in the auction.

balance of the winning price: see section 6.6.

bidder means a person registered by the ACMA as a bidder under section 4.19.

carrier has the same meaning as in the *Telecommunications Act 1997*.

clock round: see paragraph 5.1 (2) (a).

confidential information: see section 3.1.

eligibility deadline: see paragraph 4.4 (1) (f).

eligibility payment means a payment made by an applicant under section 4.14.

eligibility points, in relation to a bidder, means the number of points the bidder may use to bid on lots in the auction.

eligibility-reducing round, for a bidder, means a clock round in which the total value, in eligibility points, of the package bid for by the bidder is less than the bidder's eligibility points.

final clock round: see clause 24 of Schedule 1.

initial eligibility points, for a bidder, means the number of eligibility points secured by the bidder under section 4.14.

lot: see section 1.5.

lot rating means the value of a lot in eligibility points as determined by the ACMA under section 4.6.

marketing plans means the *Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012* and the *Radiocommunications Spectrum Marketing Plan (2.5 GHz Band) 2012*.

number of lots of a product that are available: see section 1.5.

package, in relation to a bid, means the group of lots that is the subject of the bid.

product: see section 1.5.

pseudorandom means using computer-generated numbers that satisfy a statistical test for randomness, but are not generated by a truly random physical process.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

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re-allocation declarations means the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* and the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011*.

register means the register of bidders maintained by the ACMA under section 4.18.

related body corporate has the meaning given by section 9 of the *Corporations Act 2001*.

related person, in relation to an applicant or bidder that is a body corporate, means any of the following:

- (a) a director or secretary of the applicant or bidder;
- (b) an employee of the applicant or bidder;
- (c) an employee of a related body corporate that provides services to the applicant or bidder.

reserve bid means a bid taken to have been made for a single lot of a product by a nominal bidder at the price for the lot set by the ACMA under paragraph 4.6 (1) (c).

roaming services agreement means an agreement between carriers for the principal purpose of enabling end-users of public mobile telecommunications services supplied by one carrier to use services supplied by another carrier in geographic locations where the first carrier's services are not available.

specified group of persons, in relation to an applicant or bidder, means the applicant or bidder and all of the applicant's or bidder's associates.

Note The definition of **specified group of persons** is affected by subsection 2.3 (2) of this determination.

spectrum licence limits directions means the *Radiocommunications (Spectrum Licence Limits) Direction No. 1 of 2012* and the *Radiocommunications (Spectrum Licence Limits) Direction No. 2 of 2012*.

supplementary bid limit means the maximum number of bids that a bidder is permitted to make in the supplementary round.

supplementary round: see paragraph 5.1 (2) (b).

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

- (2) In this determination, a reference to the **value** of a package in eligibility points is a reference to the sum of the lot ratings for the lots in the package.
- (3) In this determination, the range of numbers that identifies a frequency band or frequency range includes the higher, but not the lower, number.
- (4) In this determination, a reference to time is a reference to the legal time in Victoria.

Note Several other words and expressions used in this determination have the meaning given by section 5 of the Act. For example:

- ACCC

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- ACMA
- frequency band
- spectrum
- spectrum licence.

1.5 Products and lots

- (1) In this determination:

lot means a unit of a product that is offered in the auction.

product means a part of the spectrum identified as a product in one of the marketing plans, characterised by frequency ranges and a geographic region.

Note The marketing plans place each product into a category, with the category defining the frequency ranges.

- (2) In this determination, a reference to the *number of lots of a product that are available* is a reference to the number of lots of the product as set out in one of the marketing plans.
- (3) The size of each lot of a product, in megahertz, is the lot size set out for the product in one of the marketing plans.

1.6 Lodgement of documents

- (1) A document may be given to the ACMA under this determination by:
- (a) delivering the document to the physical address specified in the applicant information package; or
 - (b) emailing the document to the email address specified in the applicant information package in accordance with subsection (2); or
 - (c) faxing the document to the fax number specified in the applicant information package in accordance with subsections (3) and (4).

Note Subsections 4.7 (3), 4.12 (6), 4.13 (4) and 4.14 (6) have additional requirements for certain documents lodged by email or fax.

- (2) If a document is emailed:
- (a) the document must be included as an attachment; and
 - (b) the document must be:
 - (i) if the document is a statutory declaration, statement under section 6.3 or deed—in PDF format or another format approved by the auction manager; or
 - (ii) if the document is not a statutory declaration, statement under section 6.3 or deed—in Word, RTF or PDF format or another format approved by the auction manager.

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- (3) If a document is faxed, the document must be accompanied by a cover sheet that states:
 - (a) the sender's name, postal address, telephone number and fax number; and
 - (b) the number of pages transmitted, including the cover sheet.
- (4) If the faxed document is a completed application form, a completed eligibility nomination form, a statutory declaration, a statement under section 6.3 or a deed, the cover sheet must also state the type of document.

1.7 Payment of amounts

- (1) An amount paid to the ACMA on behalf of the Commonwealth under this determination must be paid in Australian currency.
- (2) An amount must be paid by bank cheque or by electronic transfer.
- (3) An electronic transfer must be made into the bank account with the following details:
 - (a) Bank—ANZ Bank;
 - (b) Branch—Belconnen;
 - (c) BSB number—012-951;
 - (d) Account number—8379 24272;
 - (e) Account name—ACMA Official Administered Receipts.
- (4) An amount is taken to have been paid by a deadline specified in this determination if either:
 - (a) the ACMA receives a bank cheque for the full amount on or before the deadline; or
 - (b) both:
 - (i) the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (such as a transfer receipt); and
 - (ii) the amount is received in the ACMA's bank account no later than 3 working days after the deadline; or
 - (c) the ACMA receives other evidence which satisfies the ACMA that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.
- (5) An amount due under this determination is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount due.

Note The effect of this subsection is that an applicant or bidder must add the value of any bank charge or government duty to the amount of a payment.

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1.8 Statutory declaration for body corporate

A statutory declaration required to be made in this determination by a body corporate must be made by a director or secretary of the body corporate.

Part 2 Limits on allocation of spectrum

Overview of Part 2

This Part defines concepts related to limiting the amount of spectrum that a person or group of persons may be allocated as a result of the procedures in this determination.

2.1 Meaning of *allocation limits*

- (1) In this determination, a reference to the *allocation limits* is a reference to the requirement that the allocation of spectrum licences under this determination must not result in a person or specified group of persons having permission to use more spectrum than a limit set out in subsection (2).

Note The Minister has required, in directions under subsection 60 (10) of the Act, that the limits be imposed in this determination.

- (2) The limits are:
- (a) 25 MHz of spectrum in the area specified in subsection 4 (2) of the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* in the frequency band 703 MHz to 748 MHz; and
 - (b) 25 MHz of spectrum in the area specified in subsection 4 (2) of the *Radiocommunications (Spectrum Re-allocation) Declaration No. 1 of 2011* in the frequency band 758 MHz to 803 MHz; and
 - (c) 40 MHz of spectrum in the areas specified in subsection 4 (2) of the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011* in the frequency band 2500 MHz to 2570 MHz; and
 - (d) 40 MHz of spectrum in the areas specified in subsection 4 (2) of the *Radiocommunications (Spectrum Re-allocation) Declaration No. 2 of 2011* in the frequency band 2620 MHz to 2690 MHz.

2.2 Meaning of *associate*

- (1) In this determination:
- associate*, in relation to a person, means:
- (a) for a body corporate:
 - (i) a director or secretary of the body corporate; or
 - (ii) a related body corporate; or
 - (iii) a director or secretary of a related body corporate; or
 - (iv) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body corporate; and
 - (b) for an individual:
 - (i) the individual's spouse; or

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- (ii) the individual's de facto partner within the meaning given by the *Acts Interpretation Act 1901*; or
 - (iii) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
 - (iv) a body corporate of which the individual is a director or secretary; or
 - (v) a body corporate that is related to a body corporate of which the individual is a director or secretary; and
- (c) for any person—any other person (other than the ACMA) who has a relevant agreement with the person that:
- (i) is for the use by a party to the agreement of spectrum licensed to one of the parties under a spectrum licence for a part of the spectrum referred to in a re-allocation declaration; or
 - (ii) relates to the acquisition of a spectrum licence for a part of the spectrum referred to in a re-allocation declaration.
- (2) For paragraph (c) of the definition of *associate*, a *relevant agreement* means an agreement, arrangement or understanding:
- (a) whether formal, informal or partly formal and partly informal; and
 - (b) whether written, oral or partly written and partly oral; and
 - (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;
- other than a roaming services agreement or an agreement between carriers provided for by or under Schedule 1 to the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*.

2.3 Affiliation between applicants or bidders

- (1) Two applicants or bidders are *affiliated* if:
- (a) the applicants or bidders are associates of each other; or
 - (b) the specified group of persons in relation to one applicant or bidder has at least one member in common with the specified group of persons in relation to the other applicant or bidder.

Note Paragraph (b) means that 2 applicants or bidders are affiliated if they have an associate in common.

- (2) If 2 applicants or bidders are affiliated, they are taken to be in a single specified group of persons for the purpose of the allocation limits.

2.4 Information relevant to considering whether applicants or bidders are affiliated

- (1) When considering under this determination whether 2 or more applicants or bidders are affiliated, the ACMA must have regard to:
- (a) application forms lodged under paragraph 4.7 (1) (a); and
 - (b) statutory declarations and statements made under this determination.

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- (2) The ACMA may have regard to any other information that it considers relevant.

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Part 3 Confidentiality**Overview of Part 3**

This Part sets out the confidentiality obligations of applicants and bidders. Certain information about the auction must not be shared until after the auction is completed.

3.1 Meaning of *confidential information*

In this determination:

confidential information, in relation to an applicant or bidder, means:

- (a) documents the applicant or bidder has given to the ACMA for the purpose of the auction; and
- (b) information provided to the bidder under section 4.19 for the purpose of participating in the auction; and
- (c) a bid made by the bidder in the auction; and
- (d) a proposed bid by the applicant or bidder or a bid under consideration by the applicant or bidder; and
- (e) the applicant's or bidder's bidding strategy; and
- (f) the amount the applicant or bidder is willing to pay for:
 - (i) a lot or group of lots; or
 - (ii) a part or parts of the spectrum; and
- (g) information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
 - (i) bids made or proposed to be made by another applicant or bidder; or
 - (ii) another applicant's or bidder's bidding strategy; and
- (h) information that, if disclosed, could be reasonably expected to affect or be capable of affecting the outcome of the auction.

3.2 Obligation to not disclose confidential information

- (1) An applicant or bidder, or a related person who has knowledge of the applicant's or bidder's confidential information, must not, either directly or indirectly, disclose the applicant's or bidder's confidential information about the auction to any person.
- (2) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, disclosing information about the auction:
 - (a) for the purpose of obtaining advice relating to the auction from a person in the person's professional capacity; or
 - (b) for the purpose of obtaining finance to purchase spectrum licences in the auction; or

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- (c) to the ACMA; or
- (d) to another related person of the same applicant or bidder; or
- (e) as authorised by this determination or as otherwise required by law.

Note In some cases, the person to whom the information is disclosed may become a related person who is required to give a deed of confidentiality to the ACMA—see section 3.6.

- (3) Subsection (1) does not prohibit an applicant or bidder, or a related person of an applicant or bidder, disclosing information about the auction if:
 - (a) the information is already publicly available; and
 - (b) the information was not made available because of a breach of this section.

3.3 Duration of confidentiality obligation

Section 3.2 applies to an applicant or bidder and a related person of the applicant or bidder until:

- (a) the bidder is notified under section 6.1 that the bidder is not a winning bidder; or
- (b) the applicant, as a withdrawn applicant, is notified under section 6.2 that the applicant's confidentiality obligation is at an end; or
- (c) the bidder, as a winning bidder, makes a statement under section 6.3.

3.4 Reporting breach of confidentiality

An applicant or bidder, or related person of an applicant or bidder, who discloses confidential information in breach of section 3.2 or who receives the confidential information of another applicant or bidder must report the disclosure or receipt to the ACMA in writing as soon as possible, but no later than 2 working days after becoming aware the disclosure or receipt has occurred.

3.5 Notice of breach of confidentiality

- (1) If the ACMA has reason to believe that an applicant or bidder, or a related person of the applicant or bidder, may have disclosed confidential information in breach of section 3.2 or received confidential information as a result of a breach of section 3.2, the ACMA must:
 - (a) tell the applicant or bidder, giving details of the matter; and
 - (b) ask the applicant or bidder to make submissions about the matter; and
 - (c) state a deadline for the receipt of submissions that is no more than 5 working days after the date of the request.
- (2) If the ACMA forms the belief before the end of the auction period, the ACMA is not required to tell the applicant or bidder before the auction period ends, but must tell the applicant or bidder as soon as practicable after the auction period ends.

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3.6 Deed of confidentiality required from related persons

- (1) A related person of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information must give the ACMA a completed deed of confidentiality form if the person is:
 - (a) an employee of the applicant or bidder; or
 - (b) an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.
- (2) If a person mentioned in paragraph (1) (a) or (b) receives knowledge of the applicant's confidential information before the application deadline, the person must give the ACMA the completed deed of confidentiality form before the application deadline.

Note A deed of confidentiality form must be provided by the ACMA as part of the applicant information package on the ACMA's website—see sections 4.4 and 4.5.

Part 4 Procedures before auction

Overview of Part 4

This Part requires persons wishing to obtain a spectrum licence in the auction to apply for registration as a participant in the auction before the application deadline advertised by the ACMA and to pay the application fee.

Applicants will then be required to provide a statutory declaration about their affiliation with any other applicant.

This Part then requires applicants to lodge an eligibility nomination form, which will establish the number of eligibility points the applicant will have for the first round of the auction, and either make an eligibility payment or give the ACMA a deed of financial security. The value of the eligibility payment or deed is based on the number of eligibility points nominated.

Once these steps are validly completed, this Part requires the ACMA to register a person as a participant in the auction.

Division 1 Preliminary

4.1 Auction manager

The ACMA must, in writing, appoint a person to manage the auction.

4.2 Setting application fee

Before the ACMA publishes a notice inviting applications for the auction, it must set the amount of the application fee.

4.3 Application fee not refundable

An application fee paid under this determination is not refundable in any circumstances, including if an applicant or bidder withdraws before the auction or is excluded from the auction.

Division 2 Advertising auction

4.4 Advertising of auction by ACMA

- (1) The ACMA must publish on its website a notice that:
 - (a) describes the parts of the spectrum to be auctioned; and
 - (b) gives a brief description of the way the auction will be conducted; and
 - (c) states that the auction will be conducted in accordance with this determination; and

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- (d) invites persons to apply to the ACMA to take part in the auction; and
 - (e) states the date and time (the *application deadline*) before which:
 - (i) applications must be received by the ACMA; and
 - (ii) the application fee must be paid to the ACMA on behalf of the Commonwealth; and
 - (f) states the date and time (the *eligibility deadline*) before which:
 - (i) completed eligibility nomination forms must be received by the ACMA; and
 - (ii) eligibility payments must be paid to the ACMA on behalf of the Commonwealth or deeds of financial security must be given to the ACMA; and
 - (g) states that applications may only be withdrawn before the eligibility deadline; and
 - (h) states that the applicant information package can be obtained from the ACMA's website at the electronic address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACMA must publish another notice giving details of the change on its website.
- (3) The ACMA may publish the information required by subsections (1) and (2) by additional methods, and may publish other information about the auction by any method it chooses.

4.5 Applicant information package

- (1) The applicant information package must contain the following information:
- (a) the re-allocation declarations;
 - (b) the spectrum licence limits directions;
 - (c) the marketing plans;
 - (d) this determination;
 - (e) a guide to the auction;
 - (f) an application form approved by the ACMA, with instructions for completing and lodging the form;
 - (g) a deed of financial security form approved by the ACMA;
 - (h) information about providing a deed of financial security as an alternative to an eligibility payment;
 - (i) a deed of acknowledgement form approved by the ACMA, that includes a statement to the effect that an applicant understands and agrees to be bound by the provisions of this determination;
 - (j) a deed of confidentiality form approved by the ACMA, that includes a statement that an applicant (or related person of an applicant) agrees not to disclose confidential information before section 3.2 ceases to apply to the relevant applicant;
 - (k) statutory declaration forms for the purpose of this determination;

- (l) the amount of the application fee for the auction;
 - (m) the application deadline;
 - (n) the eligibility deadline;
 - (o) advice that the eligibility deadline is the last time for withdrawal from the auction;
 - (p) the physical address for lodging documents with the ACMA;
 - (q) the email address for lodging documents with the ACMA;
 - (r) the fax number for lodging documents with the ACMA.
- (2) The applicant information package may also contain other information about the auction.
 - (3) The applicant information package must be published on the ACMA's website.
 - (4) If the ACMA makes any change to the contents of the applicant information package after it is published, the ACMA must publish a notice giving details of the change on its website.

4.6 Lot ratings and initial prices

- (1) The ACMA must set the following amounts:
 - (a) the lot rating for the lots of each product;
 - (b) the dollar value of each initial eligibility point for the auction;
 - (c) the price for the lots of each product for the first clock round.
- (2) After setting the amounts mentioned in paragraphs (1) (a) and (b), the ACMA must approve an eligibility nomination form.
- (3) The ACMA must ensure that the eligibility nomination form includes a guide to calculating initial eligibility points.
- (4) The ACMA must publish the amounts set under subsection (1) and the eligibility nomination form on its website no later than 70 days after a notice about the auction is published under subsection 4.4 (1).

Division 3 Application to participate in auction

4.7 Lodging application

- (1) A person may apply to become registered as a bidder in the auction by:
 - (a) giving the ACMA a completed application form; and
 - (b) giving the ACMA a completed deed of acknowledgement form; and
 - (c) giving the ACMA a completed deed of confidentiality form; and
 - (d) paying the application fee;before the application deadline.

Note For information on how an application fee must be paid, see section 1.7.

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- (2) An applicant may give the ACMA an updated document for paragraphs (1) (a) to (c) at any time until the application deadline, but not after the deadline.
- (3) If a document for paragraphs (1) (a) to (c) is given to the ACMA by email or fax before the application deadline, the original document must be received by the ACMA no later than 3 working days after the application deadline (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.

4.8 Applicants to notify ACMA if application information incorrect

If an applicant knows that any of the information in the application is incorrect, or has become incorrect, the applicant must immediately give the ACMA the correct information.

4.9 Applicant to provide statutory declaration

- (1) After the application deadline, the ACMA must:
 - (a) give each applicant details about the identity of all other applicants, and the persons identified as the associates of other applicants; and
 - (b) ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant and, if so, identifying the other applicant and giving details of the affiliation.
- (2) The ACMA must state a deadline, at least 5 working days after the date of the request, before which the statutory declaration must be received by the ACMA.

4.10 Failure to provide statutory declaration

If an applicant does not give the ACMA a statutory declaration in accordance with section 4.9, the applicant is taken to have withdrawn the application.

4.11 Procedure if ACMA satisfied applicants affiliated

- (1) If the ACMA is satisfied that 2 or more applicants are affiliated, the ACMA must, in writing:
 - (a) notify the applicants and tell them the basis on which the ACMA is satisfied the applicants are affiliated; and
 - (b) notify the affiliated applicants that to participate in the auction they must:
 - (i) withdraw the applications of all the affiliated applicants and submit a new application under section 4.12; or
 - (ii) withdraw the applications of all but one of the affiliated applicants.

- (2) Within 10 working days of the ACMA notifying the affiliated applicants under subsection (1), the applicants must notify the ACMA, in writing, which option under paragraph (1) (b) the applicants have decided to take.
- (3) If the affiliated applicants do not notify the ACMA within 10 working days, the applicants are taken to have withdrawn the applications.
- (4) If some of the affiliated applicants withdraw their applications, but more than one affiliated applicant does not, the remaining affiliated applicants are taken to have withdrawn the applications.
- (5) The ACMA must tell the applicants in writing if they are taken to have withdrawn under subsection (3) or (4).

4.12 Requirements for new application

- (1) If a group of affiliated applicants notified by the ACMA under subsection 4.11 (1) decide to submit a new application, the new applicant must be a body corporate whose only members are one or more of those affiliated applicants.
- (2) The new applicant must, within 10 working days of the ACMA notifying the affiliated applicants under subsection 4.11 (1):
 - (a) give the ACMA a completed application form; and
 - (b) pay the application fee.

Note For information on how an application fee must be paid, see section 1.7.

- (3) If the ACMA receives a completed application form and application fee under subsection (2), the ACMA must give each applicant (including the new applicant) updated details about the identity of all other applicants and the persons identified as the associates of other applicants.
- (4) The updated information does not need to include those applicants who have already withdrawn.
- (5) The new applicant must, no later than 3 working days after the ACMA gives the new applicant the updated information (or, if the ACMA agrees to a later time, the agreed time), give the ACMA:
 - (a) a completed deed of acknowledgement form; and
 - (b) a completed deed of confidentiality form; and
 - (c) a statutory declaration that the new applicant is not affiliated with any other applicant in the updated list.
- (6) If a document for paragraph (2) (a), (5) (a) or (5) (b) is given to the ACMA by email or fax before the applicable deadline, the original document must be received by the ACMA no later than 3 working days after the deadline under subsection (5) (or, if the ACMA agrees to a later time, the agreed time) for the application to be valid.

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- (7) The ACMA must not accept a new application under this section unless it is satisfied that the new applicant is not affiliated with any applicant who has not withdrawn, including another new applicant.

Division 4 Eligibility nomination and financial security

4.13 Lodging eligibility nomination form

- (1) An applicant must nominate its initial eligibility points by giving the ACMA a completed eligibility nomination form before the eligibility deadline.
- (2) The maximum number of initial eligibility points that an applicant may nominate is the total of the lot ratings of all lots to be auctioned.
Note A person's ability to use eligibility points in the auction is restricted by the allocation limits in section 2.1.
- (3) An applicant may change the number of points nominated by giving the ACMA a new eligibility nomination form at any time until the eligibility deadline, but not after the deadline.
- (4) If an eligibility nomination form is given to the ACMA by email or fax before the eligibility deadline, the original form must be received by the ACMA no later than 3 working days after the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the nomination to be taken to have been made.
- (5) If an applicant does not nominate its initial eligibility points by the eligibility deadline, the applicant is taken to have withdrawn the application.

4.14 Eligibility payment or deed of financial security required for initial eligibility points

- (1) An applicant must, before the eligibility deadline, secure initial eligibility points by:
 - (a) making an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
 - (b) giving the ACMA a deed of financial security, which has been completed in the approved form and executed, for an amount; or
 - (c) making an eligibility payment of part of an amount and giving the ACMA a deed of financial security for the remainder.
Note For information on how an eligibility payment is to be paid, see section 1.7.
- (2) The amount required to secure the initial eligibility points nominated by the applicant is worked out by multiplying the nominated number of points by the dollar value of initial eligibility points set by the ACMA under paragraph 4.6 (1) (b).

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- (3) If an applicant makes an eligibility payment or gives the ACMA a deed (or both) for an amount less than the amount worked out under subsection (2), the number of initial eligibility points secured by the applicant is worked out by dividing the amount paid or secured by deed by the dollar value of initial eligibility points, and rounding down to the nearest whole point.
- (4) A deed of financial security must be executed by:
 - (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or
 - (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
 - (c) a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.
- (5) If a deed of financial security is executed by a person acting under a power of attorney for a body corporate, the applicant must give the ACMA a copy of the power of attorney with the deed.
- (6) If a deed of financial security is given to the ACMA by email or fax before the eligibility deadline, the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or, if the ACMA agrees to a later time, the agreed time) for the deed to be taken to have been given to the ACMA.
- (7) An applicant is taken to have withdrawn the application if:
 - (a) the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline; or
 - (b) the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (4).

Division 5 Withdrawal

4.15 Withdrawal of applicant

- (1) An applicant may withdraw from the auction before the eligibility deadline, by giving the ACMA notice in writing.
- (2) If an applicant who withdraws under subsection (1) or who is taken to have withdrawn under another section of this determination has made an eligibility payment under section 4.14, the ACMA must refund the payment.
- (3) An applicant may not withdraw after the eligibility deadline.
- (4) An applicant must not be re-admitted to the auction after withdrawing.

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Division 6 Setting elements of auction

4.16 Supplementary bid limit

- (1) After the application deadline, the ACMA must set the supplementary bid limit.
- (2) At least 5 working days before the eligibility deadline, the ACMA must notify each applicant who has not withdrawn of the supplementary bid limit.

4.17 First clock round

- (1) After the eligibility deadline, the auction manager must set the start date and time of the first clock round of the auction.
- (2) The start date and time must be at least 15 working days after the eligibility deadline.
- (3) The auction manager must notify bidders of the start date and time of the first clock round at least 10 working days before the day of the first clock round.

Division 7 Registration of bidders

4.18 Register of bidders

- (1) The ACMA must maintain a register of bidders in the auction in electronic form.
- (2) For each bidder, the register must contain the following:
 - (a) the bidder's name;
 - (b) the bidder's postal address;
 - (c) the bidder's email address;
 - (d) the bidder's telephone number;
 - (e) the name, position, postal address, email address and telephone number of a contact person for the bidder;
 - (f) the bidder's initial eligibility points;
 - (g) the bidder's ACN, ARBN or ABN;
 - (h) the names of the bidder's associates and the nature of their association with the bidder.
- (3) The register may also contain any other information that the ACMA considers necessary or convenient for the running of the auction.

- (4) The ACMA must make changes to the register as soon as practicable after:
 - (a) a bidder tells the ACMA of a change in the bidder's name or contact information, including a change of information for the bidder's contact person; or
 - (b) the ACMA becomes aware that any of the information on the register is not correct.

4.19 Registration process

- (1) The ACMA must register a person as a bidder in the auction only if:
 - (a) the eligibility deadline has passed; and
 - (b) the person has:
 - (i) made a valid application under section 4.7 or 4.12; and
 - (ii) given the ACMA a completed eligibility nomination form under section 4.13; and
 - (iii) made an eligibility payment or given the ACMA a deed of financial security under section 4.14; and
 - (c) if a deed of financial security is given—the ACMA is satisfied that the person who executed the deed is a person mentioned in subsection 4.14 (4).
- (2) After the eligibility deadline the ACMA must, in writing, tell a bidder that the bidder has been registered and may participate in the auction, and give the bidder the following:
 - (a) a copy of the information recorded on the register for the bidder;
 - (b) the ACMA's email address and telephone and fax numbers available for use by bidders;
 - (c) information about accessing and using the auction system;
 - (d) any items required for access;
 - (e) information about how to bid by alternative means if the bidder is unable to submit a bid using the auction system.

Note Information provided to a bidder under this section for the purpose of participating in the auction is defined as **confidential information** under section 3.1.

4.20 Bidders to notify ACMA if register incorrect

If a bidder knows that any of the information about the bidder or the bidder's associates on the register is incorrect, the bidder must immediately give the ACMA the correct information.

4.21 Preparation for bidding

The ACMA must give each bidder an opportunity to try out the auction system before the auction commences.

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4.22 Security of auction

- (1) A bidder must ensure that any items provided to the bidder for the purpose of accessing the auction system are kept secure during the auction period.
- (2) The bidder must notify the ACMA immediately if any item provided to the bidder for the purpose of accessing the auction system is lost or stolen during the auction period.

Part 5 Auction procedures

Overview of Part 5

This Part outlines the different stages of a combinatorial clock auction and the procedures for the auction. The detailed rules for the conduct of the auction are set out in Schedule 1 to this determination.

This Part also prohibits affiliation between bidders during the auction, and requires bidders to report to the ACMA if they believe an affiliation has occurred.

Division 1 Procedures to be applied

5.1 Auction stages

- (1) The auction consists of the allocation stage and the assignment stage.
- (2) The allocation stage is made up of:
 - (a) one or more rounds (***clock rounds***) for the making of bids for packages of lots at prices set by the ACMA; and
 - (b) a further round (***supplementary round***) for the making of supplementary bids for packages of lots at prices chosen by bidders within parameters set by this determination; and
 - (c) the determination of the winning allocation stage bids and the associated allocation prices after all rounds are complete.
- (3) The assignment stage consists of rounds (***assignment rounds***) for the making of bids for the assignment of frequency ranges to lots of each product that have been won in the allocation stage.

5.2 Procedures if only one bidder

- (1) If there is only one bidder, the procedures to be applied for allocating lots and assigning frequency ranges are as follows:
 - (a) there will be one clock round using the auction system in which the bidder may bid at the prices set by the ACMA under paragraph 4.6 (1) (c);
 - (b) there will be no supplementary round;
 - (c) the assignment stage will be conducted as soon as possible after the clock round to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned.

Note In this situation, the assignment prices will be zero—see clause 76 of Schedule 1.

Section 5.3

- (2) The ACMA must notify the bidder as soon as reasonably practicable after the eligibility deadline that it is the only bidder, and that the procedures in this section apply.

5.3 Clock rounds

The clock rounds of the auction are to be conducted in accordance with the rules in Part 1 of Schedule 1.

5.4 Supplementary round

After the clock rounds have ended, the supplementary round of the auction is to be conducted in accordance with the rules in Part 2 of Schedule 1 (unless there is only one bidder).

5.5 Determination of results of allocation stage

- (1) After the end of the supplementary round, the auction manager must determine the winning bids from the bids made in the allocation stage and the allocation prices to be paid by the winning bidders in accordance with the rules in Part 3 of Schedule 1.
- (2) After the auction manager determines the winning allocation stage bids and allocation prices, the auction manager must tell all bidders:
 - (a) the number of winning bidders; and
 - (b) the total number of lots of each product that have been allocated to winning bidders.
- (3) The auction manager must tell each winning bidder:
 - (a) the number of lots of each product the bidder has won; and
 - (b) the allocation price for the bidder's winning bid.

5.6 Assignment stage

- (1) The assignment stage is to be conducted in accordance with the rules in Part 4 of Schedule 1.
- (2) The auction manager must tell each winning bidder:
 - (a) the frequency ranges assigned to lots won by the bidder; and
 - (b) any assignment price for the frequency ranges assigned;as determined by the auction manager in accordance with the rules in Part 4 of Schedule 1.
- (3) The assignment stage is complete when the auction manager has notified bidders of the results of every assignment round.

5.7 Auction manager's discretion to accept bids

- (1) The auction manager may permit a bidder to submit a bid for a round by a method other than the auction system if the auction manager is satisfied that the bidder is not able to submit a bid for the round using the auction system.
- (2) The auction manager may permit a bidder to submit a bid for a round after the end of the round if the auction manager is satisfied that the bidder could not submit the bid during the round because of technical or communication problems.
- (3) A bid permitted by the auction manager under subsection (2) is taken to have been made during the round.
- (4) The auction manager must not permit a bidder to submit a bid under subsection (2) after information about the outcome of the round has been given to bidders.

5.8 Action that auction manager may take in exceptional circumstances

- (1) If the auction manager is satisfied that the auction is affected by exceptional circumstances, the auction manager may:
 - (a) stop the current round of the auction and restart the round; or
 - (b) cancel the results of one or more auction rounds and restart the auction from the point before those rounds; or
 - (c) restart the auction from the first clock round; or
 - (d) stop the auction.
- (2) For this section, exceptional circumstances include:
 - (a) a significant technical difficulty with the auction system; or
 - (b) a breach of the confidentiality obligation in section 3.2.
- (3) Subsection (2) does not limit what might constitute exceptional circumstances.

Division 2 Affiliations during auction

5.9 Affiliation during auction period not permitted

A bidder must not be affiliated with another bidder during the auction period.

Note If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under section 7.6.

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5.10 Requirement to report affiliation

If, at any time during the auction period, a bidder believes that it may be an affiliate of another bidder, the bidder must immediately tell the ACMA in writing the identity of the other bidder and give details of the affiliation.

5.11 Auction continues despite possible affiliation

If the ACMA becomes aware during the auction period that 2 or more bidders may be affiliated, the auction is to continue and the bidders may continue to participate in the auction.

5.12 ACMA consideration of affiliation

- (1) If the ACMA has reason to believe that 2 or more bidders are affiliated during the auction period, the ACMA must notify the bidders in writing and tell them the basis on which the ACMA believes that the bidders are affiliated.
- (2) If a bidder gave the ACMA information under section 5.10 and the ACMA does not consider that the bidder is affiliated with another bidder, the ACMA must tell both bidders in writing that the ACMA does not consider them to be affiliated.

Part 6 Procedures after auction

Overview of Part 6

After the auction procedures in Part 5 are completed, this Part requires the ACMA to notify unsuccessful bidders and withdrawn applicants that their confidentiality obligations have ended, and provide refunds of eligibility payments.

This Part also requires winning bidders to make a statement about any affiliation with another winning bidder. If 2 or more winning bidders are affiliated, the spectrum allocated to those bidders must be reduced to comply with the allocation limits.

Any eligibility payment by a winning bidder is deducted from the price to be paid for the spectrum won by the bidder in the auction. A spectrum licence is issued once the balance of the price has been paid.

Division 1 Confirmation of auction results

6.1 Notice and refunds to unsuccessful bidders

- (1) As soon as practicable after the end of the auction period, the ACMA must notify each bidder that is not a winning bidder that:
 - (a) the bidder was unsuccessful in the auction; and
 - (b) the bidder's confidentiality obligations under section 3.2 have ended.
- (2) If the bidder made an eligibility payment, the ACMA must refund the payment no later than 6 months after sending the notice under subsection (1) unless the ACMA has made a decision to retain the eligibility payment under section 7.6.

Note Section 7.6 enables the ACMA to retain an eligibility payment if it is satisfied certain breaches of this determination have occurred.

6.2 Notice to withdrawn applicants

As soon as practicable after the end of the auction period, the ACMA must notify each withdrawn applicant that the applicant's confidentiality obligations under section 3.2 have ended.

Note Eligibility payments made by withdrawn applicants are refundable under section 4.15.

6.3 Winning bidder to make statement about affiliations

- (1) As soon as practicable after the end of the auction period, the ACMA must:
 - (a) give each winning bidder details about the identity of all other winning bidders; and

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- (b) ask the bidder to make a statement whether the bidder is an affiliate of another winning bidder and, if so, identifying the other bidder and giving details of the affiliation.
- (2) The ACMA must state a deadline, at least 5 working days after the date of the request, before which the statement must be received by the ACMA.
- (3) A winning bidder must give the ACMA the statement by the deadline.

Note 1 Giving false or misleading information is a serious offence under section 137.1 of the *Criminal Code*.

Note 2 Section 136.1 of the *Criminal Code* also makes it an offence to make a false or misleading statement in connection with an application for a licence.

6.4 Notification that winning bidders are affiliated

If the ACMA is satisfied that 2 or more winning bidders have become affiliated after the auction period (but were not affiliated during the auction period), the ACMA must notify the bidders in writing and tell them the basis on which the ACMA is satisfied the bidders are affiliated.

6.5 Consequences of affiliation

- (1) If the ACMA notifies 2 or more winning bidders under section 6.4 that it is satisfied the bidders are affiliated, the ACMA must not issue spectrum licences to the bidders that would exceed the allocation limits.
- (2) If the issue of spectrum licences to the affiliated bidders for all the lots of a product the bidders won at auction would exceed the allocation limits, the bidders may give a direction to the ACMA specifying how spectrum is to be allocated between the bidders up to the allocation limits.
- (3) The direction must be given jointly by the bidders and must be given to the ACMA within 5 working days after the bidders received notification under section 6.4.
- (4) If the ACMA does not receive a direction within 5 working days, the ACMA may, for any part of the spectrum where the lots won by the bidders exceed the allocation limits, choose at its discretion how to allocate spectrum to each bidder up to the allocation limits.
- (5) A frequency range can be assigned to a bidder under this section from any of the frequency ranges assigned to the lots won at auction by any of the affiliated bidders.
- (6) Spectrum in excess of the allocation limits that is not allocated under subsection (2) or (4) is taken to be unallocated.
- (7) A winning bidder must pay the full balance of the winning price for all lots won by the bidder at auction, despite receiving a smaller allocation as a result of this section.

Division 2 Payment and issue of licences

6.6 Balance of winning price

For a winning bidder, the balance of the winning price is the total of the allocation price and assignment prices for the lots won by the bidder at auction, minus any eligibility payment made by the bidder under section 4.14.

6.7 Sufficient eligibility payment—issue of licence without further payment

- (1) If the balance of the winning price for a winning bidder is an amount less than zero:
 - (a) the ACMA on behalf of the Commonwealth must refund the eligibility payment in excess of the total of the allocation price and assignment prices for the lots won by the bidder at auction; and
 - (b) the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.
- (2) If the balance of the winning price for a winning bidder is zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

6.8 Payment of balance of winning price

- (1) If the balance of the winning price for a winning bidder is an amount greater than zero, the ACMA must notify the bidder by registered mail of the balance.
- (2) The balance of the winning price must be paid by the winning bidder to the ACMA on behalf of the Commonwealth no later than 20 working days after the date of the notice.

Note For information on how the balance of the winning price must be paid, see section 1.7.

- (3) If the ACMA becomes aware that a notice under subsection (1) contains a material error, the ACMA must give the winning bidder a revised notice by registered mail.
- (4) If the ACMA gives a winning bidder a revised notice, the balance of the winning price must be paid no later than:
 - (a) if the revised notice is given within 20 working days after the date of the original notice—no later than 30 working days after the date of the original notice; or
 - (b) if the revised notice is given more than 20 working days after the date of the original notice—no later than 10 working days after the date of the revised notice.

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6.9 Issue of licence after payment of balance of winning price

If a winning bidder pays the balance of the winning price in accordance with section 6.8, the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder.

6.10 Publication of auction results

The ACMA must announce or publish the following information about the auction after the end of the auction period:

- (a) the names of winning bidders;
- (b) the spectrum allocated to each winning bidder;
- (c) the total sum paid, or to be paid, by each winning bidder (being the total of the allocation price and assignment prices for the lots won by the bidder).

Part 7 Miscellaneous

Overview of Part 7

This Part deals with a range of matters, including information-gathering powers and the enforcement of the procedures in this determination by the Federal Court.

7.1 Unallocated spectrum

Parts of the spectrum that are offered at the auction but not allocated may be later offered for allocation by a procedure to be determined by the ACMA.

Note The ACMA may make determinations under section 60 of the Act about allocations by auction or by other procedures.

7.2 Bidders must not misuse auction system

- (1) A bidder must only access and use the auction system in accordance with the information about access and use provided under section 4.19.
- (2) A bidder must not attempt to interfere with, disrupt or damage the auction system.
- (3) A bidder must not attempt to use the auction system to breach a law of the Commonwealth.

7.3 ACMA may obtain information from applicants and bidders

- (1) If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA's functions or exercise of its powers under this determination, the ACMA may, by written notice, require the applicant or bidder:
 - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

Note If a requirement in a notice given under this subsection is breached, the ACMA may take action under section 7.6.

- (2) The ACMA may vary a notice given under subsection (1).

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7.4 Use of information and documents by ACMA

- (1) The ACMA may use information or documents it obtains in the performance of its functions under this determination:
 - (a) for the purposes of this determination, including disclosing or publishing information or documents as provided for in this determination; and
 - (b) in relation to a spectrum licence issued as a result of the auction.
- (2) The ACMA may retain possession of a document or other item given to the ACMA for the purposes of this determination for as long as necessary for the performance of the ACMA's functions and exercise of its powers under this determination or the Act.
- (3) The ACMA may disclose information or documents in accordance with Part 7A of the *Australian Communications and Media Authority Act 2005* or as otherwise authorised by law.

7.5 ACMA to provide information to ACCC on request

- (1) The ACCC may make a request to the ACMA for information in relation to the auction or in relation to an applicant or bidder.
- (2) The ACMA must provide the requested information to the ACCC if the ACMA has the information.
- (3) Without limiting subsection (1), information that the ACCC may request includes the following:
 - (a) completed application forms;
 - (b) completed eligibility nomination forms;
 - (c) completed deeds of confidentiality;
 - (d) information about an applicant's associates and affiliations;
 - (e) information about any breaches of confidentiality obligations;
 - (f) information about bidding during the auction;
 - (g) information about the outcomes of the procedures in Part 6.

7.6 Retention of eligibility payment or enforcement of deed for breach of auction procedures

- (1) The ACMA may retain an eligibility payment made by an applicant or bidder, or enforce a deed of financial security given by an applicant or bidder, if:
 - (a) the ACMA is satisfied that:
 - (i) the applicant or bidder, or a related person of the applicant or bidder, breached a provision of this determination; and

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- (ii) the breach affected, or may have affected, the outcome of the auction; or
 - (b) the bidder is a winning bidder who failed to give the statement required under section 6.3; or
 - (c) the bidder is a winning bidder who failed to pay the balance of the winning price as required under section 6.8; or
 - (d) the ACMA is satisfied that the applicant or bidder, or a related person of the applicant or bidder, breached the confidentiality obligation under section 3.2 after the auction period (but before the confidentiality obligation came to an end); or
 - (e) the ACMA is satisfied that the bidder breached section 5.9; or
 - (f) the applicant or bidder failed to comply with a requirement in a notice given under subsection 7.3 (1).
- (2) The ACMA must notify the applicant or bidder, in writing, of a decision under subsection (1) and the nature of the breach before the later of:
- (a) 6 months after the end of the auction period; and
 - (b) 6 months after the day on which the breach or failure mentioned in subsection (1) occurred.
- (3) An eligibility payment retained under this section, or an amount obtained through enforcement of a deed of financial security under this section, is forfeited to the Commonwealth unless the Federal Court orders the return of the amount under section 7.8.

7.7 Effect of retention on winning bidders

If the ACMA makes a decision under subsection 7.6 (1) in relation to a winning bidder:

- (a) despite sections 6.7 and 6.9, the ACMA must not issue a spectrum licence to the bidder; and
- (b) the spectrum won by the bidder at auction is taken to be unallocated.

7.8 Application to Federal Court for return of retained amount

- (1) An applicant or bidder who has been notified by the ACMA under subsection 7.6 (2) may, within 1 year of receiving the notice, apply to the Federal Court for return of all or part of an eligibility payment or an amount secured by a deed of financial security.
- (2) On application, the Federal Court may:
 - (a) if the Court is not satisfied that the applicant or bidder committed the breach identified in the notice given by the ACMA—order the return of all of the amount retained by the ACMA; or

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- (b) if the Court is satisfied that the applicant or bidder committed the breach, but considers that it would be disproportionate for the full amount to be retained—order the return of part of the amount retained by the ACMA.
- (3) This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder.
- (4) This section does not remove any existing jurisdiction of a court.

7.9 Liability of ACMA

Neither the ACMA, the auction manager nor the Commonwealth is liable to pay damages or costs arising from an act or omission of any person in relation to the auction procedures set out in this determination.

7.10 Other rights not affected

This determination does not limit any other right of action or remedy which the ACMA or the Commonwealth has against a person.

7.11 Auction manager may delegate functions and powers

The auction manager may delegate any of the manager's functions and powers under this determination to another person in writing.

Schedule 1 Auction rules

Part 1 Clock rounds

Schedule for clock rounds

- 1 Clock rounds must start and end between 9 am and 5 pm on working days.
- 2 The scheduling of clock rounds between those times is at the auction manager's discretion.
- 3 There is no minimum or maximum length for a clock round, and no minimum or maximum length for the interval between clock rounds.
- 4 There is no upper or lower limit on the number of clock rounds per day.
- 5 The auction system will indicate the anticipated schedule of rounds for a given day at least 1 hour before the start time of the first clock round of the day. However, the auction manager may, at any time, modify the schedule of rounds. If this occurs, the auction manager must inform bidders of the change as soon as practicable.
- 6 Before the start time of each clock round, the auction manager must indicate to each bidder using the auction system:
 - (a) the start time of the round; and
 - (b) the end time of the round; and
 - (c) the prices that will apply to lots of each product in the round; and
 - (d) the eligibility points of the bidder for the round.

Prices in clock rounds

- 7 In the first clock round, the prices for lots of each product will be the prices set by the ACMA under paragraph 4.6 (1) (c) of this determination.
- 8 In subsequent clock rounds the price for lots of a product will be determined on the following basis:
 - (a) if the total number of lots of a product that were bid for in the previous clock round was more than the number of lots of the product that are available, the price will be an amount determined by the auction manager that is greater than the price in the previous clock round;
 - (b) if the total number of lots of a product that were bid for in the previous clock round was equal to or less than the number of lots of the product that are available, the price will be the same as the price in the previous clock round.

- 9 The auction manager may determine the price increment under paragraph 8 (a) from one clock round to the next at the auction manager's discretion. The increment may be different for different products and may be different for the same product between different clock rounds.
- 10 The price for a product will only be reduced if the auction is restarted either from the beginning or from a prior round under section 5.8 of this determination.

Eligibility points

- 11 For the first clock round, the eligibility points of a bidder will be the initial eligibility points secured by the bidder under section 4.14 of this determination.
- 12 In any other clock round, a bidder's eligibility points will be the lesser of:
 - (a) the bidder's eligibility points in the previous round; and
 - (b) the value, in eligibility points, of the package that the bidder bid for in the previous clock round.

Note This means that if a bidder does not submit a bid in any given clock round, the bidder's eligibility points will become zero and the bidder will not be entitled to bid in subsequent clock rounds.

Clock round bids

- 13 A bidder is entitled to bid in a clock round if the bidder has eligibility points remaining. A bidder may not make more than one bid in each clock round.
- 14 A bidder may change, delete or replace a bid in the auction system as often as desired within a clock round, subject to the data validation checks that are performed by the auction system. The bid that will be treated as binding for a bidder is the bid in the auction system at the end of the round.
- 15 A clock round bid consists of:
 - (a) the number of lots of each product that are being bid for, entered by the bidder; and
 - (b) the bid price of the package, calculated by the auction system using the prices of lots in the current round.
- 16 If a bidder does not submit a valid bid in a clock round, the bidder will be deemed to have placed a bid for zero lots of all products in that round.

Validity of clock round bids

- 17 A bid in a clock round is valid if all of the following apply to the bid:
 - (a) it is received between the start time and end time of the clock round;
 - (b) for each product, the number of lots bid for does not exceed the number of lots of the product that are available;

- (c) for each product, the total size of the lots bid for (expressed in megahertz) does not exceed the allocation limits applicable to the product;
- (d) either:
 - (i) the value of the package in eligibility points does not exceed the eligibility points of the bidder for the clock round; or
 - (ii) the bid satisfies the revealed preference constraint with respect to each of the bidder's previous eligibility-reducing rounds and the value of the package, in eligibility points, does not exceed the bidder's initial eligibility points; or
 - (iii) both:
 - (A) the bidder's bid in the previous clock round included at least one lot of the 700 MHz product; and
 - (B) for each product, the current bid does not include more lots than the bid in the previous clock round;
- (e) if clause 19 or 20 applies—the bid satisfies that clause.

18 For subparagraph 17 (d) (ii), a bid in a clock round (*t*) **satisfies the revealed preference constraint** with respect to an earlier clock round (*s*) if the package bid for in clock round *t* has not become relatively more expensive than the package bid for in clock round *s*, as the prices of lots have changed from the prices in clock round *s* to the prices in clock round *t*.

Algebraically, the revealed preference constraint is:

$$\sum_{i=1}^m (Q_{t,i} \times (P_{t,i} - P_{s,i})) \leq \sum_{i=1}^m (Q_{s,i} \times (P_{t,i} - P_{s,i}))$$

where:

i indexes the products.

m is the number of products.

$Q_{t,i}$ is the quantity of lots of the *i*th product bid for in clock round *t*.

$P_{t,i}$ is the price of each lot of the *i*th product in clock round *t*.

$P_{s,i}$ is the price of each lot of the *i*th product in clock round *s*.

$Q_{s,i}$ is the quantity of lots of the *i*th product bid for in clock round *s*.

- 19 If a bidder bid for 3 or more lots of the 700 MHz product in the previous clock round, the bidder must bid for at least 2 lots of the 700 MHz product in the current clock round.
- 20 If the total number of lots of the 700 MHz product bid for in the previous clock round was equal to or less than the number of lots of the 700 MHz product that are available, each bidder must bid for at least as many lots of the product in the current round as in the previous round.

Information available during the clock rounds

- 21 After each clock round other than the final clock round and before the next clock round, the auction system will make available to each bidder:
 - (a) for each product, the total number of lots that were bid for in the clock round that has just ended; and
 - (b) the package and price of the bidder's own bid in that clock round.
- 22 After the final clock round and before the supplementary round, the auction system will make available to each bidder:
 - (a) for each product, the total number of lots that were bid for in the final clock round; and
 - (b) the package and price of the bidder's own bid in the final clock round.
- 23 No disaggregated information will be released during the allocation stage about the bids submitted by other bidders.

End of clock rounds

- 24 The clock rounds will end when there is a clock round in which, for every product, the total number of lots bid for is no more than the number of lots of the product that are available (the *final clock round*). At this point, the auction manager will announce to each bidder using the auction system that the clock rounds have concluded and that the auction will progress to the supplementary round.

Part 2 Supplementary round

Schedule for supplementary round

- 25 There will be at least 1 clear working day between the final clock round and the supplementary round.
- 26 The supplementary round must start and end between 9 am and 5 pm on a working day.
- 27 The auction manager otherwise has discretion over the time and duration of the supplementary round.
- 28 The start and end times of the supplementary round will be announced by the auction manager at least 1 hour before the start of the supplementary round.

Supplementary bids

- 29 In the supplementary round, a bidder may submit bids using the auction system for different packages, up to the supplementary bid limit. Bidding is open to bidders who have bid for at least one lot in the first clock round.

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- 30 There is no requirement for a bidder to submit any supplementary bids.
- 31 A bidder may change, delete or replace a supplementary bid in the auction system as often as desired within the supplementary round, subject to the data validation checks that are performed by the auction system. The collection of supplementary bids that will be treated as binding for a bidder is the valid collection (if any) in the auction system at the end of the round.
- Note* For conditions of validity, see clause 36.
- 32 A supplementary bid consists of:
- (a) the number of lots of each product that are being bid for; and
 - (b) a bid price for the package that is a whole multiple of the dollar amount set by the auction manager as the minimum increment for supplementary bids.
- 33 Packages bid for in the supplementary round may have some products and lots in common, but a bidder's collection of supplementary bids must not include more than one supplementary bid for identical packages.
- 34 All lots are available for bidding in the supplementary round.
- 35 The dollar amount of each supplementary bid is determined by the bidder, subject to the minimum increment set by the auction manager and the restrictions set out for the validity of bids.

Validity of supplementary bids

- 36 A collection of supplementary bids is valid if the collection satisfies clauses 29 and 33 and every supplementary bid in the collection satisfies all of the following conditions:
- (a) the bid is received between the start time and end time of the supplementary round;
 - (b) for each product, the number of lots bid for does not exceed the number of lots of the product that are available;
 - (c) the dollar amount bid for the package is not less than the price of the package calculated using the prices of lots in the first clock round;
 - (d) the dollar amount bid for the package is a whole multiple of the minimum increment for supplementary bids;
 - (e) for each product, the total size of the lots bid for (expressed in megahertz) does not exceed the allocation limits applicable to the product;
 - (f) the value of the package in eligibility points does not exceed the bidder's initial eligibility points;
 - (g) if the supplementary bid is for a package that the bidder bid for in a clock round — the dollar amount of the supplementary bid is more than the price of the package in the clock round;

- (h) if the supplementary bid is for a package other than the package that the bidder bid for in the final clock round—the bid satisfies the revealed preference cap with respect to the last clock round in which the bidder’s eligibility points were equal to or more than the value of the package in eligibility points.

Note The amount bid for a package may be limited by the revealed preference cap with respect to a clock round. In turn, a supplementary bid for the package from that clock round may be limited by the revealed preference cap with respect to another clock round, and so on. This may form a chain of caps on supplementary bids, all of which must be satisfied for the collection of supplementary bids to be valid.

- 37 For paragraph 36 (h), a bid in the supplementary round *satisfies the revealed preference cap* with respect to a clock round (t) if the package bid for in the supplementary round has not become relatively more expensive than the package bid for in the clock round, when the prices of each package in clock round t are compared to the supplementary round bid and the highest price bid (whether in the supplementary round or in any clock round) for the package bid for in the clock round.

Algebraically, the revealed preference cap is:

$$B_{SR} \leq B_t + \sum_{i=1}^m (P_{t,i} \times (Q_{SR,i} - Q_{t,i}))$$

where:

B_{SR} is the price of the package bid for in the supplementary round.

B_t is the highest price bid for the package that was bid for in clock round t , whether in the supplementary round or in any clock round.

i indexes the products.

m is the number of products.

$P_{t,i}$ is the price of each lot of the i^{th} product in clock round t .

$Q_{SR,i}$ is the quantity of lots of the i^{th} product in the package bid for in the supplementary round.

$Q_{t,i}$ is the quantity of lots of the i^{th} product in the package bid for in clock round t .

Note Because of paragraph 36 (g), if a package bid for in a clock round was also bid for in the supplementary round, then B_t will be the amount bid for the package in the supplementary round. Otherwise, B_t will be the highest amount bid for the package in any of the clock rounds (not necessarily clock round t).

Part 3 Completion of allocation stage

Determination of winning allocation stage bids

- 38 After the clock rounds and supplementary round, the auction manager must determine the winning bids for the allocation stage.

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- 39 The bids must be selected from:
- (a) valid bids made in the clock rounds; and
 - (b) valid bids made in the supplementary round; and
 - (c) reserve bids taken to have been made for each lot offered in the auction.
- 40 Each reserve bid is taken to have been made by a different nominal bidder.
- Note* As a result, any number of reserve bids may be included in the winning allocation stage bids.
- 41 The combination of winning allocation stage bids must be a combination of valid bids such that:
- (a) for each product, the number of lots that are allocated to bidders is no more than the number of lots of the product that are available; and
 - (b) no more than one bid is selected from each bidder.
- 42 A combination of winning allocation stage bids must be selected so that the combination of bids maximises the sum of the bid prices, subject to satisfying clause 41.
- 43 If more than one combination of bids satisfies clause 42, the combination of bids must be selected from those combinations so as to minimise the total number of lots that:
- (a) were included in the package that a bidder bid for in the final clock round; and
 - (b) would not be allocated to the bidder in the combination of bids selected.
- 44 If more than one combination of bids satisfies clause 43, the combination of bids must be selected from those combinations so as to maximise the value, in eligibility points, of the bids selected. For this clause, a reserve bid is taken to be valued at zero eligibility points.
- 45 If more than one combination of bids satisfies clause 44, the combination of bids must be selected from the combinations satisfying clause 44 by pseudorandom selection.
- 46 If one or more reserve bids are selected in a combination of winning allocation stage bids, the corresponding lots are unallocated.

Determination of allocation prices

- 47 The auction manager must determine the allocation price for each winning allocation stage bid.
- 48 The allocation price for a winning bid for a package must be:
- (a) at least the price of the package calculated using the prices of lots in the first clock round; and

(b) no more than the bid price for the package.

49 Subject to the constraints in clause 48, a set of allocation prices for all winning bids must be selected so that:

- (a) there is no alternative bidder, or group of bidders, who (based on their bids) would pay more than any winning bidder or group of winning bidders; and
- (b) if more than one set of allocation prices satisfies paragraph (a)—the sum of the allocation prices is also minimised; and
- (c) if more than one set of allocation prices satisfies paragraphs (a) and (b)—it is the solution to the formula in clause 50.

50 For paragraph 49 (c), the formula is:

$$\min_{\{p_j\}_{j \in J}} \left\{ \sum_{j \in J} \frac{1}{w_j} (p_j - v_j)^2 \right\}$$

subject to $\{p_j\}_{j \in J}$ satisfying paragraphs 49 (a) and (b),

where:

$\{p_j\}_{j \in J}$ is a set of allocation prices.

$j \in J$ is the index of each bidder (j) in the set of all winning bidders (J).

$\{w_j\}_{j \in J}$ is the set of prices the winning bidders' winning packages would have had in the first clock round.

$\{v_j\}_{j \in J}$ is the set of Vickrey prices for the winning bidders, the price for each bidder j being:

- (a) the sum of bid prices for the combination of bids that would have been selected under clause 42 if bidder j had not submitted any bids; less
- (b) the sum of bid prices for all other winning bids.

51 The allocation prices calculated under clause 49 must be rounded up to the nearest whole dollar.

Part 4 Assignment stage

Schedule for assignment rounds

- 52 After the completion of the allocation stage, the auction manager must announce:
- (a) the anticipated start and end time of each assignment round; and
 - (b) the product or products that will be the subject of each assignment round.
- 53 There must be at least 1 working day between the completion of the allocation stage and the first assignment round.
- 54 Assignment rounds must start and end between 9 am and 5 pm on working days.
- 55 The start and end time of each assignment round must be announced at least 1 hour before the round starts.
- 56 The scheduling of assignment rounds between those times is at the auction manager's discretion.
- 57 The auction manager has discretion over the duration of assignment rounds.
- 58 Two or more products may be the subject of a given assignment round. A product must not be the subject of more than one assignment round.
- 59 However, an assignment round held for the 700 MHz product must not include any other product and must be held before the assignment rounds for other products.

Frequency range options in assignment rounds

- 60 Bidding in an assignment round is only open to bidders who have won, in the allocation stage, at least one lot of a product that is the subject of the assignment round.
- 61 For each product, the auction manager must determine a set of frequency range options available to each bidder so that:
- (a) the frequency range included within each option for a bidder is a contiguous frequency range corresponding in bandwidth to the total size, expressed in megahertz, of the lots of the product that the bidder won in the allocation stage; and
 - (b) for each option, there exists at least one frequency range option for every other bidder so that:
 - (i) each bidder's option complies with paragraph (a); and
 - (ii) none of the frequency ranges overlap.

- 62 If some of the lots of a product were not allocated in the allocation stage, the auction manager must, in determining the frequency range options available to each bidder, ensure that the frequency ranges assigned to the unallocated lots will be adjacent to each other.
- 63 If a bidder is participating in a given assignment round for more than one product, the auction manager may determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of clause 61 are met for each individual product in the group.
- 64 At the start of an assignment round, the auction manager must provide each bidder in the assignment round with the list of frequency options available to the bidder.

Assignment bids

- 65 An assignment bid consists of:
- (a) the frequency range option that is being bid for; and
 - (b) a bid price for the frequency range option that is a whole multiple of the dollar amount set by the auction manager as the minimum increment for assignment bids.
- 66 A bidder may submit an assignment bid for any frequency range option on the list presented by the auction manager. A bidder is not permitted to bid for any other frequency range.
- 67 A bidder may change, delete or replace an assignment bid in the auction system as often as desired within an assignment round. The bid that will be treated as binding for a bidder is the bid in the auction system at the end of the round.
- 68 Any frequency range option for which no assignment bid is received or for which an invalid assignment bid is received is taken to have an assignment bid with a bid price of zero.
- 69 If a bidder does not submit any assignment bid, then the bidder will be taken to have bid zero dollars for every frequency range option.

Validity of assignment bids

- 70 An assignment bid is valid if:
- (a) it is received between the start and end time of the assignment round for the product; and
 - (b) it is for a frequency range option made available to the bidder; and
 - (c) the dollar amount bid for the frequency range option is a whole multiple of the minimum increment for assignment round bids.

Determination of winning assignment bids

- 71 After an assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products bid for in the round.
- 72 The winning assignment bids must be a combination of valid assignment bids such that:
- (a) exactly one bid (whether a submitted bid or a bid of zero dollars taken to have been made under clause 68 or 69) is selected from each bidder; and
 - (b) the frequency ranges included in any pair of winning bids for a product do not overlap; and
 - (c) any unallocated lots of a product are adjacent to each other.
- 73 Subject to the constraint in clause 72, the assignment bids selected must maximise the sum of the bid prices.
- 74 If more than one combination of bids meets the criterion in clause 73, the winning combination must be selected by pseudorandom selection.

Determination of assignment prices

- 75 The auction manager must determine the assignment price for each winning assignment bid in an assignment round.
- 76 If there is only one bidder in an assignment round, then the assignment price must be zero. Otherwise, the auction manager must determine the assignment price in accordance with the following clauses.
- 77 The assignment price must be no more than the bid price.
- 78 The assignment price may be zero.
- 79 Subject to the constraint in clause 77, a set of assignment prices in the assignment round must be selected so that:
- (a) there is no alternative bidder, or group of bidders, who (based on their bids) would pay more than any winning bidder or group of winning bidders; and
 - (b) if more than one set of assignment prices satisfies paragraph (a)—the sum of the assignment prices is also minimised; and
 - (c) if more than one set of assignment prices satisfies paragraphs (a) and (b)—it is the solution to the formula in clause 80.
- 80 For paragraph 79 (c), the formula is:

$$\min_{\{p_j\}_{j \in J}} \left\{ \sum_{j \in J} \frac{1}{w_j} (p_j - v_j)^2 \right\}$$

subject to $\{p_j\}_{j \in J}$ satisfying paragraphs 79 (a) and (b),

where:

$\{p_j\}_{j \in J}$ is a set of assignment prices.

$j \in J$ is the index of each bidder (j) in the set of all bidders participating in the assignment round (J).

$\{w_j\}_{j \in J}$ is the set of prices the bidders' assigned lots would have had in the first clock round.

$\{v_j\}_{j \in J}$ is the set of Vickrey prices for the bidders, the price for each bidder j being:

- (a) the sum of bid prices for the combination of bids that would have been selected under clause 73 if bidder j had submitted bids of zero dollars for every frequency range option; less
- (b) the sum of bid prices for all other winning bids.

- 81 The assignment prices calculated under clause 79 must be rounded up to the nearest whole dollar.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.