

3.4

The Competitive Licensing Process

This section discusses competitive licensing processes, the purposes for which they are used, and the methods for carrying them. While competitive licensing processes vary from country to country, these processes frequently have common features. The following sections review practices that are commonly employed to improve the effectiveness, efficiency and transparency of licensing processes.

3.4.1 COMPETITIVE LICENSING PROCESS

Competitive licensing processes are generally used to issue an individual licence to a single service provider or a limited number of them. In a competitive licensing process, the regulator (or other licensing authority) typically describes the business opportunity and invites interested parties to submit applications for the licence to enter the business. The successful applicant is normally selected through a form of competitive evaluation, such as a comparative evaluation process (sometimes called a “beauty contest”), an auction, or some combination of the two.

A competition for the award of an individual licence is frequently referred to as a “licensing” or “tender” process or a “request for applications” process. In this module, we use the term “competitive licensing process” to refer generally to a competitive selection process, by which a number of applicants compete for the right to hold a limited number of licences.

3.4.1.1 FEATURES OF A MULTIPLE ROUND AUCTION: THE CANADIAN EXAMPLE

- 1. Bidder Eligibility Points:** Each licence in an auction is assigned a number of points proportionate to the bandwidth and population covered by that licence. Each bidder must indicate which licences, and the number of “points-worth” of licences, it may wish to bid on.
- 2. Activity Rule:** A bidder is considered active on a particular licence if it has the current high bid from the previous round or if it submits an acceptable bid in that current round. In each stage of bidding, a bidder must be active on licences whose corresponding points add up to a certain percentage of the bidder’s eligibility point level.
- 3. Bid Withdrawals/Penalties:** If a bidder makes a bid and later wishes to change it, it may do so subject to paying a penalty which corresponds to the potential loss of revenue caused by the withdrawn bid.
- 4. Bid Increments:** Bid increments are used to expedite the auction. They are set in percentage and/or absolute dollar terms and are changed during the course of the auction.
- 5. Waivers:** Waivers protect bidders against mistakes they may make or in the case of technical or communication problems. They prevent a bidder from losing bidder eligibility points when it does not satisfy the activity requirements in a given stage.
- 6. Stopping rule:** The auction generally stops when a round finishes with no acceptable bids or waivers having been submitted on any licences.
- 7. Forfeiture:** A bidder who submits the high bid on a licence but fails to pay will forfeit its right to the licence and must pay a penalty.

Reference Documents

- [Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum in the 2GHz Range](#)

3.4.2 PHASES OF A COMPETITIVE LICENSING PROCESS

Competitive licensing processes generally have a number of phases. After determining the basic objectives of a licensing process, the regulator will establish the schedule for the process and prepare some form of guide to be used by applicants in the licensing process. Typically, the licensing process begins when the regulator issues some form of notice of invitation to apply for the licence. Some form of guide to the licensing process is often made available at the same time as this notice, or shortly thereafter.

In some cases, the licensing process includes a pre-qualification phase, in which potential applicants are screened in order to limit the competition to qualified applicants. The pre-qualification phase is followed by the qualification phase and the selection phase, where the regulator uses a competitive mechanism (or combination of mechanisms) to select the successful applicant. In other cases, however, the licensing process does not feature a pre-qualification phase and instead proceeds directly to the selection phase.

The licensing process culminates with the selection of the successful applicant and the award of licence or licences. More information about each of the phases mentioned above can be found by following the links below.

RELATED INFORMATION

[Scheduling the Licensing Process](#)

[The Guide to the Licensing Process](#)

[The Request for Applications](#)

[The Pre-Qualification Phase](#)

[The Selection Phase](#)

3.4.3 SCHEDULING THE LICENSING PROCESS

A licensing process schedule normally lists the steps in the licensing process and the date and time for such steps. The schedule sets out the framework for how the licensing process will unfold, and is thus of major interest to both the regulator and potential applicants for the licence.

Publishing a schedule for the licensing process aids in compliance with one of the requirements set out in the *WTO Regulation Reference Paper*. The Paper requires that certain information about licensing, including the “period of time normally required to reach a decision concerning an application for a licence”, be made publicly available. In most cases, the schedule is published as part of the guide to the licensing process.

Reference Documents

- [India -- 3G and BWA Auction Timelines](#)

3.4.3.1 STEPS IN THE LICENSING SCHEDULE

This section provides further information on a subject introduced earlier in this module, namely the steps outlined in the licensing schedule.

The steps included in a schedule will depend on the nature of the licensing process. Generally speaking, schedules include the dates of all significant steps in the licensing process, especially any deadlines governing tasks that applicants are required to complete. Many schedules also include the timelines for the review of the applications and the date on which the decision concerning the award of the licence will be announced. Other important steps may be included in the schedule, for example, the effective date of the licence.

In setting a schedule, the regulator should balance its own interests, the interests of the public, and the interests of potential applicants. For example, the interest in moving the licensing process ahead as quickly as possible after issuing the

request for applications must be balanced against the need to provide potential applicants with sufficient time to conduct due diligence and to prepare the required materials for the application.

The regulator should also consider how the scheduling of events affects the transparency of the licensing process. For example, lengthy review periods for the evaluation of applications may undermine the appearance of transparency. Generally speaking, the selection of the highest bidder in an auction process should take little or no time. However, the evaluation of applications to determine compliance with technical or financial qualification criteria can take longer. Comparative evaluations processes will normally also take longer.

Dates and deadlines included in licensing schedules are usually specific. In addition to noting the day, month and year of a particular event, it is often advisable to include a fixed time (*i.e.*, the hour) for certain steps. If a fixed time is indicated for a particular event, it is important to designate the relevant time zone.

In some cases, it may be appropriate to indicate in a schedule that a particular step will occur after a certain number of days or weeks have passed since a preceding event. Where this is done, it is important to clearly define what the initiating event is. It is also important to define what a “day” means for the purposes of the licensing process so that it is clear whether a day includes weekends and holidays.

In some cases, the regulator may wish to retain the power to make changes to the schedule. This power gives the regulator flexibility to adapt the schedule as the need arises and as circumstances change. The regulator should notify all participants in the licensing process of any changes to the schedule as promptly as possible. It is also advisable to post notification of all changes to the schedule on the regulator’s website.

While it may be necessary on occasion to amend a licensing schedule, regulators should bear in mind that excessive changes or delays in a licensing process will undermine confidence in the process.

Practice Notes

- [Bahrain -Second Mobile Operator Licensing Schedule -2003](#)
- [Belgium –3G Licensing Process Schedule](#)
- [Nepal – Rural Telecommunications Services Licensing Schedule](#)
- [Saudi Arabia – Schedule for Data Services Licensing Process](#)
- [Switzerland- GSM Telecom Services Licensing Schedule](#)

Reference Documents

- [India -- 3G and BWA Auction Timelines](#)
- [Saudi Arabia -- Request for Pre-Qualification of Candidates to Participate in the Licensing Process of Data Transmission Services in the Kingdom of Saudi Arabia](#)
- [Saudi Arabia- Revision of the Deadlines for RFPQ Submissions](#)

3.4.4 THE GUIDE TO THE LICENSING PROCESS

A regulator will typically issue some form of guide to the licensing process. Such a guide is sometimes referred to as a “Request for Applications for a Licence”, “Invitation to Tender”, “Licensing Guidelines”, or even “Licensing Tender”. We will refer to these documents collectively as the guide to the licensing process.

The guide to the licensing process sets out a range of important information about the licensing competition. Such information may include background to the competition, market conditions, the scope of the licence, the procedures that will be followed in the competition, qualification criteria, selection criteria, fees, and the schedule for the licensing process. This guide is typically made available to the public or to qualified bidders as soon as a form of notice of invitation to apply for the licence is released.

In some cases, additional documentation is issued in order to provide potential participants in the licensing process with more information about the licence, the licensing process, the local economy and regulatory framework, and other relevant matters. For example, in Singapore, the ICT regulator, Info-Communications Development Authority, published an Information Memorandum to provide interested parties with information about the proposed grant of Public Cellular Mobile Telecommunications Services Spectrum Rights. This Information Memorandum clearly states that its publication was for informational purposes only and is not an offer or invitation to participate in the auction process.

Practice Notes

- **Estonia- 3G Tender Information Document-2004**
- **Nepal -- Request for Applications for a Licence to Provide Rural Telecommunications Service (RTS) in the Eastern Development Region**
- **Norway- 3G Licensing Document- 2000**
- **Switzerland - Invitation to Tender for GSM Licences - 2003**

Reference Documents

- **Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone Network**
- **Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks**
- **India -- Auction of 3G and BWA Spectrum**
- **Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service (RTS) in the Eastern Development Region**
- **Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction**
- **Nigeria -- Information Memorandum: 800 MHz Spectrum Auction**
- **Norway- Invitation to Tender for Licences for the Development and Operation of a Third Generation Mobile Telecommunications System**
- **Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network**
- **Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights**
- **Singapore- Announcement of 3G Licensing Framework and Auction Rules**
- **South Africa- Invitation to Apply for a Public Switched Telephone Service Licence**
- **Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard**

3.4.4.1 CONTENTS OF THE GUIDE TO THE LICENSING PROCESS

This section provides further information on a subject introduced earlier in this module, namely the contents of a notice, information memorandum, request for tenders or similar “guide” to applying for an individual licence or other authorization to provide an ICT service.

Guides to the licensing process usually contain information that allows applicants to analyze the prospective opportunity and to submit responsive applications. Guides to the licensing process often include:

- **An Introduction**, including a brief overview of the purpose of the licensing process and the address for correspondence with the regulator.
- **A Schedule** of the various steps in the licensing process.
- **Background Information on the ICT Sector in the Country**, including information related to the current structure of the ICT sector, major stakeholders, current network capabilities, ICT policy, ICT legislation and other licences or authorizations in place.
- **Rights and Obligations of the Licensee**, including information related to exclusivity, network roll-out requirements, scheduling, service quality, interconnection, access to public and private lands, the term of the licence and spectrum allocation.
- **Instruction to the Applicants**, including information related to the selection process, eligibility and qualification, content and format of the application, communications and requests for clarification, the cost of the application and bidding, the modification of the terms of the licence and other legal and formal requirements.
- **A Draft Licence** may be included. This approach adds considerable certainty and transparency to the process.

- **Information** may also be provided, including relevant investment legislation and policies, interconnection guidelines, an application for spectrum, the existing tariff, the national numbering plan and a tariff guideline.

Practice Notes

- **Estonia- 3G Tender Information Document-2004**
- **Nepal -- Request for Applications for a Licence to Provide Rural Telecommunications Service (RTS) in the Eastern Development Region**
- **Norway- 3G Licensing Document- 2000**
- **Switzerland - Invitation to Tender for GSM Licences - 2003**

Reference Documents

- **Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum in the 2GHz Range**
- **Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone Network**
- **Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks**
- **Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service (RTS) in the Eastern Development Region**
- **Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction**
- **Nigeria -- Information Memorandum: 800 MHz Spectrum Auction**
- **Norway -- Invitation to Tender for Licences for the Development and Operation of a Third-Generation Mobile Telecommunications System in Norway**
- **Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network**
- **Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights**
- **South Africa- Invitation to Apply for a Public Switched Telephone Service Licence**
- **Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard**

3.4.5 THE PUBLIC NOTICE OF THE REQUEST FOR APPLICATIONS

The licensing process generally begins with a public notice of the licence competition. One of the purposes of issuing a public notice is to alert potential applicants about the opportunity to obtain the licence. Accordingly, the public notice usually states the regulator's intention to issue a licence and provides a high level summary of the licence and the licensing process. The public notice also provides information on where to obtain more information about the licensing process. In the past, notices of invitation to apply for a licence were sometimes sent to only a few qualified bidders that were pre-selected by an investment bank or other advisor to the regulator. However, with the increasing emphasis on regulatory transparency, most authorities will issue some form of public notice of their licensing process, often at a preliminary or pre-qualification phase of the process.

3.4.5.1 LICENSING PROCESS PUBLIC NOTICE

A public notice that one or more individual licences will be issued generally includes a brief summary of the opportunity and the proposed licensing process. Information commonly included in a public notice is:

- a description of the services or facilities to be authorized;
- the geographic area of the licence;
- the competitive process that will be used to award the licence; and
- key dates in the licensing process, especially the deadline for submitting applications.

Some longer notices include information about pre-qualification and selection criteria; information about application and

licence fees; and other information that is usually left to the licensing guide.

Some licensing authorities charge a sizable fee for the purchase of the guide to the licensing process. In such cases, it is necessary to provide enough information in the public announcement for interested persons to determine whether it is worth purchasing the full licensing package.

Public notices may be in print or electronic format, or both. Notices typically appear on the web site of the regulator, in the trade press, magazines, newspapers, journals and other media where industry participants can be expected to learn of the notice.

Reference Documents

- [Algeria -- Notice of Invitation to the expression of interest related to third generation \(3G\) mobile communications licenses assignment](#)
- [Kenya- Invitation to Prequalify for the International Tender of a License to Construct and Operate a Nationwide GSM Cellular System](#)
- [Macedonia -- Tender for granting authorizations for radio frequencies utilization for the provision of 3G services according to the IMT-2000/UMTS standard](#)
- [Singapore- Announcement of 3G Licensing Framework and Auction Rules](#)
- [Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard](#)

3.4.6 THE PRE-QUALIFICATION PHASE

It is sometimes desirable to limit the field of applicants to parties that have demonstrable financial and technical qualifications to achieve the objectives of the regulator. In these cases, the licensing process includes a pre-qualification phase. During the pre-qualification phase, potential applicants must demonstrate or confirm that they meet the pre-qualification criteria in order to be eligible to participate in the licensing competition.

The pre-qualification criteria are usually minimum requirements that establish a baseline of financial capability and technical competence. In some cases, applicants must demonstrate past experience in providing certain types of services or running a specified type and size of network. In other cases (typically spectrum auctions), applicants must confirm that they already hold a particular kind of telecommunications or ICT licence. The fact that an applicant holds the designated licence serves as evidence of its financial capability and technical competence since the applicant would have had to meet such criteria in order to obtain the designated licence. This approach was used in the 2007 Nigerian 800 MHz spectrum auction and in the 2007 10.5 GHz spectrum auction in Singapore, for example.

In some cases, legislation or regulations require regulators to include a pre-qualification phase in a competitive licensing process. In Saudi Arabia, for example, the Telecommunications By-law requires that the Communications Information and Technology Commission (CITC) include a pre-qualification phase in any auction or comparative evaluation process. The By-law broadly identifies financial capability and technical capability as the two pre-qualification criteria that applicants must meet to participate in a competitive licensing process. The CITC is authorized to determine the specific form and substance that is used as measures of whether an applicant has meet these two pre-qualification criteria.

Practice Notes

- [Jordan- Pre-qualification Notice for 3rd Mobile Licence- 2003](#)
- [Kenya- Prequalification Notice for a SNO Licences- 2003](#)
- [Licensing Pre-Qualification Criteria](#)
- [Saudi Arabia – Pre-Qualification for Data Services Licensing](#)
- [Saudi Arabia- Pre-qualification for Cellular Mobile Services Licensing](#)

Reference Documents

- [Jordan- Pre-qualification Requirements for the Application for a Licence to Build, Own and Operate a Public Mobile Telecommunications Network and to Provide Public Mobile Telecommunications Services](#)
- [Kenya- Invitation to Pre-qualify for the International Tender for a Second National Operator \(SNO\)](#)

- [Kenya- Invitation to Prequalify for the International Tender of a License to Construct and Operate a Nationwide GSM Cellular System](#)
- [Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction](#)
- [Nigeria -- Information Memorandum: 800 MHz Spectrum Auction](#)
- [Saudi Arabia -- Request for Pre-Qualification of Candidates in the Licensing Process of Cellular Mobile Services in the Kingdom of Saudi Arabia](#)
- [Saudi Arabia -- Request for Pre-Qualification of Candidates to Participate in the Licensing Process of Data Transmission Services in the Kingdom of Saudi Arabia](#)
- [Saudi Arabia -- RFPQ Questions and Answers](#)
- [Saudi Arabia -- RFPQ Questions and Answers](#)
- [Saudi Arabia- Cellular Mobile Licensing RFPQ Questions and Answers](#)

3.4.6.1 WHETHER TO INCLUDE A PRE-QUALIFICATION PHASE

This section provides further information on a subject introduced earlier in this module, namely whether to run a pre-qualification process as part of a licensing process.

As was noted in [section 4.6](#), in some cases, regulators are obligated to include a pre-qualification phase in any competitive licensing process by the terms of applicable telecommunications legislation or regulations. The Saudi Arabian regulator, for example, must include a pre-qualification phase in any auction or comparative evaluation phase. However, in many other cases, regulators are not obligated to include a pre-qualification phase. In these latter cases, regulators must determine whether a competitive licensing process ought to include a pre-qualification stage. The decision about whether to require applicants to pre-qualify generally takes into account a number of factors.

The nature of the ICT market and the circumstances of the licence competition are relevant to determining whether a pre-qualification phase would be beneficial. The level of competition in the market for which the licence is being issued is also an important consideration.

For example, in the case of individual licensees that will enjoy monopoly or other exclusive rights, there is an imperative to ensure that the licensed service provider is financially and technically able to meet obligations contained in the licence related to network rollout, service coverage and quality. The process of enforcing compliance with the terms and conditions of the licence or revoking and administering a new licensing process in the case of default is time consuming, costly and disruptive for consumers.

In the case of highly competitive services, consumers can switch away from a service provider that fails to provide adequate service to another. A pre-qualification process to establish financial viability and technical competence is therefore less important.

However, even in relatively competitive markets, such as mobile cellular services, it is important to establish some minimum qualification requirements. These requirements will ensure that valuable spectrum and other scarce resources are awarded to applicants who are financially and technically capable of providing the service.

The type of selection mechanism that will be applied to award the licence is also relevant. Comparative evaluation processes are often structured to include an evaluation of the financial and technical merits of applicants. The selection mechanism for an auction, however, often does not focus on financial and technical considerations. Thus, pre-qualification phases often have more relevance in auctions than in comparative evaluation processes.

One potential disadvantage of requiring pre-qualification is that the pre-qualification round extends the licensing process and delays the actual issuance of the licence. One way to minimize the delay caused by the pre-qualification round is to adopt criteria that are relatively easy to adjudicate and that require little subjective analysis.

In any event, the regulator may ultimately save time by requiring that applicants pre-qualify since the regulator will then have fewer applications to review during the selection process. Receiving applications from large numbers of clearly unqualified applicants does not advance the licensing process. On the contrary, it complicates the task of the regulator since the regulator must expend time and money to review these applications. It is often preferable to exclude persons who are not likely to be issued the licence from participating in the process at an early phase. Thus, while the licensing process is lengthened by the pre-qualification phase, time is gained during the selection phase.

Regulators sometimes impose a significant application fee instead of or in addition to relying on a formal pre-qualification. Such an application fee will discourage frivolous bidders. The fee may be tied to the submission of an application or may be

charged for the purchase of the guide to the licensing process.

Because the purpose of a pre-qualification phase is to limit the field of applicants, this phase occurs early on in the licensing competition. It is advisable to inform potential applicants at an early phase that they will be required to pre-qualify to participate in the selection phase of the licensing competition.

The public notice of the invitation to participate in the licensing process often makes reference to pre-qualification requirements. The guide to the licensing process may also contain information about the pre-qualification phase. Some regulators, however, prepare a separate document that addresses only the pre-qualification phase. Applicants that successfully qualify for the licensing competition are then provided with the guide to the licensing process, which outlines the selection process, among other things.

Related Materials

For a discussion on the specific considerations relevant to deciding whether to include a pre-qualification requirement in universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service", section 7.1.3, "Design of Bidding Process"](#).

3.4.6.2 PRE-QUALIFICATION CRITERIA

This section provides further information on a subject introduced earlier in this module, namely a pre-qualification process for applicants for individual licences.

Pre-qualification criteria are minimum requirements that must be met in order to participate in a competitive process an award of licence. Generally, pre-qualification criteria are aimed at ensuring that applicants have the financial and technical resources and experience to successfully provide the authorized service. In order to enhance transparency and certainty in the licensing process, it is preferable that the pre-qualification criteria be objective rather than subjective measurements of financial viability and technical competence. An objective pre-qualification criterion that is often used requires applicants to demonstrate that they, or an affiliated entity, have actually operated a network of a certain size. For example, applicants might have to demonstrate that they have run a mobile cellular telephone network with 100,000 subscribers in order to pre-qualify for a mobile cellular licensing process. While such a criterion is objective and effective in ensuring experience, it would preclude financially capable new entrants from participating. This can be counter-productive, since adequately financed new entrants can usually 'buy' good cellular operating experience by hiring some of the thousands of engineers and business people who have worked in the global cellular business.

In some cases (typically licensing processes for spectrum allocations), the pre-qualification criteria include the requirement that applicants already hold a particular kind of telecommunications or ICT licence. In these cases, the pre-existing licence acts as a proxy for financial capability and technical competence: presumably, the applicant had to satisfy such criteria when it obtained the first licence. Thus, the fact that the applicant holds the specified licence is evidence of its ability to meet financial capability and technical competence requirements. Nigeria used this approach in its 2007 800 MHz spectrum auction. One of the pre-qualification criteria for participating in the auction was a requirement to hold a national network operating licence or a Unified Access Services (UAS) Licence. In order to acquire either of these licences, applicants would have had to satisfy a number of criteria relating to financial capability, operating experience, and technical expertise. See Box 1 to review the pre-qualification criteria featured in the 800 MHz spectrum auction.

Singapore also used this approach in its 10.5 GHz spectrum auction in 2007. Participation in this auction process was restricted to holders of Facilities-Based Operator (FBO) Licences and the Singapore Armed Forces, the Singapore Police Force, and the Civil Defence Force. The criteria for obtaining an FBO Licence in Singapore include, among other things, evidence of the applicant's financial capability and strength; the applicant's technical plan and capability; and the technical soundness of the applicant's plans. Thus, FBO licensees would have already satisfied an evaluation of their financial capabilities and technical competence prior to participating in the 10.5 GHz auction.

Applicants were required to confirm that they met the following pre-qualification criteria in order to be eligible to participate in the auction: The Applicant must:

- be a company operating in Nigeria;
- possess a subsisting national network operating licence or a Unified Access Services (UAS) Licence;
- must not already have a cumulative spectrum size equal to or more than 5MHz on any or combination of spectrum band(s), except for point-to-point microwave frequency band;
- not have any outstanding obligations, including any obligations relating to administration, licence, and operating fees owed to the Nigerian Communications Commission and interconnection debts, due at the time of the deadline for submitting applications;
- not have a relationship with any other Applicant, where a relationship is defined as a situation where an Applicant owns directly or indirectly an ownership stake of ten percent or more in another Applicant; and
- pay the Intention-to-Bid Deposit (Niara 40 million) into a specified account.

Applicants were further required to submit confirmation that they met the above criteria using the templates provided in the Information Memorandum issued with respect to the auction. Applications were required to be accompanied by proof that the Intention-to-Bid Deposit had been paid into the designated account and that the funds had cleared. The Information Memorandum specifically stated that bank guarantees were not acceptable substitutes.

◀ Box 1 Pre-Qualification Criteria for the 2007 Nigerian 800 MHz Spectrum Auction

Source: Nigerian Communications Commission, Information Memorandum: 800 MHz Spectrum Auction

Some countries impose foreign ownership restrictions that establish minimum levels of local ownership for authorized service providers. Foreign ownership restrictions are generally contrary to the spirit, if not the letter of international trade agreements, including the GATS. However, various WTO signatories have registered exemptions permitting them to continue to apply foreign ownership restrictions. Over time, such restrictions are expected to be phased out in most countries. Until they are, the restrictions should be noted in any pre-qualification criteria.

RELATED INFORMATION

Qualification Criteria and Selection Criteria

Practice Notes

- [Jordan- Pre-qualification Notice for 3rd Mobile Licence- 2003](#)
- [Kenya- Prequalification Notice for a SNO Licences- 2003](#)
- [Licensing Pre-Qualification Criteria](#)
- [Saudi Arabia – Pre-Qualification for Data Services Licensing](#)
- [Saudi Arabia- Pre-qualification for Cellular Mobile Services Licensing](#)

Reference Documents

- [India -- Auction of 3G and BWA Spectrum](#)
- [Jordan- Pre-qualification Requirements for the Application for a Licence to Build, Own and Operate a Public Mobile Telecommunications Network and to Provide Public Mobile Telecommunications Services](#)
- [Kenya- Invitation to Pre-qualify for the International Tender for a Second National Operator \(SNO\)](#)
- [Kenya- Invitation to Prequalify for the International Tender of a License to Construct and Operate a Nationwide GSM Cellular System](#)
- [Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction](#)
- [Nigeria -- Information Memorandum: 800 MHz Spectrum Auction](#)
- [Saudi Arabia -- Request for Pre-Qualification of Candidates in the Licensing Process of Cellular Mobile Services in the Kingdom of Saudi Arabia](#)
- [Saudi Arabia- Request for Pre-qualification of Candidates to Participate in the Licensing Process of Data Telecommunications Services](#)

- [Saudi Arabia- Telecommunications Bylaw](#)

3.4.7 QUALIFICATION CRITERIA AND SELECTION CRITERIA

It is important to distinguish between criteria relating to the qualification of an applicant to participate in the selection phase of a licensing process and criteria for the actual selection of a successful licensee from among the qualified applicants.

Qualification criteria serve to determine which parties will have the right to advance to the selection phase of the licensing process. Selection criteria are used to determine which applicant will be awarded the licence or licences.

In the case of a general authorization, only the qualification criteria are relevant because no competitive selection is made. In the case of a selection process for an individual licence, both qualification and selection criteria are normally developed. It is generally advisable to conduct a licensing process in at least two phases. The qualification phase is completed first. For less complex licensing processes, the pre-qualification and qualification phases are sometimes combined as one. Only qualified applicants participate in the second phase – the licensee selection process.

Related Materials

For a discussion about the specific considerations relevant to the eligibility criteria for universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service"](#), [section 7.1.3, "Design of Bidding Process"](#).

Practice Notes

- [Licensing Qualification Criteria](#)
- [Licensing Qualification Criteria: Selected Country Examples](#)
- [Licensing Selection Criteria](#)

Reference Documents

- [Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone Network](#)
- [Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks](#)
- [Macedonia -- Tender for granting authorizations for radio frequencies utilization for the provision of 3G services according to the IMT-2000/UMTS standard](#)
- [Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction](#)
- [Nigeria -- Information Memorandum: 800 MHz Spectrum Auction](#)
- [Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network](#)
- [Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights](#)
- [Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard](#)

3.4.7.1 THE QUALIFICATION PHASE

This section provides further information on a subject introduced earlier in this module, namely the qualification process for applicants for individual licences.

In some licensing processes, the qualification phase and selection phase are dealt with separately, such as in the classic “two envelope” approach. Under this approach, the qualification phase occurs first. The first envelope is opened and the submissions of applicants are reviewed to determine which ones are technically, financially or otherwise qualified to proceed to the selection phase.

The second envelopes of non-qualified applicants are usually returned un-opened. Sometimes an explanation is given as to

which qualification criteria the applicant failed to meet. Such an explanation is consistent with the requirement of the *WTO Regulation Reference Paper* to make reasons for denial of a licence known to the applicant upon request.

Where the qualification and selection processes are run separately, such as under the two envelope approach, an applicant's second envelope contains information related to the selection criteria. The most common and objective selection criterion is the financial amount of a bid. This may be based on the highest bid, for example, for a 3G licence. It may also be to the lowest bid, for example, in the case of a least-cost subsidy auction. Such auctions are discussed in Module 4, Universal Access. Selection criteria are discussed further below.

In some cases, the qualification and selection processes are held simultaneously, such as in a comparative evaluation process.

Qualification criteria should be published in advance of the commencement of the qualification phase. This is consistent with the provisions of the *WTO Regulation Reference Paper*, which stipulate that "all licensing criteria" must be made publicly available.

In order to maximize the transparency of the process, direction may be provided on how potential applicants can demonstrate that they have met qualification criteria, such as technical competence or financial backing. As previously indicated, one of the most common type of evidence involves prior experience in operating a network with a specific number of subscribers.

There are potentially negative consequences to adopting very specific qualification criteria and to specifying the type of evidence that will suffice to demonstrate that these criteria have been met. This specificity makes the process more rigid and constrains the regulator's flexibility to address novel situations or unexpected but useful qualifications. Maintaining some degree of regulatory discretion in the qualification process may be appropriate.

Transparency in the qualification phase is maintained by communicating clearly with potential applicants about how their submissions will be evaluated. In particular, it is advisable to inform potential applicants whether minimum compliance with pre-qualification criteria is sufficient to advance them to the selection phase of the competition. There has been litigation against regulators in some countries where qualification criteria were specified but some otherwise qualified applicants were subsequently rejected on the basis that they were less qualified than others.

In order to increase certainty of the licensing process, as well as its transparency, regulators usually state the date for a decision on which applicants have successfully qualified to advance to the selection phase. This date, as well as other significant dates in the qualification process, is frequently included in a schedule provided in the qualification process materials issued to potential applicants.

Practice Notes

- [Licensing Qualification Criteria](#)
- [Licensing Qualification Criteria: Selected Country Examples](#)

Reference Documents

- [Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum in the 2GHz Range](#)
- [Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone Network](#)
- [Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights](#)
- [Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard](#)

3.4.8 THE SELECTION PHASE

The heart of the licensing process is the selection phase. During this phase, the competition for the licence occurs and the successful applicant is selected. There are two main types of competitive selection processes: a comparative evaluation approach (or "beauty contest") and auctions. Other approaches include lotteries and a variety of hybrid approaches that

use elements of pre-qualification, comparative evaluation and auctions or lottery approaches. A guide to a licensing process should provide details about the selection mechanism to be used in the licensing competition, as well as information about selection criteria and the process that will be followed.

Practice Notes

- [Estonia- 3G Tender Information Document-2004](#)
- [Licensing Selection Criteria](#)
- [Nepal -- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Norway- 3G Licensing Document- 2000](#)
- [Selection Mechanisms in Comparative Perspective](#)
- [Switzerland - Invitation to Tender for GSM Licences - 2003](#)

Reference Documents

- [India-Rural Services Licensing Document](#)
- [South Africa- Invitation to Apply for a Public Switched Telephone Service Licence](#)

3.4.8.1 COMPETITIVE SELECTION MECHANISMS

This section provides further information on a subject introduced earlier in this module, namely the selection process for applicants for individual licences.

Two main approaches are used in competitive selection processes:

- Comparative Evaluation Approaches, and
- Auctions

In addition, there are many hybrid approaches that combine elements of these main approaches. Less common approaches include lotteries, first come-first served processes, and selections based on the best performance under previously held licences.

Comparative Evaluation Approach – In a comparative evaluation, or “beauty contest”, the award of licence is determined using a merit-based assessment of competitive applications. Each application is evaluated on the basis of a pre-set list of selection criteria or on the basis of the applicant’s ability to fulfil certain, more general, requirements. This approach allows regulators to award the licence to the service provider that is best placed to meet the specific objectives of the licensing process.

If more than one licence is being issued at the same time, the applicant with the most points is deemed the winner and is permitted to choose which licence it wants. The applicant with the second-highest amount of points has the right to choose next, and so on. This approach was used in the 2007 GSM spectrum auction in Iceland, where two licences were issued using a beauty contest.

There are many forms of comparative evaluation schemes. In some cases, licences are awarded to applicants expected to make the best use of the limited resources associated with the licence to serve the public. For example, in the 2007 Icelandic GSM spectrum auction, the evaluation centred on which applicant would be able to roll out its network and services in the shortest amount of time, to the greatest number of people. In other cases, the evaluation is based on criteria related to technical competence, experience, and cost efficiency. Some comparative evaluations rely in part on quantitative measures, such as the number of years of operational experience. Others rely on more qualitative (and thus subjective) criteria, such as the quality of management.

Specific selection criteria, should be clearly described in the guide to the licensing process. It is also useful to pre-determine and to publish the weighting for each criterion. This promotes transparency in the licensing process. This also helps applicants to prepare more responsive applications to ensure that the regulator selects the best qualified applicant for the award of the licence.

Auctions – While the comparative evaluation approach involves the selection of an applicant based on merit, auctions involve little or no qualitative analysis of the merits of the applicant. Instead, selection is based on a single evaluative criterion, namely the amount bid by qualified applicants.

Many different types of auctions are possible. The most common involves selection of the qualified applicant who submits the highest bid for the right to hold the licence. In least-cost subsidy auctions, which are described in Module 4, Universal Access, a selection is made based on which qualified applicant requires the lowest subsidy to provide a non-economic service. The services authorized using a least-cost subsidy auction are generally subsidized as part of a country's universal access program. In a least-cost subsidy auction, applicants make offers of the subsidies they would require to provide the authorized services. The applicant that bids the lowest subsidy is awarded the licence, along with the right to the subsidy it has proposed. Such auctions have been used successfully on a number of occasions to license subsidized rural telecommunications services in Latin America, and more recently in other regions. For example, the Nepalese regulator used this mechanism to issue a rural telecommunications services licence in its country.

Auctions can also be based on any other measurable indicator that is financial or based on financial considerations. These might include the lowest consumer tariff to be charged, the highest quality of service, or the greatest level of service to non-economic areas.

In many auctions, bidders are pre-qualified or qualified using criteria similar to those used in comparative evaluation processes. As a result, participation in these auctions is limited to bidders with proven financial and technical capabilities.

While some auctions feature only a single round of bidding, many auctions include multiple bidding rounds. There are frequently rules governing how often a bidder must bid to avoid disqualification, minimum bid increments, the start-of-round price, the duration of each round, and so on. In many cases, all bidders participate in the auction until a winner has been determined or they have been disqualified. In some cases, however, the auction itself has two stages. During the first stage, all bidders participate and typically must provide a sealed bid. Only a certain number of bidders, however, are permitted to advance to the second stage, where the winner of the auction is actually determined through one or several rounds of bidding. This approach was used in the 2007 Nigerian 800 MHz auction. All Approved Bidders were required to submit a sealed bid during the first round of bidding. Only the two Approved Bidders who had submitted the top bids advanced to the second round of bidding. The winner of the auction was determined in the second round of the auction.

Regulators have frequently relied on auctions to issue spectrum licences. A discussion of various auction procedures in the context of spectrum licences will be included in the spectrum licensing module of this Toolkit.

Hybrid Approaches – There are many variations of the two main selection approaches. In some cases, hybrid approaches blend elements of a comparative evaluation with elements of an auction. For example, applicants may be scored on a number of quality-based criteria and market-based criteria, such as the amount of their bid for the licence, financial security, technical competence, and operational experience. In this case, the applicant with the highest combined score may be awarded the licence.

RELATED INFORMATION

The Pre-Qualification Phase

Selection Criteria

The Selection Process

Choosing Selection Mechanisms and Criteria

For a discussion on the specific considerations relevant to the design of the selection mechanism in universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service", section 7.1.3, "Design of Bidding Process"](#).

Practice Notes

- [Nepal -- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Selection Mechanisms in Comparative Perspective](#)

Reference Documents

- [Bahrain- Invitation to Apply for a Licence for the Second Mobile Telecommunications Licence and Frequency Licence](#)
- [Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum](#)

in the 2GHz Range

- [Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks](#)
- [India -- Auction of 3G and BWA Spectrum](#)
- [Macedonia -- Tender for granting authorizations for radio frequencies utilization for the provision of 3G services according to the IMT-2000/UMTS standard](#)
- [Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction](#)
- [Nigeria -- Information Memorandum: 800 MHz Spectrum Auction](#)
- [Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network](#)
- [Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights](#)
- [Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard](#)

3.4.8.2 SELECTION CRITERIA

This section provides further information on a subject introduced earlier in this module, namely selection criteria used in the selection process for applicants for individual licences.

Selection criteria are used to determine which qualified applicant will be awarded the licence during a licensing process. A wide range of criteria can be used in the selection process. The choice of criteria is related to the objectives of the licensing process.

For example, if an important objective is to license a competent operator to provide adequate services to the public on a long-term basis, then criteria that measure technical competence, operational abilities, and financial viability will be important. Alternatively, if the prime objective is to raise money for a government treasury, price may be the best selection criterion. However, in such a case, applicants should normally be pre-qualified to ensure some minimum level of capability to implement the service.

Selection criteria may be quantitative or qualitative. A comparative evaluation procedure may involve one or the other or both types of criteria. Which type of criteria should be used in a licensing process depends on the objectives of the licensing process and the advantages and disadvantages of each type of criteria in the particular licence and ICT market circumstances.

Regulators may attribute different weight to different selection criteria. In such a case, information should be provided about the weighting of selection criteria, in order to promote transparency in the licensing process.

RELATED INFORMATION

The Selection Process

For a discussion on the specific considerations relevant to eligibility and selection criteria in universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service", section 7.1.3, "Design of Bidding Process"](#).

Practice Notes

- [Licensing Selection Criteria](#)

Reference Documents

- [Bahrain- Invitation to Apply for a Licence for the Second Mobile Telecommunications Licence and Frequency Licence](#)
- [Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum in the 2GHz Range](#)
- [Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone](#)

Network

- **Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks**
- **Macedonia -- Tender for granting authorizations for radio frequencies utilization for the provision of 3G services according to the IMT-2000/UMTS standard**
- **Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service (RTS) in the Eastern Development Region**
- **Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction**
- **Nigeria -- Information Memorandum: 800 MHz Spectrum Auction**
- **Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network**
- **Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights**
- **Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard**

3.4.8.3 THE SELECTION PROCESS

This section provides further information on a subject introduced earlier in this module, namely the selection process for applicants for individual licences.

To increase confidence in the licensing process, it is important to build as much transparency and certainty as possible into the selection process. There are a number of ways that regulators can enhance transparency and certainty.

To build transparency and certainty, the guide to the licensing process should describe the selection mechanism that will be used. It should also outline the selection criteria and the weight given to each criterion. The guide should include a coherent and complete set of selection procedures that will be followed in the selection process. All steps of the process should be outlined and any required action of applicants at each step should be noted.

The guide to the licensing process should also address various contingencies that are frequently encountered. For example, it is helpful if the guide specifies the procedures that will be followed if there is a tie in the selection process. Understandably, not all contingencies can be addressed. If the selection process takes an unexpected turn, transparency and certainty can be maintained by consulting openly with applicants about the unanticipated circumstances and communicating clearly the proposed course of action.

The major steps in the selection process should be clearly identified. These may include: if there is a qualification phase, the announcement of the decision on which applicants have successfully qualified to advance to the selection phase of the process; the deadline for submitting questions about the licensing process; the date on which the regulator's questions of clarification regarding submitted applications will be issued; the deadline for replying to questions of clarification; the date on which the successful applicant will be announced; the deadline for the successful applicant to confirm acceptance of the licence; and date on which the licence will be issued. A Practice Note in this module discusses the steps of selection processes in a comparative perspective.

Transparency and certainty may also be fostered by specifying to applicants all the materials that must be submitted for review during the selection process, as well as the acceptable form for submission of these materials. It is helpful to provide applicants with a "compliance list" that summarizes all the required materials to be submitted, cross-referenced to the relevant portion of the guide to the licensing process. The regulator may require that the applicant submit this list with its application in a form that identifies where each of the required materials may be found in the application package.

The selection process concludes with the award of licence. It is a good practice to specify when and where the award of licence will be announced. It is also good practice to require the successful applicant to confirm its acceptance of the award of licence in writing within a prescribed amount of time. If the successful applicant is required to comply with any conditions before the licence is issued (e.g., the payment of a licence fee), such requirements should be clearly identified.

RELATED INFORMATION

[Scheduling the Licensing Process](#)

[Choosing Selection Mechanisms and Criteria](#)

For a discussion on the specific considerations relevant to the design of the selection mechanism in universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service", section 7.1.3, "Design of Bidding Process"](#).

Practice Notes

- [Licensing Selection Criteria](#)
- [Selection Mechanisms in Comparative Perspective](#)

Reference Documents

- [Bahrain- Invitation to Apply for a Licence for the Second Mobile Telecommunications Licence and Frequency Licence](#)
- [Canada -- Licensing Framework for the Auction for Spectrum for Advanced Wireless Services and other Spectrum in the 2GHz Range](#)
- [Estonia- Information Document of the Public Tender for Technical Authorisation of 3G Mobile Telephone Network](#)
- [Iceland -- Tender for the Issuance of Frequency Authorizations for GSM 1800 Mobile Phone Networks](#)
- [India -- Auction of 3G and BWA Spectrum](#)
- [Macedonia -- Tender for granting authorizations for radio frequencies utilization for the provision of 3G services according to the IMT-2000/UMTS standard](#)
- [Nepal- Request for Applications for a Licence to Provide Rural Telecommunications Service \(RTS\) in the Eastern Development Region](#)
- [Nigeria -- Information Memorandum for the 2 GHz Spectrum Auction](#)
- [Nigeria -- Information Memorandum: 800 MHz Spectrum Auction](#)
- [Poland -- Tender for two exclusive nationwide frequency licences in the band of 880-990 MHz and 925-935 MHz to be used in a public telecommunication network](#)
- [Singapore -- Information Memorandum: Auction of Public Cellular Mobile Telecommunications Services Spectrum Rights](#)
- [Switzerland- Public Invitation to Tender for Radio Licences for the Provision of Telecommunications Services Based on the GSM Standard](#)

3.4.8.4 CHOOSING SELECTION MECHANISMS AND CRITERIA

This section provides further information on a subject introduced earlier in this module, namely selection mechanisms and criteria used in the selection process for applicants for individual licences.

Choosing appropriate selection criteria and processes can be very challenging. Consideration must be given to such factors as: local market conditions, policy objectives, compliance with WTO rules or other transparency requirements, the underlying legislative framework, the nature of the licence being issued, the capacity of the regulator, and the time frame for the issuance of licence, in addition to a number of other factors.

Several observations can be made about the choice of selection criteria and selection process. First, qualified applicants are motivated to devote financial and other resources to those aspects of their applications that will form the basis of the selection decision. Licensing criteria can be seen as part of a zero-sum game. Each applicant has a finite amount of cash and other resources to devote to the proposed service. Other things being equal, resources which are allocated to one selection criterion (e.g. the highest licence fee or aggressive network roll-out commitments) are not available to fund other aspects of the operation which are not related to selection criteria (i.e. lower prices, introduction of enhanced networks or services).

Second, transparency is increased by use of simple quantitative selection criteria. A comparative evaluation process that is based on subjective or qualitative criteria will be less transparent. The same is true of multiple criteria that cannot easily be compared. A lack of transparency undermines the credibility of the process and of the regulator. It also opens the door for complaints of bias, corruption or incompetence. To maximize transparency, it has often been argued that a single financial or other quantitative selection criterion should be used. This can be derived by use of a formula which combines a

number of selection criteria into a single numeric factor if desired.

On the other hand, depending on market conditions, use of a quantitative auction process can lead to excessively high bids. Frequently cited examples of excessive bidding are the 3G auction process held in the UK, Germany and elsewhere in Western Europe around the year 2000. These auctions are described in Module 5, Radio Frequency Management.

Use of a single financial criterion does not mean other service factors or licensing objectives are irrelevant. Important factors and objectives not used as selection criteria can be included in the qualification process or incorporated into the conditions of licence. For example, network coverage, rollout and universal service commitments can be specifically incorporated as licence conditions that any successful applicant must comply with. All applicants must then incorporate these minimum requirements into the calculation of their financial bid.

Related Materials

For a discussion on the specific considerations relevant to the design of the selection mechanism and selection criteria in universal access and services (UAS) bidding processes, see [Module 4, "Universal Access and Service", section 7.1.3, "Design of Bidding Process"](#).

Practice Notes

- [Licensing Selection Criteria](#)
- [Selection Mechanisms in Comparative Perspective](#)

[Next: 3.5 Fees](#) →

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