



CLARIFICATORY/AMENDATORY BULLETIN NO. 1
11 October 2018

NMP SELECTION PROCESS

Issued under Sec. 5.2 of the Instruction to Participants (ITP) to clarify and/or amend certain provisions of the ITP for the NMP Selection Process, considering the questions received by the Selection Committee from the perspective Participants.

ITP Provision	Amendatory
1. Page 27 of the ITP regarding the marking of the sealed envelope which will contain the two (2) flash drives	<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> <p>“SELECTION PROCESS FOR NEW MAJOR PLAYER: SECOND FIRST SUBMISSION PACKAGE OF <u>NAME OF PARTICIPANT</u> (FLASH DRIVES)”</p> </div>
2. Page 6 of the ITP to add as Annex 10	Annex 10 NMP Undertaking (in favor of the PCC)

Queries/Issues	Clarification
1. Re CF, is coverage of the type of service considered in determining eligibility?	No. CF requirement is that it should be able to operate telecommunications services as authorized in the franchise and that the scope should be nationwide owing to the national population coverage requirement as indicated in the selection criteria.
2. Re CF term, is there a minimum number of years remaining in its franchise on submission date?	No. The CF Holder is not required to have any minimum number of years remaining in its franchise and may thus, have less than five (5) years left on Submission Date. Thus, should the Participant fall under such situation, the NTC will issue a CPCN only for the remaining term of the franchise.
3. Re CF renewal/extension, will NTC assist?	No. NTC will not assist in securing renewal. It is the NMP’s sole responsibility to secure a renewal of its Congressional Franchise.
4. Re ₱10B paid capital, a. Is an audited financial statements as of October 2018 considered “latest audited financial statements” under 4.2(b) of the ITP?	a. Yes. For purposes of determining financial capability of a Participant the paid capital requirement should be indicated in its latest audited financial statements.

Queries/Issues	Clarification
<p>b. Will the approval of the SEC on the increase authorized capital stock and/or paid capital suffice to comply with the ₱10B paid capital requirement?</p> <p>c. Please confirm that the SEC Certificate authorizing the Franchise Holder to increase its capital stock is sufficient to comply with the SEC Clearance requirement in the MC.</p> <p>d. Will NTC extend assistance in the Participant's application for approval of change in its controlling interest?</p>	<p>b. No. SEC approval on the increase of authorized capital and/or paid capital is not considered as compliant to the ₱10B paid capital requirement.</p> <p>The ₱10B paid capital requirement should be indicated in the Participant's [Sec. 4.2(b) of the ITP] latest audited financial statements.</p> <p>c. No. The SEC clearance contemplated in Sec 10.1(b) of the MC must state that the terms of the Bidding Agreement complies with the relevant rules on the limitation of foreign equity ownership. Specifically, for the NMP selection process, the SEC will conduct a review on the above compliance with foreign equity ownership limits.</p> <p>d. No. It is the NMP's sole responsibility to secure an approval for its change in controlling interest.</p>
<p>5. Re ₱10B paid capital, can the paid capital of ₱10 B or the terms of the Bidding Agreement be implemented by the NMP after issuance of the CPCN?</p>	<p>No. Sec. 4.2(b) of the ITP on Financial Capacity provides that the Participant itself, under 4.2(b)(1) or the aggregate paid capital of its members under 4.2(b)(2) should be at least ₱10B as indicated in their respective latest audited financial statements.</p> <p>Sec 10.1(b) of the MC also states that among the documents required of the NMP to submit for the processing of its CPCN includes "Compliance by NMP of Paid Capital of at least ₱10 B and implementation of the relevant provisions of the Bidding Agreement, if applicable to a Participant which has been selected as NMP..."</p> <p>For a Participant under Sec. 4.1 (a) of the ITP, the ₱10 B paid capital shall be required upon submission of the Selection Document and to be shown in its latest audited financial statements.</p> <p>For a Participant under Sec. 4.1(b) of the ITP, the member with Congressional Franchise (CF) does not necessarily have ₱10B of paid capital upon the submission of the Selection document but the aggregate paid capital of all the members of the consortium shall be at least ₱10B. Since the CPCN is to be granted to the Participant that is a CF holder, said CF holder shall increase its paid capital to at least PHP10B if its paid capital is less than ₱10B before the CPCN is granted.</p>

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6. Re ₱10B paid capital, basis of ₱10B paid capital	<p>₱40B is the minimum cumulative CAPEX/OPEX on Year 1 of the Commitment Period. (Based on submitted Annual Reports in the last five years of the dominant telco players)</p> <p>In evaluating the financial capacity of an applicant, the NTC adheres to the 70%-30% debt to equity ratio requirement. 30% of ₱40B is ₱12B.</p> <p>In this NMP Selection Process, the NTC decided to peg it at ₱10B to make it easier for prospective Participants to comply with.</p> <p>₱10B is the approximate minimum equity requirement based on Year 1 of the Commitment Period.</p>
7. Re ₱10B paid capital, can the ₱10B paid capital requirement under Section 10 of the MC be complied within 30 days from completion of all conditions precedent?	<p>No. Sec. 10.1 of the MC provides for 90 calendar days from the issuance of the Confirmation Order for the NMP to submit the enumerated documents including <i>“(b) Compliance by NMP of Paid Capital of at least P10B and implementation of the relevant provisions of the Bidding Agreement, if applicable to a Participant which has been selected as NMP, xxx”</i></p>
<p>8. Re technical capability, what is “national scale”?</p> <p>How does national scale apply to the domestic Participant?</p>	<p>Sec. 4.2(c) of the ITP states that the Participant shall have experience in the provisioning, delivery and operations of telecommunication services for the last 10 years on a national scale.</p> <p>National scale shall refer to the provisioning, delivery and operations of telecommunication services for a country, or particular regions thereof as geographically designated by the telecommunications authority of that country.</p> <p>Thus, there are two elements in the above definition: continuous (for the last 10 years) and national.</p> <p>The phrase “particular regions thereof, as geographically designated by the telecommunications authority of that country” only applies to foreign members of a Participant.</p> <p>The entity that is a holder of a Congressional franchise is necessarily a domestic corporation.</p>
9. Re technical capability, can a foreign investor nominate its subsidiary, affiliate or related-company as the entity that will fulfill the Technical Capability requirement?	<p>No. The foreign investor under Section 1.10(b) cannot nominate its subsidiary, affiliate or related-company to fulfill the Technical Capability requirement under 2.3. The subsidiary, affiliate or related-company must also be a committed investor in the binding Bidding Agreement.</p>

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<p>10. Re technical capability, if a Participant, or a committed investor chose one of the technology companies as a partner, such as Nokia, Ericsson, Huawei, etc., can this technology partner be considered the entity with experience in the provisioning, delivery and operations of telecommunications services for the last ten (10) years on a national scale?</p>	<p>No, unless the partner technology company is a committed investor under Section 1.10(b). The MC requires the Congressional Franchise holder (Sec. 1.10(a)) or at least one of its committed investors under Sec. 1.10(b) to have experience in the provisioning, delivery and operations of telecommunications services for the last ten (10) years on a national scale.</p> <p>Furthermore, please see Sec. 4.2 (c) and 8.3 (c) of the ITP regarding of the Certification of technical capability from the respective official telecommunications regulatory agency of any of the countries where the Participant's committed investors are operating as required in Sec. 4.2 of this ITP.</p>
<p>11. Re radio frequency for assignment, is NTC considering the 2.3-3.3 GHz as frequency for the NMP? Can it be used for 5G technology?</p>	<p>Please see Sec. 2.1 of the ITP regarding Covered Radio Frequencies for assignment to the NMP.</p> <p>The Philippines has adopted a technology-neutral policy with respect to spectrum, giving operators the flexibility to choose what technology to use including 5G.</p>
<p>12. Re Participation Security, can a Participant refuse to extend its Participation Security beyond the original 180 days from the date of submission and opening of bids?</p>	<p>Yes as provided in Sec. 8.4(c)(2) of the ITP. But in such an event, the Participant is deemed to have withdrawn its bid and will no longer be considered should the provisional NMP be disqualified, or should the NMP fail to comply with its submission of documents for the processing of its CPCN.</p>
<p>13. Re Participation Security, if the Participant is unable to secure all Conditions Precedent for the issuance of a CPCN, will its Participation Security be forfeited?</p>	<p>Yes as provided in Sec. 8.4 (e) of the ITP.</p>
<p>14. Re Participation Security, can the Participant immediately withdraw without triggering the forfeiture of its Participation Security in the following cases:</p> <p>(a) Its bid is declared not compliant with the requirements of the bidding; or</p> <p>(b) Its bid is declared compliant but the Participant is not selected as an NMP.</p> <p>In either case, can the Participation Security be withdrawn prior to the issuance of a CPCN in favor of the winning Participant?</p>	<p>In (a), the answer is Yes. As per Sec. 8.4 (c)(1) of the ITP, upon a finding that a Participant's bid is not compliant with the requirements of the bid, and upon signing a waiver of its right to file a motion for reconsideration or is withdrawing any pending motion for reconsideration or petitions/appeal, the non-compliant Participant may withdraw its Participation Security.</p> <p>In (b), the answer is No. The Participant-in-waiting is required to maintain its Participation Security for the entire period of 180 calendar days. This may be considered as unjustified withdrawal as provided in Sec. 8.4 (e)(3) of the ITP.</p> <p>Upon the lapse of such period and the NMP has not been issued a CPCN, the Selection Committee will issue a request to all prospective compliant</p>

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	<p>Participants to renew its respective Participation Securities.</p> <p>Refusal by any of the compliant Participants to renew its Participation Security shall be construed as its decision to no longer participate in the proceedings.</p>
<p>15. What is the difference between participation security and performance bond?</p>	<p>The Participation Security is posted to ensure that a Participant stands by its CLoS for the prescribed period and that if successful, the Participant (the named NMP) will accept its confirmation as the NMP and comply with its CLoS necessary for the processing of its CPCN.</p> <p>The Performance Security ensures the faithful compliance by the NMP with its obligations under the Selection Documents and the CPCN during the Commitment Period.</p>
<p>16. Re Participation Security, can the 700M participation security be dispensed with as this might be a deterrent to prospective participants?</p>	<p>No. Please see Sec. 8.4 of the ITP.</p>
<p>17. Re Performance Security, is the basis for the 10% performance bond the total CAPEX and OPEX of the 5-year commitment period or on a year-to-year basis?</p>	<p>No. Please refer to Sec. 11.1 of the MC.</p>
<p>18. Please confirm if PCC approval is still required for the Bidding Agreement.</p>	<p>In lieu of PCC approval requirement under Sec. 10.1(a) of the MC, PCC has provided an Undertaking that Participant shall execute in favor of the PCC.</p>
<p>19. Please consider converting the 90-day period to submit requirements to the NTC's issuance of the CPCN as "a period necessary to comply with all requirements"</p>	<p>The NTC Memorandum Circular No. 09-09-2018 was published on 21 September 2018 in the Philippine Star and took effect on 06 October 2018. It is deemed an effective rule and any substantive amendments will require an amendatory circular which requires publication, hearing on the draft and publication of amendments to be effective.</p>
<p>20. Will NTC extend the 90-day period to comply with Section 10.1 if delay in securing Congressional approval is due to causes outside the control of the NMP?</p>	<p>No, except in cases of <i>force majeure</i>.</p>