

1 **JOINT MEMORANDUM CIRCULAR**

2 **No.** _____

3
4 **SUBJECT: RULES AND REGULATIONS ON THE SELECTION**
5 **OF A NEW MAJOR PLAYER IN THE PUBLIC**
6 **TELECOMMUNICATIONS MARKET**

7 **WHEREAS**, Sec. 24, Article II of the 1987 Philippine Constitution declares that the
8 State recognizes the vital role of communication and information in nation-building.

9 **WHEREAS**, the entry of a new major player in the telecommunications market is a
10 matter of paramount national interest which shall redound to the benefit of the public
11 by ensuring genuine competition in the country’s telecommunications industry;

12 **WHEREAS**, Section 5 of RA 10844, otherwise known as the “Department of
13 Information and Communications Technology (DICT) Act of 2015”, provides that the
14 DICT shall be the primary policy, planning, coordinating, implementing, and
15 administrative entity of the Executive Branch of the government that will plan,
16 develop, and promote the national ICT development agenda;

17 **WHEREAS**, President Rodrigo R. Duterte directed the NTC and the DICT to ensure
18 the entry of a new major player in the telecommunications industry;

19 **WHEREAS**, Republic Act No. (RA) 7925 or the Public Telecommunications Policy
20 Act recognizes the vital role of telecommunications to national development and
21 security;

22 **WHEREAS**, the International Telecommunication Union reports that broadband
23 penetration impacts GDP growth from 0.025% to 1.38% for every 10% increase in
24 penetration;

25 **WHEREAS**, Section 5 of RA 7925 declared that the “NTC shall be the principal
26 administrator of this Act and as such shall take the necessary measures to implement
27 the policies and objectives set forth in this Act”;

28 **WHEREAS**, based on the 2016 annual report submitted by the telecommunications
29 companies, there are two (2) dominant telco players in the Philippine market with a
30 minimum of forty percent (40%) market share each;

31 **NOW, THEREFORE**, pursuant to Republic Act No. (RA) 7925 (Public
32 Telecommunications Policy Act), Act No. 3846 (Radio Control Law), as amended,
33 EO 546 series of 1979 and in faithful compliance with Department of Information and
34 Communications Technology (DICT) Memorandum Order No. 001, series of 2018,
35 the following rules and regulations to facilitate the selection of a new major player
36 (NMP) in the public telecommunications market are hereby promulgated:

37 **SECTION 1. DEFINITION OF TERMS**

38 1.1. **Congressional franchise** refers to a subsisting telecommunications franchise
39 to install, operate and maintain fixed (wired and wireless) networks, mobile
40 networks, and offer all types of national and international telecommunications
41 services at the time of the bid and which will not expire on or before 31
42 December 2023.

- 1 1.2. **Related Party** refers to a “company’s subsidiaries, as well as affiliates and any
2 party (including their subsidiaries, affiliates and special purpose entities), that
3 the company exerts direct or indirect control over or that exerts direct or
4 indirect control over the company; the company’s directors; officers;
5 shareholders and related interests (DOSRI), and their close family members, as
6 well as corresponding persons in affiliated companies. This shall also include
7 such other person or juridical entity whose interest may pose a potential
8 conflict with the interest of the company.”¹
- 9 1.3. **Net Present Value** (NPV) of committed investments refers to the application
10 of an annual discount rate of ten percent (10%) to the annual amounts of
11 committed investments to convert them into present values;
- 12 1.4. **Telecommunications Facilities** refers to (a) apparatus comprising an
13 electronics communications network, (b) apparatus used for the switching and
14 routing of signals, and (c) software and stored data.²
- 15 1.5. **Net Book Value** (NBV) of telecommunications facilities refers to the historical
16 cost of telecommunications facilities minus accumulated depreciation, if any.
17 Details of the NBV of telecommunications facilities shall be presented and
18 contained in the required Lapsing Schedule. The basis for the NBV of
19 telecommunications facilities shall be the audited financial statements (AFS) as
20 of 31 December 2017 or applicable month in 2017 if the fiscal year is
21 employed;
- 22 1.6. **Lapsing Schedule of Telecommunications Facilities** is the detailed
23 report/table of telecommunications facilities presenting historical cost and
24 corresponding accumulated depreciation (e.g. description of the
25 telecommunication facilities, quantity, date of acquisition, historical cost,
26 estimated useful life, depreciation for the year and accumulated depreciation)
- 27 1.7. **Bidder’s liabilities** refers to the Participant’s uncontested obligations as of 31
28 January 2018 to the NTC, if any, i.e. Supervision and Regulation Fees (SRF),
29 Spectrum User Fees (SUF), penalties, surcharges and interests.

30 **SECTION 2. QUALIFICATIONS OF THE PARTICIPANTS FOR THE**
31 **SELECTION OF THE NEW MAJOR PLAYER (NMP)**

32 The Participant shall possess the following qualifications:

- 33 2.1. **Legal Qualifications**
- 34 a. Corporation with a Congressional franchise, or, if a consortium,
35 Filipinos must have at least sixty percent (60%) interest in said
36 consortium, and at least one of the members should be a holder of a
37 Congressional franchise;
- 38 b. Is not a Related Party to any telecom group with a mobile and
39 broadband wireless market share of at least forty percent (40%);

¹ SEC Memorandum Circular No. 19 series of 2016 dated 22 November 2016.

² As defined in Republic Act No. 10926.

1 c. No Bidder's Liabilities.

2 2.2. Financial Capability

3 a. The Participant shall have a net worth of at least PhP10B as indicated
4 in its latest audited financial statements; or

5 b. In case of a consortium, the participant should provide evidence that
6 it has the capacity to raise equity from potential consortium members
7 to enable it to have a net worth of at least PhP10B, provided that all
8 ownership requirements under the law are complied with.

9 2.3. Technical Capability

10 The Participant, or at least one of the members of the consortium, shall
11 have a proven technical capability in operating a telecommunications
12 service.

13 **SECTION 3. FREQUENCY ASSIGNMENTS**

14 The NMP shall be assigned the following bands of radio frequencies:

FREQUENCY BAND	FREQUENCY RANGE	
700 MHz	738 – 748 MHz	
	793 – 803 MHz	
850 MHz	835 – 845 MHz	
2100 MHz	1955 – 1965 MHz	
	1965 – 1975 MHz	(1)
	2145 – 2155 MHz	
	2155 – 2165 MHz	(1)
2010 MHz	2010 – 2025 MHz	
2.5 GHz	2535 – 2555 MHz	
3.3 GHz	3300 – 3400 MHz	
3.5 GHz	3480 – 3520 MHz	
10.5 GHz	10182 – 10259 MHz	
	10280 – 10294 MHz	
	10532 – 10609 MHz	
	10630 – 10644 MHz	

15 (1) Contingent on the decision of the Supreme Court in the pending cases, i.e.
16 Bayantel, et al.

17 **SECTION 4. SELECTION PROCESS**

18 4.1 **The Selection Committee.** The NTC shall create a Selection Committee for the
19 purpose of undertaking the selection process.

20 The Committee shall be composed of a Chairperson and two (2) members.

21 The Chairperson shall create a Technical Working Group and/or Selection Committee
22 Secretariat for technical and legal assistance.

1 4.2 **Criteria for Award of NMP.** The Selection Committee shall determine the
2 NMP with the highest calculated and responsive bid out of all the Participants. The
3 formula for the computation shall be as follows:
4

$$\begin{aligned} \text{Highest Bid} = & \quad \text{NPV of committed investment for five (5) years} \\ & + \quad \text{NBV of existing telecommunications facilities, if any} \end{aligned}$$

- 7
- 8 a. The Highest Bid shall be rounded down to the nearest peso.
 - 9 b. The committed investment, exclusive of value added taxes, shall be indicated
10 on a yearly basis.
 - 11 c. The committed investment shall only be telecommunications facilities directly
12 related to the installation, operation and maintenance of fixed (wired and
13 wireless) networks, mobile networks, and national and international
14 telecommunications services.
 - 15 d. The NBV of telecommunications facilities shall be subjected to evaluation by
16 the Selection Committee only if its inclusion is sufficiently significant to affect
17 the determination of the winning participant.

18 4.3. **Pre-Selection Conference.** A pre-selection conference shall be conducted to
19 clarify and explain the terms, qualifications, requirements, obligations and timelines,
20 among other matters, to ensure equal access to information and transparency.
21

22 The Pre-Selection Conference shall be held on _____ 2018, _____ <AM/PM>
23 Philippine Standard time (PST) at _____.
24

25 4.4 **Observers.** In addition to the representative of the Commission on Audit (COA)
26 and members of the Oversight Committee, at least two (2) observers shall be invited
27 to sit in the proceedings during the pre-selection conference, eligibility checking and
28 examination of bids, evaluation and post-qualification.
29

30 4.5 **Submission of Bids**

- 31
- 32 a. Participants shall submit their respective bids in two (2) separate envelopes on
33 _____ 2018 from 8:00AM to 2:00PM, Philippine Standard time (PST) to the
34 Selection Committee address below. No envelope shall be accepted after the
35 deadline.
36

37 NATIONAL TELECOMMUNICATIONS COMMISSION
38 BIR Rd., East Triangle
39 Brgy. Diliman, Quezon City
40

- 41 b. The first envelope, properly sealed and marked as **“FIRST ENVELOPE OF**
42 **_____”**, shall contain the following documents:
43 (i) Letter of Intent;
44 (ii) Company Profile;

- 1 (iii) Copy of Securities and Exchange Commission (SEC) Registration;
- 2 (iv) Copy of current Mayor's Permit;
- 3 (v) Tax Clearance per E.O. 398 s. 2005, as finally reviewed and approved
- 4 by the Bureau of Internal Revenue;
- 5 (vi) No bidder liabilities as certified by the NTC Regulations Branch;
- 6 (vii) Annual AFS for the last three (3) years (i.e. 2015, 2016, 2017), if
- 7 applicable;
- 8 (viii) Lapsing Schedule of existing Telecommunications Facilities as of latest
- 9 AFS for 2017, if any;
- 10 (ix) SEC clearance that proposed business combination arising from a
- 11 consortium complies with the foreign ownership limits;
- 12 (x) Undertaking to amend its Articles of Incorporation prohibiting any
- 13 business combination that will make the NMP a related party of the
- 14 incumbent dominant telco players in the Philippine market having a
- 15 minimum of forty percent (40%) market share each;
- 16 (xi) Omnibus Sworn Statement executed by the Participant, or its duly
- 17 authorized representative, which shall contain the following
- 18 acknowledgments and undertakings:
- 19 1. That the signatory is the duly authorized representative of the
- 20 Participant and granted full powers and authority to do, execute and
- 21 perform any and all acts necessary to participate, submit the bid, and
- 22 to sign and execute the ensuing documents accompanied by the duly
- 23 notarized Special Power of Attorney, Board/Partnership Resolution,
- 24 or Secretary's Certificate, whichever is applicable;
- 25 2. That the Participant is a holder of a congressional franchise;
- 26 3. That the Participant is not a related party to any dominant
- 27 telecommunications player with at least forty percent (40%) market
- 28 share;
- 29 4. That the Participant shall automatically return the assigned radio
- 30 frequencies without condition to the NTC should it be acquired or
- 31 merged with any entity that is a related party to any of the dominant
- 32 telecommunications players with at least forty percent (40%) market
- 33 share;
- 34 5. That the Participant shall comply with all its obligations once
- 35 awarded as the NMP;
- 36 6. Each of the documents submitted are true and correct copies of the
- 37 original documents of the corporation with the congressional
- 38 franchise; and
- 39 7. That the Participant did not give or pay, directly or indirectly, any
- 40 commission, amount, fee, or any form of consideration, pecuniary or

1 otherwise, to any person or official, personnel or representative of
2 the government in relation to this selection process.

3 c. The second envelope properly sealed and marked as “**SECOND ENVELOPE**
4 **OF ____**” shall contain the following documents:

5 (i) Bid Form containing the Participant’s Committed investment for the
6 first five (5) years from the date of the award, *i.e.* FY1, FY2, FY3, FY4,
7 FY5;

8 (ii) Bid Bond callable upon demand issued by the Government Service
9 Insurance System of two percent (2%) of its first year’s committed
10 investment.

11 Immediately after the declaration by the Chairperson of the Selection Committee
12 of the closing of the submission of bids, the Selection Committee shall
13 immediately proceed to open the envelopes successively.

14 **4.6 Opening of Bids and Preliminary Evaluation of Bids**

15 a. The authorized representatives of the Participants shall be required to attend the
16 opening of the two envelopes, which shall be held after the closing of the
17 submission of bids.

18 b. The first envelope shall be opened and checked for completeness and
19 compliance. Only those submissions found complete and compliant shall be
20 entitled to proceed in the selection process while those found incomplete or
21 non-compliant shall be disqualified from further participation.

22 c. The second envelope of the remaining qualified Participants shall then be
23 opened and checked for completeness and compliance. Only those submissions
24 found complete and compliant shall be entitled to proceed while those found
25 incomplete or non-compliant duly marked “NON-COMPLIANT” and shall be
26 disqualified from further participation.

27 d. In case of a tie, the Participant with the highest bid based on the first two (2)
28 years shall be selected.

29 e. The Selection Committee shall immediately prepare an Abstract of Bids which
30 shall contain all bids that have been received, opened, evaluated and ranked.

31 f. The Selection Committee shall announce the Participant with the highest
32 calculated bid who shall undergo post-qualification to determine whether the
33 bidder complies with, and is responsive to, all the requirements and conditions.

34 **4.7 Post-Qualification**

35 a. The post-qualification shall verify, validate and ascertain all statements made
36 and documents submitted by the Participant with the highest calculated bid.

37 b. If the Participant passes all the criteria for post qualification, it shall be
38 declared the NMP.

39 c. If the Participant with the highest calculated bid fails post-qualification, it shall
40 be notified of its disqualification and the grounds for it. The second highest

1 calculated bid shall be post-qualified in the same manner above, and so on as
2 the case may be, until an NMP is determined and declared.

3 **4.8 Award of the New Major Player**

- 4 a. The Selection Committee shall declare the Participant with the highest bid who
5 passed post-qualification as the highest calculated and responsive bid.
- 6 b. NTC's Deputy Commissioners shall individually review the Selection
7 Committee's declaration and submit their recommendations to the *NTC En*
8 *Banc*.
- 9 c. The NTC *En Banc* shall proceed to award the highest calculated and responsive
10 bidder as the NMP.
- 11 d. All selection process documents shall be transmitted to NTC *En Banc* for its
12 appropriate action. Whenever necessary, the NTC shall, in accordance to
13 existing rules and regulations, issue a Provisional Authority (PA) or Certificate
14 of Public Convenience and Necessity (CPCN) or the appropriate
15 licenses/authorizations to the NMP.

16 **4.9 Failure of Bidding.** The following shall constitute a failure of bidding:

- 17 a. No envelope is received;
- 18 b. All Participants are declared ineligible;
- 19 c. All bids failed post-qualification; or
- 20 d. The Participant with the highest and/or next highest calculated and responsive
21 bid refuses, without justifiable cause, to accept the award of NMP, and no
22 award is made.

23 **4.10 Motions for Reconsideration**

- 24
- 25 a. The Selection Committee's resolutions and decisions at any stage of the
26 process may be questioned by any Participant by submitting a Motion for
27 Reconsideration within three (3) calendar days from written or verbal notice
28 of such decision. The Selection Committee shall decide within seven (7)
29 calendar days from its receipt of the motion.
- 30 b. A denial of the Motion for Reconsideration by the Selection Committee
31 may be disputed by filing a verified position paper with the NTC *En Banc*,
32 accompanied by the payment of a non-refundable protest fee paid in cash in
33 the sum of 0.1% of the Participant's bid in Philippine currency.
- 34 c. The verified position paper shall be resolved within seven (7) calendar days
35 strictly based on records of the Selection Committee.
- 36 d. The Participants undertake to be bound by this process and Court action
37 shall be resorted to only after this process have been completed.

38 **SECTION 5. OBLIGATIONS OF THE NMP**

- 39 **5.1 Business Combination.** If the NMP is a consortium, it shall enter into a valid
40 and appropriate business combination within ___ days from the date of the
41 award;

1 5.2 **Performance Bond.** The NMP shall post a performance bond equivalent to ½
2 of 1% or 0.005 of the amount of the committed investment for the first five (5)
3 years. The performance bond shall be pro-rated based on the amount of the
4 committed investment per year.

5 The Performance Bond shall be forfeited in favor of the government if the
6 selected entity fails to invest the amount specified in the yearly program of
7 committed investment in support of its bid. The forfeiture shall be on a yearly
8 basis.

9 5.3 **Debt-to-Equity Ratio.** To comply with the 70:30 debt-to-equity ratio, the
10 NMP shall increase its paid equity accordingly in the first two (2) years within
11 sixty (60) days from date of award.

12 5.4 **Deposit of Committed Investment.** The NMP shall deposit a minimum of
13 30% of the committed investment for the first year with a government financial
14 institution specified by the Department of Finance (DOF) within thirty (30)
15 days from the award. Thereafter, the NMP shall deposit a minimum of 30% of
16 the succeeding year's committed investment within the same period from the
17 anniversary date until the fifth year. The remaining balance for the applicable
18 year of the committed investment shall likewise be supported by a bank
19 guarantee.

20 The NMP shall be permitted to draw from the deposit for payments through
21 letters of credit mechanisms for capital expenditures in relation to
22 telecommunications facilities.

23 Any unused deposit and bank guarantees at the end of the fifth year shall be
24 immediately payable to the national government.

25 5.5 **Spectrum User Fees (SUF).** Pursuant to the existing rules and regulations, the
26 NMP shall timely pay the required annual SUF to the NTC.

27 5.6 **Roll-Out.** The NMP shall submit its roll-out plan within fifteen (15) days from
28 date of the award and shall include compliance with the following:

29 a. Start commercial operations not later than twelve (12) months from
30 the date of award;

31 b. Cover at least 80% of the provincial capital cities and towns and
32 80% of the chartered cities within five (5) years from the date of
33 award;

34 c. Strictly comply with the prescribed service performance standards
35 and;

36 d. Ensure that its networks and facilities will not have any national
37 security issue and shall abide with the National Cybersecurity Plan.

38 SECTION 6. SANCTIONS

39 6.1 **Automatic Recall of the Assigned Radio Frequencies.** Failure of the NMP to
40 comply with any of the provisions of this Joint Memorandum Circular shall
41 result in the automatic recall of the assigned radio frequencies.

1 6.2 **Failure to Comply with Debt-to-Equity Ratio.** Failure of the NMP to comply
2 with Debt-to-Equity ratio shall result in the recall of the award, and the
3 Participant that submitted the second highest bid shall be undergo post-
4 qualification.

5 **SECTION 7. SEPARABILITY CLAUSE**

6 If any section or part of this Circular is held unconstitutional or invalid, the other
7 sections or provisions not otherwise affected shall remain in full force and effect.

8 **SECTION 8. FINAL PROVISIONS**

9 8.1 Any circular, order, memoranda or parts thereof inconsistent herewith are
10 deemed repealed or amended accordingly.

11 8.2 This Circular shall take effect fifteen (15) days after publication in a newspaper
12 of general circulation and three (3) certified true copies furnished the UP Law
13 Center.

14 Quezon City, Philippines.

15 Done this ___ day of _____, 2018.

**Department of Information and
Communication Technology**

Department of Finance

**National Telecommunications
Commission**

National Security Council