

1800 MHz Auction

**Award of frequencies in the frequency bands
1720.1-1785.0 MHz and 1815.1-1880.0 MHz**

Information Memorandum

Annex C

**Decision by the Danish Energy Agency of
28 June 2016 on the 1800 MHz Auction**

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Annex C: Decision by the Danish Energy Agency of 28 June 2016 on the 1800 MHz Auction.

Decision on implementing an auction of the frequency bands 1720.1-1785.0 MHz and 1815.1-1880.0 MHz

In pursuance of the Frequency Act¹, section 10(1), the Danish Energy Agency is hereby making a specific decision to implement an auction of frequencies in the 1800 MHz frequency band and on the terms for licences issued on the basis of the auction, further to decision by the Minister for Energy, Utilities and Climate of 28 June 2016.

Framework for the auction and auction format

1. The Danish Energy Agency shall prepare and implement the auction of available frequencies in the 1800 MHz band², and in this connection the Agency shall draw up one overall auction document (Information Memorandum) and fix a time schedule for implementing the auction.
2. The auction shall be conducted in four auction stages, and parts of the auction shall be conducted electronically via the internet.
3. The auction shall comprise the following two elements:
 - a. The frequency band described in clause 1 divided into lots as described in clause 2 of the Decision by the Minister for Energy, Utilities and Climate of 28 June 2016 on the 1800 MHz Auction.
 - b. Possible exemptions from the coverage obligation, cf. clause 4 of Decision by the Minister for Energy, Utilities and Climate of 28 June 2016 on the 1800 MHz Auction.

Publication of auction documents etc.

4. The Danish Energy Agency's public announcements in pursuance of this decision shall be made in Danish on the Agency's website <http://www.ens.dk> and may be accompanied by an English translation on <http://www.ens.dk/en>. All material for submitting an application for the auction, including documents and updates on the auction, will thus be available in Danish and ordinarily also in an English translation on the Danish Energy Agency's website.
5. In case of discrepancy between the Danish version of the material on the website and the English translation thereof, the Danish version shall prevail.

¹ Act No. 475 of 12 June 2009 regarding radio frequencies as subsequently amended.

² The 1800 MHz frequency band should be understood as the frequencies 1720.1-1785.0 MHz and 1815.1-1880.0 MHz.

Licences

6. The Danish Energy Agency shall issue licences to use frequencies in the 1800 MHz band on the basis of the result of the auction.
7. The licences shall be nationwide and will be valid from 13 June 2017 to 12 June 2032. On expiry, the licences shall lapse without further notice.

Bidders and bidder relations

8. Any legal entity shall be entitled to submit an application for the auction, subject to clauses 9-16.
9. A bidder must not be under the joint control of two or more mobile operators.
10. Notwithstanding clause 9 a bidder may be under the joint control of two or more mobile operators if this is in accordance with the rules of the Competition Act as applicable from time to time. The bidder in question is required itself to assess and vouch for compliance with these rules.
11. Notwithstanding clause 9 a bidder may be under the joint control of two or more mobile operators if the bidder has previously obtained approval under the rules of the Competition Act. In that case the bidder must append documentation of such approval in its application.

Other bidder relations and bidder behaviour

12. The following relations are not allowed to exist between bidders:
 - a. one bidder is a connected person with one or more other bidders,
 - b. two or more bidders are associated bidders.
13. Until the licences have been issued, the Danish Energy Agency may grant exemption from clause 12 if it has been substantiated to the Agency,
 - a. that the connection or the association is temporary;
 - b. that the connection or the association has not been established for the purpose of the auction or the licences;
 - c. that none of the bidders have determined, or may determine, decisions in respect of another bidder or its connected persons, so that the managements of the bidders have made and will make decisions in respect of participation and bidding in connection with the auction in relation to the application independently of each other;
 - d. that none of the connected persons in relation to a bidder has determined or can determine the decisions of the managements for and on behalf of two or more bidders about participation and bidding in connection with the auction; and
 - e. that no bidder or any of its connected persons have received or will receive confidential information concerning two or more bidders.
14. The Danish Energy Agency may attach terms to an exemption under clause 13.

15. If the Danish Energy Agency finds that the relation referred to in clause 12 exists between bidders, the Danish Energy Agency shall notify this to the bidders affected, indicating a deadline for applying for exemption, cf. clause 13; bringing the relation to an end; or refraining from further participation in the auction.
16. If an exemption is not granted to the bidders pursuant to clause 13, and if, after expiry of the deadline set by the Danish Energy Agency, a relation falling within clause 12 still exists between two or more bidders, the Danish Energy Agency shall exclude the bidders affected from further participation in the auction and may declare the result of the auction not binding, wholly or partly, on the Danish Energy Agency.
17. To the extent necessary, a bidder may disclose confidential information to its connected persons or to persons who, prior to such disclosure, are insiders in relation to the same bidder. In connection with such disclosure the bidder shall take all reasonable measures for the purpose of ensuring that the person who receives the confidential information complies with clauses 18-21.
18. The bidder, the bidder's employees, board of management, board of directors, the bidder's connected persons or other insiders of the bidder must not, until the licences are issued, disclose confidential information to other parties, including other bidders and their connected persons.
19. A bidder, its connected persons and insiders shall, both prior to and after submitting an application and until the licences have been issued, refrain from entering into agreements with other bidders or the connected persons of such bidders regarding the auction.
20. Both prior to and after submission of an application and until the licences have been issued, a bidder, its connected persons and insiders shall refrain from any action that could have an adverse effect on the auction.
21. A bidder, its connected persons and insiders may neither prior to nor during the auction enter into any agreement or establish any understanding with a third party if the agreements or understanding directs this third party not to participate in the auction, or restricts the ability of this third party to participate in the auction.
22. A bidder shall ensure that a natural person who is a member of the board of directors of a bidder or employed by a bidder or any connected persons or insiders in relation to a bidder and who is also a member of the board of directors of another bidder or employed by another bidder or any connected persons or insiders in relation to such other bidder:
 - a. is in no way whatsoever involved in the preparation of an application or submission of a bid for both bidders or their connected persons, and
 - b. is not in possession of, or obtains, any confidential information concerning both bidders or their respective connected persons or insiders.
23. If a natural person who is an insider in relation to one bidder is a member of the board of directors of a legal entity or employed with a legal entity which is a connected person in relation to the bidder, and if another member of the board of directors of the legal entity, or another employee of the legal entity in

question, is an insider in relation to another bidder, the first bidder shall ensure that the legal entity in question informs the first bidder to this effect, and the first bidder shall take all reasonable measures for the purpose of ensuring compliance with clauses 18-21.

24. Prior to submitting an application for the auction, a bidder shall take all reasonable measures for the purpose of identifying its connected persons, associated persons and insiders.
25. After submitting the application, a bidder and its connected persons must refrain from actions or omissions that would establish a relation to another bidder resulting in bidders being included under clause 12.

Application procedure

Submission of application

26. Applications for the auction shall be submitted to the Danish Energy Agency on the application date between 10.00 and 15.00 hours (Danish time). The application date will be announced on the Danish Energy Agency's website, cf. clause 4.
27. The Danish Energy Agency may, up to 24 hours before expiry of the deadline for applications in force from time to time, extend the deadline.
28. Notwithstanding clause 27, the Danish Energy Agency may, less than 24 hours before expiry of the deadline for applications in force from time to time, extend the deadline in the event of extraordinary circumstances such as power failure, breakdown of the Danish Energy Agency's website, or strikes. The Danish Energy Agency shall publish such new deadline without undue delay.
29. An application shall be in writing, contained in an envelope or box marked "Tilmelding til 1800 MHz-auktion" and shall be submitted within the deadline given in clauses 26-28 to the Danish Energy Agency, Amaliegade 44, DK-1256 Copenhagen K, or to any other address that may be published by the Danish Energy Agency, cf. clause 4.
30. The Danish Energy Agency shall issue a receipt to acknowledge receipt of the application.
31. An application shall be in Danish and be submitted in one original copy signed by the natural persons who are empowered to sign for the bidder or who are otherwise authorised to bind the bidder, cf. clause 37, paragraph b. Two copies of the application shall be attached. Bidders are also requested to accompany the application by a non-binding English translation, which must be submitted in one copy. In addition, bidders are requested to provide a USB key with copies of all Danish and English documents submitted in Adobe Systems Portable Document Format (pdf).

Deposit

32. In connection with its application for the 1800 MHz auction, the bidder shall provide a bank guarantee for a deposit of DKK 150,000,000.
33. The guarantee may be used for agreed penalties, cf. clauses 80-81, and compensation, cf. clause 85.
34. The guarantee shall be provided as an irrevocable demand guarantee for the benefit of the Danish State. The specific rules on the provision of a guarantee appear from the auction documents.
35. The guarantee shall be released after deducting any agreed penalty or compensation under clause 33 to the bidder:
 - a. when a bidder is notified that the bidder's application is rejected,
 - b. when a bidder is notified that the bidder will not be assigned a licence, or
 - c. when a bidder is assigned a licence and has paid the licence price, cf. clauses 66 and 67.

Content of application

36. The application shall consist of the following documents:
 - a. A completed and signed application form with associated documents, cf. clause 37.
 - b. A bank guarantee for the deposit, cf. clauses 32-34.
 - c. A copy of a bidder declaration prepared by the Danish Energy Agency, signed by one or more natural persons who are empowered to sign for the bidder or who are otherwise authorised to bind the bidder, cf. clause 37, paragraph b.
37. The application form shall contain the following information and be accompanied by the following documents:
 - a. The bidder's name and an address in Denmark, telephone number and e-mail address where the bidder may be contacted on weekdays between 09.00 and 17.00 hours (Danish time).
 - b. Details and documentation of the names, positions and signatures of the natural persons who are empowered to sign for the bidder or who are otherwise authorised to bind the bidder in any respect regarding the application and the auction, and documentation of such power or authority.
 - c. An exhaustive list of the names, positions, and addresses of the bidder's members of the board of management and board of directors or, in the absence of such, similar bodies.
 - d. An exhaustive list of the bidder's insiders to the extent that the bidder is aware of such particulars, cf. clauses 24 and 101.
 - e. A detailed, clear and exhaustive outline of the ownership structure for the bidder, to the extent that the bidder is aware of such particulars, cf. clause 24, and in accordance with the details set out by the Danish Energy Agency in annex H, including:
 - x. a list of all connected persons, cf. clause 99, and for each of them a statement to explain why the person concerned is a connected person, and if the person is a mobile operator, information to that effect,

- y. a list of associated persons, cf. clause 107, and for each of them a statement to explain why the person concerned is an associated person, and whether the person is also an associated person in relation to another bidder.

However, the outline does not have to state the names of persons that are connected persons in relation to a bidder exclusively as a result of the control over the bidder and such legal entities by a state.

- f. A summary of any agreement according to which one or more persons have control over the bidder to the extent that the bidder is aware of such particulars, cf. clauses 24 and 103.
 - g. Evidence of any approval in accordance with clause 11.
 - h. Indication as to whether an A lot is desired.
 - i. A completed form regarding bids for Coverage Area Groups.
38. All information and all declarations included in the application and attached annexes, cf. clauses 36 and 37, must be correct and accurate.
39. The Danish Energy Agency may change or supplement the rules contained in clauses 36 and 37 by specifying further rules concerning the form and content of an application.

Supplementing, correcting and specifying the application

40. The bidder shall be under an obligation to immediately notify the Danish Energy Agency of any change in the matters referred to in clause 37 after submission of the application and until a bidder has been rejected or excluded from the auction; has been released from its bid(s); or has been issued a licence. The notification shall be signed by the natural persons who are empowered to sign for the bidder or who are otherwise authorised to bind the bidder, cf. clause 37, paragraph b. At the same time the bidder's notification is considered to be a supplement or specification of the bidder's application according to clauses 36-39.
41. After submission of an application and until the date when a bidder has been rejected or excluded from the auction, has been released from its bid(s), or has been issued a licence, the bidder shall be under an obligation to immediately notify the Danish Energy Agency if the bidder finds that clause 38 had been violated at the time of the submission of the application or that any notifications pursuant to clause 40 were incorrect or inaccurate. The notification shall be signed by the natural persons who are empowered to sign for the bidder or who are otherwise authorised to bind the bidder, cf. clause 37, paragraph b. At the same time the bidder's notification is considered to be a supplement or specification of the bidder's application according to clauses 36-39.
42. In cases where a bidder has notified the Danish Energy Agency as stated in clause 40 or 41, the Agency may request a bidder whose application has been accepted to supplement, correct or specify its application and annexes attached thereto, or to provide relevant documentation, within a time limit of four days.
43. After receipt of a notification under clause 40 or 41 or after expiry of the time limit set under clause 42, the Danish Energy Agency shall make a decision that the application shall remain accepted if it continues to comply with the

provisions of clauses 36-39. Otherwise the Danish Energy Agency may reject the application.

Withdrawal of application

44. Bidders may withdraw an application before a deadline announced by the Danish Energy Agency. The deadline will be at least two working days after expiry of the deadline for resolution of relations between bidders, cf. clause 51.
45. After this, bidders cannot withdraw an application unless this is in response to a notice by the Danish Energy Agency under clause 15.

Questions

46. Bidders are entitled to put questions to the Danish Energy Agency concerning the application procedure or the auction up to eight days before expiry of the deadline for applications in force from time to time, cf. clauses 26-28.
47. Questions may be asked by letter to the Danish Energy Agency, Amaliegade 44, DK-1256 Copenhagen K, or e-mail to: tele@ens.dk marked "1800 MHz-auktion". Questions shall be asked in Danish and be accompanied by an English translation.
48. As far as possible, the Danish Energy Agency shall publish questions asked pursuant to clause 46 and replies not later than 48 hours before expiry of the deadline for applications in force from time to time, cf. clauses 26-28. Questions and replies shall be published in a form that will not show who has asked the question. As far as possible, a non-binding English translation of replies will be provided.

Qualification procedure and publication

Initial check of application

49. The Danish Energy Agency shall ascertain whether applications are in compliance with clauses 8, 26 and 29. The Danish Energy Agency shall reject applications not submitted in compliance with clauses 8, 26 and 29 (application in writing within the deadline) and shall notify the bidder of this.
50. The Danish Energy Agency shall ascertain whether applications are in compliance with clauses 36 and 37 and any rules issued pursuant to clause 39. If an application is not in compliance therewith, the Danish Energy Agency shall request the bidder, within a time limit of four days, to correct the matter by supplementing, correcting or specifying the application with annexes; providing relevant documentation; or providing security, cf. clause 32. If upon expiry of the time limit it is still not possible to accept the application or it has not been corrected, the Danish Energy Agency shall reject the application or grant a further extension of time according to the second sentence hereof.

Publication of list of bidders etc.

51. The Danish Energy Agency shall notify the bidders of the identity of the bidders whose applications have not been rejected under clauses 49-50, including information about the ownership structure of these bidders, cf. clause 37, paragraph e. At the same time, the Danish Energy Agency shall indicate a deadline for bidders to notify the existence of relations between bidders, cf. clause 53.
52. At the same time, the information mentioned in clause 51 shall be published on the Danish Energy Agency's website, cf. clause 4.

Resolution of relations between bidders

53. As an element in the qualification procedure, bidders are required to clarify whether relations falling within clause 12 exist between the bidder in question and other bidders included in the published list of bidders, cf. clauses 51-52. Within a deadline notified by the Danish Energy Agency, bidders must confirm the existence of, or absence of, any relations falling within clause 12 in relation to the bidder in question.
54. If such relations are found, clause 15 shall apply. The deadline set by the Danish Energy Agency shall be at least five working days.
55. If an exemption is not granted to the bidders under clause 13, and if, after expiry of the deadline set by the Danish Energy Agency, a relation falling within clause 12 still exists, the Agency shall reject the application of the relevant bidders, cf. clause 16.

Announcement of qualified bidders

56. After expiry of the deadline set in clause 44 for withdrawal of applications, the Danish Energy Agency will accept applications from the bidders whose applications have not been rejected pursuant to clauses 49-50 and 55. The Danish Energy Agency's acceptance of applications shall be subject to the condition that circumstances which, according to the content of the present decision and the decision by the Minister for Energy, Utilities and Climate of 28 June 2016, may lead to rejection of the application or exclusion of the bidder are not subsequently found to exist.
57. The Danish Energy Agency will notify bidders that their application has been accepted.
58. The list of qualified bidders shall be published on the Danish Energy Agency's website, cf. clause 4.

Auction procedure and submission of bids

59. The auction shall be conducted in four auction stages, and parts of the auction will be conducted electronically via the internet, cf. clause 2, using an electronic

auction system as specified in the Information Memorandum. The Information Memorandum contains more specific rules for conducting the auction, including rules for submitting valid bids.

60. In its application for the auction, a bidder whose application has been accepted by the Danish Energy Agency, cf. clause 56, shall request assignment of an A lot in its application for the auction, or submit a valid bid in the third auction stage, unless the bidder, by virtue of clauses 15 and 16, refrains or is excluded from participating in the auction.
61. From the Danish Energy Agency, bidders will receive a user manual and the necessary information on how to use the auction system, including the option of taking part in a bidder seminar and a mock auction. Bidders have a duty to make themselves thoroughly acquainted with the use of the system and the specific rules for the auction process so as to enable an expedient and efficient conduct of the auction.
62. In submitting the application, the bidder accepts an auction process as described in the Information Memorandum, cf. clause 59, including that the bidder shall be subject to the obligations described therein; that submission of bids by the bidder shall be subject to the rules described therein; that the Danish Energy Agency may exercise the powers described therein, including declaring bids submitted void and/or cancel one or more auction stages; and that the result of the auction, including licence prices, be determined according to the rules and principles described therein.

Assignment of licences in the 1800 MHz auction

63. The licences and coverage obligations will be assigned to the bidders who, following completion of the auction according to the rules described in the Information Memorandum, are regarded to be winning bidders, subject to clause 65. In case there is only one qualified bidder after completion of the qualification procedure in clauses 49-55, a licence will be assigned to this bidder under the procedure described in the Information Memorandum, cf. section 6.2.5. The licence will be assigned with the ownership structure described in the application, cf. clause 37, paragraph e.
64. The Danish Energy Agency shall notify the winning bidders that the bidders have been awarded the licences, stating the amount to be paid by the individual winning bidders under clauses 65-67. At the same time, the Danish Energy Agency shall notify the winning bidders that licences will be issued to the individual bidders when the conditions in clauses 65-70 have been met.

Payment of licence price

65. Prior to the issue of the licence, a winning bidder shall make a full or partial payment of the licence price either under clause 66 or clause 67. The licence price shall be the amount specified for each individual licence on the basis of the auction rules described in the Information Memorandum, cf. clause 59. In case there is only one qualified bidder after completion of the qualification procedure in clauses 49-55, the licence price shall be an amount equal to the total minimum bid sum for the lot(s) that will be assigned to the bidder, cf. the

procedure in the Information Memorandum, section 6.2.5. A return of the licence shall not imply that the licence price will be refunded.

66. In case a winning bidder chooses to make a full payment of the licence price, cf. clause 65, the bidder shall pay the licence price in cash not later than 10 days after having received the notification mentioned in clause 64.
67. In case a winning bidder chooses to make a partial payment of the licence price, cf. clause 65, the bidder shall pay a cash amount equal to 20% of the licence price prior to issue of the licence, and also provide the demand guarantee mentioned in clause 68 not later than 10 days after having received the notification mentioned in clause 64. The winning bidder shall settle the remaining 80% of the licence price by way of payment of eight equal annual instalments. Each instalment shall fall due for payment on the anniversary date of the issue of the licence over the next eight years.
68. If a winning bidder chooses to make a payment under clause 67, the bidder shall ensure that a guarantee payable on demand is provided at any time in relation to the Danish State, issued by a bank or insurance company which does not control, nor is controlled by, the bidder, nor is controlled by a person who controls the bidder, and which is registered in the European Economic Area and has a long-term debt rating from Standard & Poors or Fitch Rating of at least A or from Moody's Investors Service Limited of at least A2. The guarantee shall at any time be for an amount equivalent to the sum of the instalments payable on the licence price that fall due over the following three years and shall at any time be valid for the following three years, but not for longer than until expiry of the repayment period and in such a manner that the guarantee shall be reduced over the last three years of the repayment period by the instalments that are paid.
69. A winning bidder shall notify the Danish Energy Agency without undue delay in the event that the bank or insurance company that has provided the guarantee mentioned in clause 68 no longer has the credit rating stated.
70. The payment referred to in clauses 66 and 67 shall be unconditional; shall be paid into an account indicated by the Danish Energy Agency; and shall state that it has been effected by the winning bidder in question.

Granting of licences

71. If a winning bidder fails to meet the conditions in clauses 65-70 in due time, the Danish Energy Agency will set a time limit within which the bidder must correct the matter. In the event that the bidder meets the provisions of clauses 65-70 within the expiry of the time limit, the Danish Energy Agency shall issue a licence to the bidder according to clause 73. Interest will be charged on the amount referred to in clauses 66 and 67 in accordance with the Act on Interest Accruing on Delayed Payments etc.³ from the due date until payment is effected.
72. If after the expiry of a time limit according to clause 71 a bidder still fails to meet the provisions of clauses 65-70, the licence will not be issued to the bidder.

³ Act No. 459 of 13 May 2014 regarding Interest Accruing on Delayed Payments etc.

73. After completion of the procedure described in clauses 63-70, the Danish Energy Agency shall issue licences to the winning bidders.

Payment of auction costs and agreed penalties

74. The Danish Energy Agency shall charge a fee to bidders to whom licences will be or have been issued, cf. clause 73, to cover the costs involved in the Agency's arrangement and implementation of the auction and the drafting of licences etc. The costs will be allocated proportionally among winning bidders based on the amount of spectrum won by the individual bidders in the auction seen in relation to the share of the total amount of spectrum offered. The return of a licence shall not imply that this amount will be refunded.
75. The due date for the payment mentioned in clause 74 shall be fixed by the Danish Energy Agency.
76. All payments to be effected by a bidder or the licensee under clause 74 shall be unconditional and be made to an account indicated by the Danish Energy Agency and shall state that it has been effected by the bidder or licensee in question.

Publication of auction results

77. After the end of the fourth auction stage, the Danish Energy Agency shall publish who are to be granted licences, cf. clause 4 about public announcements.
78. In connection with the assignment and grant stages, the Danish Energy Agency shall publish the following information:
- a. the number of bidders that participated in the auction;
 - b. the identity of the winning bidders;
 - c. the frequencies won by the winning bidders;
 - d. the licence prices to be paid by the winning bidders according to results of the auction.
79. The Danish Energy Agency is also entitled to publish full details of the bids submitted in the auction, including the identity of all bidders and the bids they have submitted. After completion of the grant stage, the Danish Energy Agency shall decide whether, and if so, when, such information shall be published.

Penalties

80. The Danish Energy Agency may impose an agreed penalty of up to DKK 150,000,000 on the bidder,
- a. in case the bidder violates clauses **9Fejl! Henvisningskilde ikke fundet.**, 10, 17, 18, 19, 20, 21, 22, 23, 24, 25, 53, 60, 65, 68 or 71;
 - b. if the bidder's connected persons or insiders violate clauses 18, 19, 20, 21 or 25;
 - c. if information that the bidder is required to submit under clauses 36 and 37 of this decision is not correct or precise; if the bidder refuses to submit such

- information; or if the bidder fails to notify possible changes or corrections regarding information already submitted under clauses 40-42, or
- d. if the Danish Energy Agency, after having notified the award of the licence, cf. clause 64, finds that the rules mentioned in paragraphs a, b or c have been violated.
81. The Danish Energy Agency may impose an agreed penalty of up to DKK 150,000,000 on a licensee if after the issue of the licence, cf. clause 73, the Agency finds that the rules mentioned in clause 80 have been violated, or the licensee has violated the rule mentioned in clause 69.
 82. The Danish Energy Agency may exclude a bidder from further participation in the auction if the Agency finds that the bidder violates the rules mentioned in clause 80.
 83. Moreover, the Danish Energy Agency may at any time during the auction exclude the bidder from further participation in the auction pursuant to clause 16.
 84. In case the Danish Energy Agency excludes one or more bidders from the auction under the rules mentioned in clauses 82 and 83, the Agency may declare the result of the auction not binding, wholly or partly, on the Danish Energy Agency and let one or more auction stages be repeated.
 85. In case the loss of the Danish State exceeds the amount of an imposed agreed penalty in connection with a bidder's or a licensee's violation of the rules mentioned in clauses 80 and 81, the Danish State may choose also to claim damages under the general rules of Danish law.
 86. The Danish Energy Agency may revoke a licence if after the issue thereof the Agency finds that the provisions of clause 80 have been violated.
 87. The Danish Energy Agency may revoke a licence if the licensee fails to meet the payment obligation referred to in clause 74 in due time, or if the licensee fails to comply with clauses 68 and 69.
 88. The Danish Energy Agency may revoke a licence if the bank or insurance company that has provided the guarantee mentioned in clause 68 no longer holds the rating stated in clause 68, unless the licensee within a period of two months after the Danish Energy Agency's demand to that effect makes arrangements for the provision of a new guarantee in accordance with clause 68.
 89. If a licence is revoked by the Danish Energy Agency pursuant to clause 86, 87 or 88, the licensee shall be under an obligation to pay on demand an amount equivalent to 30% of the licence price, or, if payment of a lower amount of the licence price is outstanding, then such lower amount.
 90. Upon return of its licence to the Danish Energy Agency, the licensee may terminate future rights and obligations not yet due by paying not later than the date of return an amount equivalent to 30% of the licence price, or, if payment of a smaller amount of the licence is outstanding, then such smaller amount.

91. Revocation or return of a licence shall not imply that the amounts mentioned in clause 65 or 74 are refunded.
92. In case of revocation or return of the licence, licence prices already paid shall not be refunded, and the obligation to pay instalments that are due plus accrued interest shall subsist.

Waiver of the right to claim compensation other than monetary claims

93. In submitting an application for the auction, the bidder waives the right to claim any form of compensation other than monetary claims, and also waives the right to bring an action claiming specific performance or that the auction be repeated.

Disputes

94. Any controversy or dispute between the Danish State, including the Danish Energy Agency, and a bidder or licensee in respect of this decision or the auction documents shall be settled under Danish law and be subject to the jurisdiction of the Danish courts of law.
95. If the venue of a bidder or licensee is not in Denmark, the agreed venue of the bidder or licensee will be the Danish Energy Agency's venue.

Definitions

96. Conditional rights: in relation to the definitions of participation, cf. clause 98, connected person, cf. clause 99, and control, cf. clause 103, conditional rights shall be included no matter whether the condition or conditions are subsequently complied with or waived.
This shall not apply to conditional rights concerning a merger or acquisition, where:
 - a. such merger or acquisition is subject to the approval of the Competition Council, a similar public competition authority, or the European Commission, or
 - b. such merger or acquisition is opposed by the relevant party's board of directors.In the situations referred to in paragraphs a and b, conditional rights shall be included where an approval has been received, or respectively the relevant party's board of directors no longer opposes such merger or acquisition.
In connection with the calculation of ownership interests or the number of voting rights or in connection with the evaluation of whether or not control exists, where the calculation or the evaluation can be made in several ways, including as a consequence of subscription options or authorisation to waive any pre-emption right for the purpose of exercising an issue directed towards a certain group of investors, the calculation or evaluation shall be made in such a manner as will lead to the highest ownership interest, the highest number of voting rights or the highest influence.
97. Bidder: a bidder shall mean a legal entity which intends or considers submitting an application for the auction or which has submitted an application for the auction.

98. Participation: participation shall mean:
- a. the possession, the facto or formal, by a person of ownership in a legal entity, whether directly or through one or more intermediate legal entities,
 - b. the right to acquire or subscribe for ownership in the legal entity referred to under paragraph a,
 - c. the right to dispose of the ownership in the legal entity referred to under paragraph a, or
 - d. the right to acquire voting rights in relation to the ownership in the legal entity referred to under paragraph a.
- When calculating the participation held by the first person in the second person through one or more intermediate legal entities, the ownership shares held by each link of the chain through which participation has been established shall be multiplied. However, in the event that any link of the chain controls the next link of the chain, the former shall be deemed to have a 100% ownership share.
99. Connected person: connected person shall mean in relation to a bidder a person:
- a. who controls the bidder,
 - b. who holds a participation of 10% or more in the bidder, and
 - x. who holds confidential information about the bidder, or
 - y. who has an agreement to finance, wholly or partly, or otherwise assist the bidder in connection with the auction process,
 - c. who controls a legal entity falling within paragraph b,
 - d. who is controlled by a person falling within paragraph a or b,
 - e. who is controlled by a person who controls a legal entity falling within paragraph b, or
 - f. who is controlled by the bidder.
100. Confidential information: confidential Information shall mean information of any nature, which, directly or indirectly, concerns a bid submitted by a bidder or a bid that a bidder considers submitting, and regardless of the media on which such information may exist, if such information – if made accessible to other parties – could affect the price that a bidder would offer. Confidential information shall include any non-published information about a bidder's strategy in connection with the auction, including the bid that a bidder is willing to submit, which may affect the bidder's price or submission of a bid, and which may influence the bidder's fulfilment of its bid, as well as information about financing the bid sum.
101. Insider: insider shall mean a person:
- a. who has received confidential information about a bidder, or
 - b. who has undertaken to finance, wholly or partly, or otherwise assist a bidder or the bidder's connected persons in connection with the auction process.
102. Legal person: legal entity means a public or private limited company, a partnership or the like.
103. Control: a person shall be deemed to control and have control of another legal entity if that person, directly or indirectly, solely or jointly with a third party:
- a. holds or is entitled to acquire 50% or more of the ownership interest in such other legal entity,
 - b. holds or is entitled to dispose of half or more of the voting rights in such other legal entity,

- c. is entitled to appoint or dismiss half or more of such other legal entity's top management,
 - d. is entitled to exercise a controlling influence over such other legal entity on the basis of the articles of association or any other agreement, or
 - e. could otherwise exercise a controlling influence over such other legal entity.
104. Mobile operator: a mobile operator shall mean a person who holds a nationwide licence in the frequency bands 791-821 MHz and 832-862 MHz, 880.1-914.9 MHz and 925.1-959.9 MHz, 1710.1-1784.9 MHz and 1805.1-1879.9 MHz, 1900-1980 MHz and 2110-2170 MHz and 2500-2690 MHz, as well as persons who control a mobile operator; who are controlled by a mobile operator; or who are controlled by a person controlling a mobile operator.
105. Person: person shall mean natural persons and legal entities, unless otherwise expressly prescribed by the provisions of the decision.
106. Associated bidders: associated bidders shall mean bidders who have one of the following relationships to each other:
- a. one bidder holds a participation of 20% or more in the other bidder,
 - b. a connected person in relation to one bidder holds a participation of 20% or more in the other bidder,
 - c. a person who is not a connected person in relation to any of the bidders concerned but holds a participation of 20% or more in both bidders, or
 - d. one of the bidders or a connected person in relation to this bidder or a party who holds a participation of 20% or more in this bidder, and the other bidder or a connected person in relation to the other bidder or a party who holds a participation of 20% or more in the other bidder, each hold a participation of 20% or more in the same mobile operator or persons who control the mobile operator.
107. Associated person: associated person shall mean in relation to a bidder a person who holds a participation of 20% or more in the bidder.

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