

## Response to Queries on IM – Spectrum Auction for Next Generation Mobile Services (NGMS) in Pakistan 2021

31<sup>st</sup> August 2021

Sr.	Reference	Questions/ Concerns / Requests	PTA's response
75	Roll-out obligations in draft license template	XYZ cannot accept the population coverage obligation of 5% annual increase due to the resulting high count of cell sites and required capex, whilst the return of investment is expected to be low or even negative	Please see notification of changes dated 31 <sup>st</sup> August 2021.
76	Roll-out obligations in draft license template	It is strongly recommended to apply the same roll-out obligations to all CMOs, preferably on the some model as existing standards (based on Tehsil HQ polygons)	Please see notification of changes dated 31 <sup>st</sup> August 2021.
77	QoS obligations in draft license template	Given the increase in data traffic, meeting the 4Mbps throughput obligations over the 15 year license duration will require additional spectrum being made available. PTA/FAB/GoP should publish its Future Spectrum Road Map.	Please refer to 1.2.3 of the IM.
78	Technology neutrality	The IM states that "spectrum assigned shall be technology neutral... with the applicable policy framework of the Government of Pakistan". What is the applicable policy framework? Further details on this framework should be made available or the GoP's plans on developing it.	Please refer to clause 3 (c) of Policy Directive and PTA determination order dated 22 <sup>nd</sup> July 2019.
79	Requirement of new license	XYZ already has an NGMS license, which authorizes provisioning of 3G/4G mobile services. XYZ therefore sees no need to be issued a new license and authorization under this spectrum auction.	Please refer to clause 3 (j) of the Policy Directive. Section 8 of the Act is hereby referred which provides that the Federal Government may issue policy Directive on terms and number of licenses. Furthermore, it is aligned with past precedence of spectrum auctions in Pakistan.

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80	Spectrum block standardization	Article 3(d) of the Policy Directive states that auction assignments should result in CMOs holding spectrum in multiples of 5 MHz paired spectrum. This condition does not seem to be directly incorporated into the IM. Please clarify whether Applicants can only submit bids that, if successful, will result in the Applicant holding blocks in multiples of 5 MHz.	Article 3(d) of the Policy Directive states that PTA "shall endeavour to provide each CMO with the opportunity to acquire additional spectrum" that allows them to hold multiples of 5 MHz paired spectrum going forward. As such, PTA and GoP have an objective to facilitate such spectrum holdings going forward. There is, however, no requirement in the IM for Applicants to only submit bids that, if successful, will result in them holding blocks in multiples of 5 MHz.
81	Product 1 spectrum	Is it mandatory for Applicants to bid for Product 1 to reach a 5MHz spectrum block) in order to take part in the Auction? If not, please provide an example scenario where an operator can take part in the auction without bidding in Product 1.	There is no requirement for Applicants to bid on Product 1 in order to bid for Product 2 or Blocks 9-11. For example, if an Applicant has a demand for 2100 MHz spectrum but does not require any additional spectrum in the 1800 MHz band, they can only bid for Blocks 9, 10 and/or 11.
82		Are Applicants allowed to bid for more than their respective roundup amounts in Product 1?	The IM does not contain any restrictions allowing Applicants to only bid on Product 1 blocks to achieve multiples of 5 MHz. However, as stated in paragraph 1.4.4, Applicants must state their interest in Product 2 in 1800 MHz if they are interested in acquiring more than 2 x 4.8 MHz within the 1800 MHz band.
83		Is Product 1 only designed for roundup, then practically there will not be any auction or demand/supply gap.	Product 1 is designed to provide CMOs with the opportunity to hold standardised 5 MHz blocks of 1800 MHz spectrum after the Spectrum Auction and Rationalisation Process. However, Applicants are not constrained to only bid for the number of Product 1 blocks that allow them to hold multiples of 5 MHz blocks in 1800 MHz. Further, as set out in Section 1.7, the rationalisation of 1800 MHz spectrum will be undertaken "post auction" (i.e., after the Clock Auction, if required, has finished). This is so it can take into account both CMOs' Existing Spectrum and Auctioned Spectrum across both Products 1 and 2.

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84		<p>The first stage of the auction (as specified in the Information Memorandum) is the Sealed Bid stage, where interested operators are required to submit their applications (or expression of interest) in the desired Products at their respective base prices. If the Product does not go to Stage 2 (the Electronic Auction Stage), the transaction under Stage 1 will effectively be operators purchasing spectrum at predetermined prices (as opposed to an auction involving price competition). Since the Stage 1 'auction' is effectively a simple sale of spectrum, then is the Authority willing to classify any spectrum assigned through Stage 1 as a simple sale of spectrum (as opposed to an auction of spectrum(public auction or auction by tender) for tax purposes?</p>	<p>XYZ's statement is based on its understanding that for Product 1 demand cannot exceed supply and thus there would never be an Electronic Auction for this Product. As explained above, this is not correct.</p>
85	Incorporation of spectrum through license modification	<p>If an operator is only interested in bidding for spectrum amount that will yield 5MHz paired spectrum blocks), can the Authority simply add that spectrum in the operator's existing license by way of a license modification (u/s 22 of the Act), rather than issuance of a fresh license?</p>	<p>Please refer to Clause 3(j) of Policy Directive dated 4<sup>th</sup> August, 2021. Any Successful Bidder will be granted a new License (based on the License Template in Annex F of the IM). This new License will cover all spectrum blocks won in this Spectrum Auction. Further, as noted in paragraph 2.7.1 of the IM, <i>"PTA envisages that, in due course, it is likely to be efficient to harmonize the terms and conditions of all existing mobile service Licenses with the form of the License in Annex F."</i></p>
86	Treatment of Residual Spectrum in Product 1	<p>What is the Authority's plan with respect to any residual spectrum leftover in Product 1 post auction? Will the Authority assign or sell leftover Product 1 spectrum to the operators?</p>	<p>Please refer to response of query no 2 (d) published on 20<sup>th</sup> August, 2021.</p>

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87	New License Obligations without Modification	In the presence of an existing NGMS License (with locked QoS standards, rollout obligations and other T&Cs), the Authority should clarify whether new and additional QoS standards, rollout obligations and other T&Cs can be imposed without modification (u/s 22 of the Act) of the existing license or T&Cs? Further, does imposing QoS standards, rollout obligations and other T&Cs through a new license amount to defeating the provisions of Section 22 of the Act? Furthermore, will the Authority prescribe analogous amendments to applicable PTA regulations (e.g. the Cellular Mobile Quality of Service Regulations, 2011 and the Broadband Quality of Service Regulations, 2014) for the purposes of implementing the revised required amendments to standards, obligations and T&Cs?	All the requirements with regard to QoS, rollout obligations etc will be made applicable in accordance with T&Cs of licenses and other enabling regulatory laws.
88	Licensing standards and obligations regime	Will the QoS standards, rollout obligations and other T&Cs in the existing license terms will be impliedly (or explicitly) repealed by the Authority? If not, how will the Authority measure QoS standards and rollout obligations where there are two sets of standards & obligations under two different licenses?	The Authority intends to harmonise in terms of QoS and rollout obligations considering to protect the interest of consumer.
89	GOP Commitments and Assurances	Will the GOP, PTA and/or FAB provide a clear and express undertaking and assurance regarding the merchantability, fitness-for-use and interference-free nature of the spectrum being auctioned? Such commitments and affirmations should be provided by way of licence T&Cs or by way of an enforceable undertaking issued to successful auction participants. What will be remedy or redressal mechanism available to a licensee in case of spectrum interference in the future?	The portion of spectrum being offered in the current auction has been monitored across the country. As per the results of monitoring surveys, the said spectrum is currently free from any kind of external interference. However, interference issues in future, if any, will be dealt as per procedure in vogue on case to case basis.

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90	SMP determination	What is the meaning of a 'relevant geographical market' for SMP determination prescribed in the License Template? Does the 'relevant geographical market' parameter conflict with Rule 17(1) of the Telecom Rules 2000?	The word "relevant geographic market" may be considered and read as "relevant market" as per applicable regulatory requirements to determine SMP. Please see notification of the changes dated 31 <sup>st</sup> August 2021.
91	Capping across the spectrum	Similar to the caps introduced for the 1800MHz band, will the Authority also impose similar spectrum caps for the 900MHz band?	The 900 MHz is outside of the scope of this Spectrum Auction.
92	Rationalization across the Spectrum.	Similar to the rationalization plan devised for the 1800MHz band, will the Authority also implement similar rationalization (and possible divestiture) for the 900MHz band?	As stated above, the 900 MHz is outside of the scope of this Spectrum Auction.
93	License and Spectrum Fee Determination by PTA	Base price of spectrum constitutes the major component of fee for grant of license. The Authority holds exclusive mandate with regards to determination of fee for grant of licenses (u/s 5(2)(a) and 21(4)(b) of the Act). This mandate has been confirmed by the Honorable Islamabad High Court as well (vide order dated 21.06.2019 in W.P. 1750 of 2019), against which the Authority has also given its consent to the Court towards determining license and spectrum fees free from any influence of any dictates of the Federal Government. Accordingly, it is advised that the Authority should issue an independent determination of spectrum price and fees for grant of license, free from any influence of the Policy Directive or any other dictates of the Federal Government.	It is clarified that as a consequence of stakeholder consultation carried out by PTA through foreign Consultant, the base price of spectrum has been recommended by the Authority and duly approved by GoP.
94	Legal Issue regarding Tenure of License	The Policy Directive for Renewal of Mobile Licenses in 2019 contained an express provision stating that "the tenure of renewed licenses shall continue to be 15 years". Accordingly, the Authority granted licenses under the said policy directive for 15-year tenures. However, in the present case, the Policy Directive for Auction of NGMS 2021 contains a different provision which states that "the tenure of frequency assignment shall be 15	Section 8 of the Act is hereby referred which provides that the Federal Government may issue Policy Directive on terms and number of licenses. In addition, in light of provision of section 22 of the Act no amendment shall vary the tenure or scope of the license. In such circumstances, it is clarified that the period of spectrum and license is 15 years.

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		<p>years". The tenure of license and the tenure of frequency assignment are not synonymous.</p> <p>Therefore, in the absence of an express policy provision relating to tenure of license, the Authority needs to adhere to the applicable statutory rules and regulations on the subject, specifically Section 8(1) of the Pakistan Telecommunication Rules, 2000 and Regulation 18 of the Pakistan Telecom Authority (Functions and Powers) Regulations 2006. Both provisions state that the tenure of licenses shall be for a period of not less than twenty-five (25) years. This aspect needs to be reconciled with the current Information Memorandum and License Template, which provide a licensing tenure of fifteen (15) years.</p>	
95	PTA Power to Amend IM at any stage of auction	If the Authority wants to amend the Information Memorandum, then said amendments cannot be made after submission of sealed bids and, in any case, reasonable notice should be provided to all operators (in case of an amendment).	The PTA is not aware of any reason for having to amend the IM after the submission of Sealed Bid Forms and Application Forms.
96	USD PKR Price Parity	Auction pricing has been denominated in USD. It is advised that either all auction pricing should be in PKR or a USD/PKR exchange rate should be locked at the date of auction.	Para 3 (h) of the Policy Directive is referred please.
97	Placement of Funds in ESCROW account	As per Clause 4.3.5 of the License Template shared, "If the Licensee disputes any outstanding amounts due under this License as specified by the Authority, the Licensee shall not withhold payment and shall deposit the disputed amount in an escrow account opened by the Authority and on terms specified by the Authority. Failure to pay the disputed amount to the escrow account shall be a breach of this License by the Licensee. On resolution of that dispute, the disputed amount shall be paid to the Authority, or refunded to the Licensee, as the case may be."	Please see notification of changes dated 31 <sup>st</sup> August 2021.

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		We suggest that the above clause is reviewed and not made part of license. The funds should be locked once the dispute is resolved.	
98	U2100 Auction	<p>In the 2100 MHz products (blocks 9, 10, and 11) if only one of those blocks receives multiple expressions of interest in the sealed-bid phase, are all three blocks entered into the electronic auction?</p> <p>Similarly, if only two of those blocks receive multiple expressions of interest in the sealed-bid phase, are all three blocks entered into the electronic auction?</p>	<p>If there is excess demand for any Block of 2100 MHz at the Sealed-Bid Stage, there will be a SMRA auction, which will include all 3 Blocks of 2100 MHz. All three Blocks will be included in the electronic auction, as there is likely to be some degree of substitutability between these Blocks. Therefore, as the price of one Block increases, Bidders will be able to switch their demand to other Blocks.</p>
99	Clause 5.3.3	<p>As per clause 5.3.3 of the IM, If the payment of Pre-Bid Deposit is being made from sources in Pakistan, it should be made only through wire transfer or through RTGS in PTA's Collection Account No. 3000942222 (IBAN PK39NBPA2221003000942222) maintained with Corporate Branch, National Bank of Pakistan, Islamabad, under intimation to DG Licensing, PTA and reference "Spectrum Auction for NGMS in Pakistan 2021".</p> <p>In order to facilitate applicant's to make the payment in an efficient manner, it is requested to also allow payment of Pre-Bid deposit in the form of Pay Order made payable to such authority as may be specified by PTA.</p>	<p>Please see notification of changes dated 31<sup>st</sup> August 2021.</p>

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100	Clause 1.5.1 - 1800 MHz rationalisation	With reference to the formulation "PTA / FAB shall undertake a process for the rationalisation of spectrum in the 1800 MHz band to achieve contiguity, where feasible." could the PTA please clarify when this might not be "feasible". Concretely, since the value of spectrum is strongly dependent on contiguous spectrum, can the PTA guarantee that all winners in the 1800 MHz auction get contiguous spectrum after the rationalisation process?	The Auction process has been designed to take into account of paragraphs 3(d) and 3(e) of the Government Policy Directive. As such, all CMOs have the opportunity, through Product 1, to purchase sufficient spectrum to "round up" current spectrum holdings to standardised blocks. Following the Spectrum Auction, the PTA will devise a new band plan, seeking to promote contiguity in the 1800 MHz band, as per Section 1.5 of the IM. It is for a Prospective Applicant to assess this process as part of its due diligence prior to the Spectrum Auction.
101	Appendix 1	Coverage obligations: The license template describes coverage obligations in the provinces of Punjab, Sindh, KPK, and Baluchistan. Do these obligations apply to all winners of spectrum in the auction regardless of amount? For instance, would they apply in full to a winner who wins a amount of say 2x1.2 MHz in the 1800 MHz band?	Please refer to Clause 3(j) of Policy Directive dated 4 <sup>th</sup> August, 2021. Any Successful Bidder will be granted a new License (based on the License Template in Annex F of the IM). This new License will cover all spectrum blocks won in this Spectrum Auction. Further, as noted in paragraph 2.7.1 of the IM, "PTA envisages that, in due course, it is likely to be efficient to harmonise the terms and conditions of all existing mobile service Licenses with the form of the License in Annex F."
102	No Reference	If PTA publishes a revised IM: Can PTA please provide a complete table comparing the license terms and conditions that would apply to a buyer of spectrum?	As part of its Responses to Queries published on its website, the PTA has specified any changes to the licence terms and conditions relative to the draft template published on 5 <sup>th</sup> August, 2021.  Please see notification of changes dated 31 <sup>st</sup> August 2021.
103	Table 1	The current IM prescribes a deadline for a binding registration for the auction around September 9th. Will PTA extend the deadline to give prospective bidders more time (e.g. 35 days) to assess the terms and conditions, considering that the incremental changes to	The PTA has published its responses to clarifications questions on a timely basis (including any changes to the licence terms and conditions). Taking into account the amendments made to the IM and the license template, the PTA considers the timeline set out in Section 1.7 of the IM to remain adequate. Please note



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		terms and conditions effectively is an element of the reserve price.	that the Application Submission deadline is 4pm on 9 <sup>th</sup> September 2021.
104	License Template	It is well understood that as per Telecommunication Policy 2015 ("Policy"), Administrative Incentive Pricing ("AIP") is intended to be a replacement mechanism for Annual Spectrum Administration Fee ("ASAF"). As per Policy, the determined mechanism will not result in a overall financial obligation that exceeds the levels established by the current mechanism – i.e. ASAF	Please see notification of changes dated 31 <sup>st</sup> August 2021.
105	License Template	<p>We also strongly oppose the formulation of escrow account as a mechanism to resolve financial dispute(s) between the operators and the PTA; we believe that escrow mechanism is meant primarily to avoid scams and frauds involving commercial agreements between two parties, (e.g. in dispute prone sectors like Real Estate);</p> <p>Our opposition is also based on that fact that compulsory deposits demanded by the PTA into the escrow account as a result of a future financial dispute(s) is unfair and asymmetrical, as there is no obligation and/or incentive for PTA to avoid disputes in future; conversely, the operators bear the entire burden – financial and administrative – for challenging PTA's demand even in the presence of evidence that clearly substantiates a challenge.</p> <p>We noted that even the tax authorities do not make blanket demands to set up escrow accounts for resolution of tax disputes; instead, tax laws of the country have the provision of Alternate Dispute Resolution (ADR) mechanism, whereby an independent committee is established to decide upon tax disputes.</p> <p>We further noted that the existing tax laws go to the extent that ADR Committee's decisions are binding on the tax authorities, but not on the tax payer; this</p>	Please see notification of changes dated 31 <sup>st</sup> August 2021.

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		<p>guarantees that the law goes to necessary extent in order to protect constitutional rights of the tax payers. We recommended that an independent tribunal be set up to resolve outstanding disputes between the industry and the PTA, as per provisions of the Telecom Act of 1996 (Act); we will be happy to provide our input to PTA for the establishment of such a tribunal</p>	
106	Table 1	<p>Regarding 4.1.2.1 and the exclusion of payments made to foreign operators as deductible charges from the calculation of annual regulatory dues, our understanding is that this matter is sub-judice and still under dispute. Therefore, we recommend that the matter be settled outside the license template</p>	<p>Referred clause will remain unchanged.</p>
107	Table 1	<p>Furthermore, for clause 4.1.1.1 where PTA has reduced the ISF payment timelines to 15 calendar days, we recommend that the payment timeline of 30 days be preserved for ISF payment by the successful bidder upon intimation by PTA as is the precedence across all previous licenses</p>	<p>Auction timeline is uploaded on PTA's website.</p>
108	Table 1	<p>We have managed to arrange the Performance Bank Guarantee approval from the bank(s) as per the following details:  1<sup>st</sup> Performance Guarantee amount US\$ 5 Million and Tenure 2.5 Years.  2<sup>nd</sup> Performance Guarantee amount US\$ 5 Million and Tenure 4.5 Years.  3<sup>rd</sup> Performance Guarantee amount US\$ 5 Million and Tenure 6.5 Years.  PTA is requested to consider and confirm acceptance of this arrangement. Kindly note that at this point of time "single Bank Guarantee of US\$15 Million" will be extremely difficult for XYZ please.</p>	<p>Understanding is correct.</p>