

**M1'S COMMENTS ON IDA'S PROPOSED
3G SPECTRUM AUCTION RULES AND
PROCEDURES RELEASED ON 22 JANUARY 2001
FOR PUBLIC CONSULTATION**

12 February, 2001

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Description of Commenting Party

MobileOne (Asia) Pte Ltd (M1) has been providing cellular mobile and paging services in Singapore since 1 April 1997. Following the full liberalisation of the telecommunications industry from 1 April 2000, M1 was awarded a Facilities Based Operator Licence and M1 has since expanded its scope of services to include international services.

General Comments on Draft 3G Auction Rules

In general, M1's view is that the Auction Rules should strive to achieve a transparent and objective Auction process. Definitions, guidelines, assessment criteria and any basis upon which a decision by IDA would be made should, as far as possible, be specified upfront in the Rules and excessive reliance on discretionary powers should be avoided. This will provide potential bidders greater certainty in the parameters within which they must conduct their requisite due diligence, undertake their internal decision-making process and ultimately participate in the Auction.

Comments on Specific Sections of Draft 3G Auction Rules

M1's comments on specific sections of the draft Rules are set out in the table below.

Section	Comment
1.1	<p><u>3G Spectrum Rights</u></p> <p>To ensure that potential bidders, whether incumbent operators or new entrants, have full information in order to value the 3G Spectrum Rights offered by IDA, M1 requests for IDA's confirmation that the Spectrum Rights will be completely cleared of all other users, eg private PHS system operators. In addition, we propose that IDA provide information on the usage of corresponding spectrum allocation in Malaysia and Indonesia, so that potential bidders will know to what extent spectrum coordination with operators in neighbouring countries would be required for the different Spectrum Rights. M1's view is that it would be more appropriate for such information to be provided by IDA in order to ensure that all interested parties are given the same information and because current accepted practice is for any representation to the regulators of neighbouring countries to be conducted through IDA rather than by individual operators.</p>
1.3	<p><u>The Telecommunications (Radio-Communication) Regulations 2001 are unavailable</u></p> <p>The revised Telecommunications (Radio-Communication) Regulations 2001 (the "Regulations") have yet to be published in the gazette and therefore there remains uncertainty with regards to those aspects of the rules which make reference to the Regulations.</p> <p>Likewise, the terms of the Generic Form of 3G Spectrum Right make extensive reference to the Regulations. In particular, M1 is concerned with Section 17.1 of the Generic Form of 3G Spectrum Right which provides that in the event that IDA terminates, suspends or cancels the 3G Spectrum Right, "the Grantee shall not have the right to seek compensation or refund of the 3G Spectrum Right fee paid". While Section 16.1 provides that IDA may suspend and/or cancel the 3G Spectrum Right only in accordance with the Regulations, it is as yet unknown what circumstances or conditions or extent of discretion to IDA are provided for in the Regulations. Given that</p>

	<p>successfully bidders are being required to invest at least \$150m for the right to use 3G spectrum and considerably more in network infrastructure, they would need certainty that their investment would be protected under the law.</p>
<p>2.1.3 & 2.1.4</p>	<p><u>Excessive and unclear change in “ownership and/or control structure” provisions</u></p> <p>Section 2.1.3 provides that changes in “ownership and/or control structure” may render the person who submitted the Application Form ineligible to participate in the Auction. The relevant change will be deemed to have occurred on the earlier of the date on which relevant transaction documentation is signed (whether conditional or unconditional) etc.</p> <p>While M1 agrees that a Bidder’s eligibility should be subject to IDA’s re-evaluation in the event of a change in ownership and/or control structure, M1 submits that a change to the ownership and/or control structure should not be deemed to have occurred unless the relevant documentation executed is of an “unconditional” nature. Bidders should not bear the risk of disqualification in relation to a transaction that may never occur, ie a conditional transaction.</p> <p>Section 2.1.4 does not stipulate clearly how IDA would determine that such a person is not or is no longer considered to be an Eligible Bidder as a result of such change in ownership and/or control structure. M1 therefore proposes that the Auction Rules provide an objective mechanism which bidders may apply in order to determine whether contemplated M&A activity would affect their eligibility to participate in the Auction. The Rules should also provide a reasonable minimum period during which the Bidder can end the particular association which threatens their right to participate in the Auction. The UK auction rules, for example, provided for the occurrence of bidder related M&A activity both with (eg trade sale) and without (eg hostile bids) the involvement of the bidder.</p>
<p>2.2.1</p>	<p><u>Lack of right of appeal against IDA decisions</u></p> <p>In the interest of ensuring a transparent process, M1 proposes that if IDA determines that an applicant is not an Eligible Bidder, the Rules should require IDA to explain the basis for their decision. In addition, the Rules should provide potential bidders with a right of appeal to the Minister in the event that IDA rejects the potential bidders Application Form.</p>
<p>2.2.3</p>	<p>Section 2.2.3 needs to provide that IDA’s request has to be made, and responded to by the Bidder, within the five (5) Business Days set out in Section 2.2.1. As such, the request by IDA for additional information must be reasonable in order to be fulfilled within the short turnaround time.</p>
<p>2.3.2 & 2.3.3</p>	<p><u>Inadequate time frame for Associated Bidders to consider on-going participation</u></p> <p>In the event that IDA returns an Associated Bidder finding, the relevant applicants have only two (2) Business Days to notify IDA who is to drop out of the auction. This time period is unrealistic. Any organisation who has committed to spend at least \$150m on a 3G licence will require a reasonable time to conduct the required internal and external discussions before exiting the auction procedure.</p>
<p>2.3.2 & 2.3.4(a)</p>	<p><u>Minimum reorganisation periods</u></p> <p>Section 2.3.2 and 2.3.4(a) states that the Associated Bidders may elect to reorganise themselves by a date specified by IDA. Bidders require a commitment from IDA that</p>

	<p>the time period extended to Bidders for this purpose will be reasonable. Ideally a minimum time would be provided for in the Rules as was the case in the UK 3G Auction.</p>
<p>2.3.7</p>	<p><u>Unclear basis for determining Associated Bidders</u></p> <p>The Rules <u>do not</u> stipulate positively what would constitute an Associated Bidder. The only guidance provided in this section is on what <u>would not</u> constitute an Associated Bidder. Instead, the Rules stipulate that the determination of whether two or more persons who submit Application Forms are Associated Bidders in relation to each other is a matter within the discretion of IDA. The Rules also fail to clarify to what extent Bidders will be regarded as having “common shareholders or other connections” in order to address IDA’s concern as spelt out in Para 9 of the Information Memorandum, which is to ensure that the persons participating in the Auction “are independent entities whose policy and operational decision-making processes are not influenced by any common shareholders or other connections”.</p> <p>Further clarity is also needed in the definition of “group” used in the criterion for determining Associated Bidders. The terms “parent company” and “subsidiary” are stated to have the meanings given in the Singapore Companies Act (Cap. 50), but there is no definition of the term “parent company” in the said Act, unless this term is equated with the term “holding company”.</p> <p>The requirements of the Application Form in providing details of ownership structure suggest that consideration will be given to a wider form of control or interest than envisaged by Section 2.3.7. The scope of the ownership structure requirements in the Application Form is also unclear as “group” is defined in the same manner as for the purpose of Section 2.3.7.</p> <p>In order to ensure transparency in the Auction process and provide potential bidders with greater certainty in order to be able to raise the necessary finance and secure the necessary bank guarantees, M1 requests that the Rules be amended to provide a clearer definition and a more objective test of what would constitute an Associated Bidder. The removal of any doubt is also important in view of Section 1.11 of the Application Form which requires the applicant to confirm that it is not aware of any material information which has not been disclosed to IDA which may be relevant in the determination as to whether it is an Associated Bidder.</p>
<p>3.2.3</p>	<p><u>Timeframe to provide Additional Bank Guarantee</u></p> <p>While we recognise that the tight timeframe for furnishing the Additional Bank Guarantee is driven by the expected pace of the Auction, in practice banks are likely to find it difficult to comply with the specified time periods. M1 proposes that up to 3 Business Days be allowed for submission of Additional Bank Guarantee.</p>
<p>3.3.3</p>	<p><u>Lack of right of appeal against IDA decisions</u></p> <p>We note that the Rules provide IDA for full discretion in determining that the relevant person is not an Eligible Bidder even after the person has been notified as such and has submitted an Initial Offer. In the interest of ensuring a transparent process, the Rules should stipulate the criteria by which IDA may make such a determination and require IDA to explain the basis for their decision to the relevant person. In addition, the Rules should provide a right of appeal to the Minister.</p>

<p>3.4.3</p>	<p><u>Auction may proceed even if there are as many or fewer Bidders than Spectrum Rights</u></p> <p>Scarcity value of spectrum is driven by a mismatch between supply and demand. However, the Rules as currently drafted will permit the Auction to proceed and potentially the price of a Spectrum Right to be driven above the Reserve Price, even if there are as many or fewer Bidders than Spectrum Rights. It could be argued that this outcome reflects the fact the relative differences in desirability of the Spectrum Rights and hence different values are attached to different Rights. On the other hand, this situation could also arise from the lack of transparency in the Auction process. In announcing that the Auction will proceed, IDA will reveal the identity of the Bidders, but will not announce the identity of the Bidder in relation to the specific Spectrum Right he has made an Initial Offer for, nor even the number of Initial Offers received for each Spectrum Right (see comment on Section 3.4.4(b) below). Thus the level of competition for each Right is not revealed to Bidders. At the end of each round, IDA will not reveal the number of bids received for each Spectrum Right (see comment on Section 8.9.1 below). Although the purpose of the Auction is to allow competitive market forces to determine a market price for each Spectrum Right, in practice imperfect information means that the degree of competition will not be fully revealed to Bidders.</p>
<p>3.4.4(b)</p>	<p><u>Identity of Bidders for specific Spectrum Rights will not be made known</u></p> <p>For the reasons cited above, M1 proposes that the Rules be revised to require IDA to announce the identity of the Bidders in relation to the specific Spectrum Right each has made an Initial Offer for, or at a minimum to announce the number of Initial Offers received for each Spectrum Right.</p> <p>Revealing each bid and the identity of the bidder improves the transparency of the auction process. This is the standard approach used in most spectrum auctions around the world. For example, it is the approach successfully used in spectrum auctions in the United States, Canada, Australia, the United Kingdom, the Netherlands, Italy, and other countries. Concealing identities has no advantage in an auction where each bidder can win at most a single license. If there is an advantage to concealing identities, it only arises in auctions where a bidder can win multiple licenses. Then concealing identities may mitigate certain retaliatory strategies.</p>
<p>3.5.1</p>	<p><u>Reserve Price should not be applicable if the Auction does not proceed</u></p> <p>IDA's rationale for the 3G Auction is to allow market forces to allocate this scarce resource according to the value attached to it by bidders (Para 5(a) of the Information Memorandum). However, if the Auction is unable to proceed because there are insufficient bidders, then the absence of bidders indicates that there is no scarcity value to the spectrum and the economic price of the Spectrum Right is less than the IDA-determined Reserve Price. If the Spectrum Rights are allocated at the Reserve Price to those who submitted an Initial Offer, this will mean a pricing mechanism based on regulatory decision and not a market-driven result. If IDA decides for any other reason that the Auction should not proceed (as provided for in Section 3.4.1), then for the same reason that market forces were not allowed to be exercised, the Spectrum Rights should not be allocated at the \$150m price tag established by regulatory fiat. Rather, IDA should re-assess the pricing mechanism in consultation with bidders.</p>

3.5.1	<p><u>Uncertainty in future method of allocation of Spectrum Rights</u></p> <p>In the event that the Auction does not proceed and any of the Spectrum Rights are not allocated to the relevant Eligible Bidder or no Initial Offer was received for any of the Spectrum Rights, the Rules provide that IDA may allocate the remaining Spectrum Rights subsequently in any manner it considers appropriate. This discretion could potentially lead to an anti-competitive outcome in that a latecomer may benefit by being allocated at a more advantageous price arising from some other allocation method than an auction.</p> <p>M1 proposes that either a moratorium of 5 years should be placed on the allocation of any such remaining Spectrum Right or that any subsequent allocation of any remaining Spectrum Right should be at no less than the price at which any Spectrum Right is awarded to the relevant Eligible Bidders under Section 3.5.1.</p>
3.5.2	<p><u>Provision for return of Bank Guarantee</u></p> <p>M1 proposes that a sentence be added to stipulate that in the event IDA chooses not to provisionally award and grant all or any of the 3G Spectrum Rights to the relevant Eligible Bidder(s) who submitted Offer(s) at the Reserve Price under Section 3.5.1, then the Bank Guarantee will be returned to the relevant Bidder within 2 Business Days of the Initial Offer Date.</p>
4.1	<p><u>Adequacy of duration of Trials and Information Session</u></p> <p>IDA may wish to consider allowing for flexibility to allow for the Information Session and Trial Auction to be conducted over a longer period of time than one day each. In particular, flexibility may be required to conduct more than one trial Auction, given potential difficulties with the Electronic Bidding Procedure technology.</p>
6.1	<p>There appears to be an error in the reference to Section 2.1.3; this should be Section 2.1.4.</p>
6.2	<p><u>Transparency of Bidders participation and bidding procedures</u></p> <p>In line with our comments on Sections 3.4.3 and 3.4.4(b) above, M1 requests IDA to consider allowing more information to be revealed to ensure a transparent and fair bidding process. At the start of the Auction, the number of Initial Offers in respect of each Spectrum Right and the identity of the Bidders should be made known to all Bidders.</p>
7.3	<p><u>Accuracy of bidding data</u></p> <p>Sub-sections (c) and (d) make certain assumptions about the accuracy of Bidders data processed by the Electronic Bidding Procedure (EBP). We note that IDA does not accept any responsibility for the accuracy of the EBP and the Information Memorandum expressly excludes all liability in relation to the same. This affords Bidders no protection in the event that data is corrupted by the EBP or there is a failure in the delivery of a bid sent. M1 requests that the EBP should include an acknowledgement to a Bidder for the receipt of each bid sent, specifying the amount of the bid, the Spectrum Right it relates to and the time of receipt. Failure to receive such acknowledgement or any error in the acknowledgement will alert the Bidder to a problem with the EBP which could then be informed to IDA. Such acknowledgement should also be accepted as a legitimate basis of dispute in the event that bid information contained in the acknowledgement conflicts with the bid information used</p>

	by IDA.
8.9.1	<p><u>Lack of transparency in bidding process</u></p> <p>This section provides that at the end of each Round, only a limited amount of information on the activity in that Round will be revealed to Bidders, namely the Current Highest Bid for each Spectrum Right in that Round and the number of waivers exercised. The number of bids received for each Spectrum Right will not be revealed, nor the identity of the Bidders for each Spectrum Right nor the amounts bid nor the identity of the Current Highest Bidder (save to the Current Highest Bidder himself). This anonymous format dilutes transparency and price discovery. For similar reasons as cited in the comments on Sections 3.4.3, 3.4.4(b) and 6.2, M1 proposes that IDA adopt a more transparent approach by providing information on the number of bids received for each Right at the end of each Round, the amounts bid and the identity of each Bidder including the Current Highest Bidder for each Spectrum Right.</p> <p>This added transparency has the additional benefit that each Bidder, as well as independent parties, can confirm that the EBP is accurately carrying out the auction rules. If software bugs are identified, then these problems are found and can be corrected before the auction process is corrupted. Discovering errors after several rounds of bidding or at the end of the auction is a recipe for disaster. It is critical that these errors be found and corrected before another round takes place.</p> <p>In addition, more transparency will mean equal access to information for Bidders. Based on the Rules as currently drafted, in the event a random draw is conducted to determine the Current Highest Bidder (as provided for in Sections 6.3(a) and 8.5), the latter has less information to determine the level of bidding activity than the Bidder(s) who bid the same amount but were not drawn. This is because the latter may infer there is more than one bidder from the fact that his amount bid is the same as the Current Highest Bid but he has not been identified as the Current Highest Bidder, whereas the Current Highest Bidder will not know that he is the Current Highest Bidder arising from a random draw process.</p>
9.2.1 & 9.2.3	<p><u>Uncertainty over Forfeiture Procedure</u></p> <p>The provisions relating to the issuing of a Forfeiture Notice are at the sole discretion of IDA. Given the potentially large sum of money at stake, M1 proposes that the Rules should stipulate a transparent and objective process associated with IDA's determination and subsequent issuing of a Forfeiture Notice. As currently drafted, the amount which shall be forfeited would also be at IDA's sole discretion. A more objective criterion should be set for the determination of the amount forfeited and this should be proportionate to the severity of the consequences of the circumstances that result in a Forfeiture Notice. The Rules should also be revised to allow for a right of appeal to the Minister on the issue of a Forfeiture Notice and the quantum of any such notice.</p>
9.2.2	<p><u>Uncertainty over Forfeiture Procedure</u></p> <p>The circumstances in which IDA can serve a Forfeiture Notice are onerous and possibly unfair. In particular: (c) given the broad nature of the confidentiality obligation in Section 14 (see comments below); (g) which seems a high price to pay to exit the Auction process; and (h) which seems disproportionate given that the consequences of the act contemplated would in any event be an invalidated Bid.</p>

10.3	<p><u>No limit to the length of suspension</u></p> <p>This section provides for an open-ended period of suspension. M1 proposes that a maximum time of 3 Business Days for a suspension should be specified. If IDA fails to re-start the auction at the end of this period, then the last Valid Bid submitted by each Bidder shall cease to be binding and the Bank Guarantee shall be returned to the relevant Bidder within 2 Business Days from the end of the maximum 3 Business Days suspension period.</p>
14	<p><u>Confidentiality Provision – Unclear and excessively broad</u></p> <p>The confidentiality provision is very broad and prohibits the disclosure of Confidential Information to anybody other than IDA or Bidder's advisers. The potential here is that Bidders could be in breach of this provision by providing Confidential Information (which is defined to include Auction procedure, business case information and auction strategy) with their own shareholders. It also precludes the possibility of discussions with potential consortium partners. Furthermore, the provision is expressed as having retrospective effect. For the purposes of the definition of Confidential Information (Part VII), a Bidder is broadly defined as including a person who merely "wishes to participate" in the Auction.</p> <p>M1 proposes that this Section on Disclosure of Confidential Information should allow for disclosure to shareholders. In addition, disclosure to facilitate discussions on forming a consortium for the purpose of obtaining a 3G licence should be permitted. The UK auction rules did have exceptions to permit financing and disclosure discussions to enable people to decide whether to join a consortium before the auction started. Rather than providing for retrospective effect which is open-ended and results in uncertainty as to when a potential bidder would be in breach, we propose that the confidentiality provision should apply from the point that the potential bidder submits the Application Form.</p> <p>In addition, there should be a corresponding obligation that IDA will receive in confidence any information submitted in conjunction with the Application Form and any other correspondence between IDA and Bidders relating to the Auction, save for bid information required to be released as part of the Auction process.</p>
17.1(a)	<p><u>IDA discretion on timeframes</u></p> <p>M1 proposes that the Rules provide some assurance of reasonableness and a route of appeal for Bidders, particularly with regard to timeframes for obtaining Additional Bank Guarantees, any requirement for reorganisation to avoid disqualification due to Associated Bidder status and the period of any suspension of the Auction process.</p>
17.1(b)	<p><u>No limit to any delay or suspension</u></p> <p>Similar to the comment above on Section 10.3, a limit should be placed on the period of delay or suspension beyond which the last Valid Bid submitted by each Bidder will cease to be binding and within two Business Days of the end of such period IDA should return the Bank Guarantee to the relevant Bidder.</p> <p>Any cancellation of the Auction should similarly provide for the prompt return of the Bank Guarantee to the relevant Bidder.</p>