

## EXPLANATORY STATEMENT

### Australian Communications and Media Authority Act 2005

### Australian Communications and Media Authority (Spectrum Licence Allocation – Combinatorial Clock Auction – Eligibility Deadline and Payment Terms) Direction 2013

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* 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 on the time for when the balance of the winning price must be paid by bidders allocated spectrum as a result of the digital dividend auction and to also extend the date of the Eligibility Deadline for the auction from 21 March 2013 to 28 March 2013.

#### 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*).

On 19 December 2012 the ACMA made the *Radiocommunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012* (the CCA Determination), under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act). The CCA Determination sets out the procedures the ACMA must apply in its allocation of the relevant spectrum and in fixing spectrum access charges payable by licensees for issuing spectrum licences.

#### *Timing of payment*

Under subsection 6.8(1) of the CCA Determination, the ACMA is required to notify a winning bidder of the balance of the winning price payable by the bidder for the spectrum

allocated to the person as a result of the auction. In accordance with the ACMA's usual practice, it is currently anticipated that the successful bidders would be required to pay the balance of their respective winning price shortly after the auction concludes, that is, in mid-2013. This direction will require the ACMA to not notify the winning bidders under subsection 6.8(1) before 1 October 2014. An exception to this requirement is where any of the spectrum licences allocated to a particular bidder has a commencement date of 1 October 2014 – for any such bidder, the direction requires the ACMA to not issue the notice under subsection 6.8(1) before 19 August 2014.

The two different dates provided for in the direction reflect the different commencement dates of the spectrum licences. The spectrum licences for the 700 MHz band are to commence on 1 January 2015. The licences for the 2.5 GHz band are to commence on 1 October 2014, except for those licences solely in the Metro Perth and/or Regional Western Australia region which are due to commence on 1 February 2016. The later time for the ACMA issuing the notice under subsection 6.8(1) of the CCA Determination will result in the balance of the licence payments being due closer to the commencement date of the spectrum licences.

In deciding to change the timing of the final payments for the spectrum allocated at the auction, the Minister was cognisant that for some licensees, payments for the reissue of expiring spectrum licences and the spectrum allocated at the digital dividend auction may both be required within a short period of time. Prior to making the direction, the Minister consulted with the applicants in the auction (i.e. those persons that had submitted an application to the ACMA and had paid the application fee to the ACMA by the application deadline of 24 January 2013).

#### *Eligibility deadline*

Under subsection 4.4(1) of the CCA Determination, it is a requirement that the ACMA publish a notice on its website setting out various information relating to the auction process for the allocation of the relevant spectrum, including the eligibility deadline, being the date and time before which completed eligibility nomination forms must be received by the ACMA and eligibility payments must be paid to the ACMA on behalf of the Commonwealth, or deeds of financial security must be given to the ACMA.

In accordance with this requirement, the ACMA published a notice on its website on 3 January 2013, announcing, among other things, an eligibility deadline of 21 March 2013.<sup>1</sup>

The auction process that has been set up by the ACMA for the allocation of the relevant spectrum is a combinatorial clock auction. Under this auction, an applicant to the auction is required to nominate by the eligibility deadline its initial eligibility points – this is the number of points a bidder may use to bid on lots in the auction. The eligibility payment required to be made by the applicant by the eligibility deadline is calculated on the basis of the number of points nominated by the applicant (see Division 4 of Part 4 of the CCA Determination). In other words, by the eligibility deadline, an applicant is required to identify the amount of spectrum that the applicant is interested in bidding for, and to make a part payment based on that amount of spectrum.

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<sup>1</sup> <http://engage.acma.gov.au/digitaldividend/notice-for-the-digital-dividend-auction/>

Subsection 4.4(2) of the CCA Determination states that if a matter mentioned in the notice published by the ACMA on its website changes, then the ACMA must publish on its website another notice giving details of the change.

The Minister is mindful the change in the timing for auction payments may affect the bidding strategies of the bidders in the auction, and consequently may affect the number of eligibility points that an applicant wishes to nominate. This Direction therefore also requires the ACMA to extend the eligibility deadline to 28 March 2013 – an extension of one week from the previously-announced eligibility deadline of 21 March 2013 – and to publish a notice on its website giving details of the change to the eligibility deadline. This change in the eligibility deadline will allow applicants to take account of the changed payment timing in their bidding strategies.

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, as well as the applicants for the digital dividend auction.

### **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 24 months after it commences.

**Section 4** defines the terms used in the Direction.

**Section 5** specifies the direction.

Subsection 5(1) requires the ACMA not to notify a winning bidder under subsection 6.8(1) of the CCA Determination until, if any of the spectrum licences to be issued for the spectrum allocated to the bidder has a commencement date of 1 October 2014, 19 August 2014, otherwise not until 1 October 2014.

Subsection 5(2) requires the ACMA to extend the eligibility deadline to 28 March 2013 and, in accordance with subsection 4.4(2) of the CCA Determination, to publish a notice on its website giving details of the change to the eligibility deadline.