



REPUBLIC OF THE PHILIPPINES
NATIONAL TELECOMMUNICATIONS COMMISSION
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MEMORANDUM CIRCULAR

No. 09-09-2018

**SUBJECT: RULES AND REGULATIONS ON THE SELECTION PROCESS
FOR A NEW MAJOR PLAYER IN THE PHILIPPINE
TELECOMMUNICATIONS MARKET**

WHEREAS, Section 24, Article II of the 1987 Philippine Constitution declares that the State recognizes the vital role of communication and information in nation-building;

WHEREAS, Section 5 of Republic Act No. (RA) 10844, otherwise known as the “Department of Information and Communications Technology (DICT) Act of 2015”, provides that the DICT shall be the primary policy, planning, coordinating, implementing, and administrative entity of the Executive Branch of the government that will plan, develop, and promote the national ICT development agenda;

WHEREAS, RA 7925, otherwise known as the “Public Telecommunications Policy Act” likewise recognizes the vital role of telecommunications to national development and security, and under Section 5 thereof declares that the “National Telecommunications Commission (NTC) shall be the principal administrator of this Act and as such shall take the necessary measures to implement the policies and objectives set forth in this Act”;

WHEREAS, the World Bank (2009) has estimated that a 10% increase in broadband penetration would yield a 1.21% and 1.38% increase in GDP growth on average for high-income and low/middle-income countries, respectively;

WHEREAS, based on the 2017 annual report submitted by telecommunications companies, there are two (2) dominant telecommunications players in the Philippine Telecommunications Services market with a minimum of forty percent (40%) market share each;

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

WHEREAS, President Rodrigo R. Duterte directed the NTC and the DICT to ensure the entry of a New Major Player (NMP) in the telecommunications industry that will provide the best possible services at reasonably accessible prices;

WHEREAS, complying with the presidential directive, the DICT issued Memorandum Order No. 001, series of 2018, as amended, prescribing the policy guidelines for the entry of an NMP in the Philippine Telecommunications Market;

WHEREAS, on 06 April 2018, President Rodrigo R. Duterte issued Administrative Order No. (AO) 11, creating an Oversight Committee for the entry of an NMP in the Philippine Telecommunications Market;

WHEREAS, the Oversight Committee and the NTC decided that the best way to select the NMP would be through a public, open, and competitive selection process among qualified congressional franchise holders that are not, or related parties to, the dominant telecommunications players as defined in this Memorandum Circular (MC);

WHEREAS, on 20 July 2018, the Oversight Committee decided that the NMP will be selected using the Highest Committed Level of Service model;

WHEREAS, the Oversight Committee directed the NTC to draft the rules and regulations to be used in the NMP selection process pursuant to the latter's quasi-legislative powers;

WHEREAS, on 08 August 2018, the NTC published the Notice of Public Hearing on the Draft NTC Memorandum Circular on the Rules And Regulations on the Selection of a New Major Player in the Public Telecommunications Market and conducted the scheduled Public Hearing thereon at the Novotel Hotel, Cubao, Quezon City on 23 August 2018;

WHEREAS, the NTC received substantial comments and recommendations during the public hearing as well as position papers submitted by interested parties to the NTC;

WHEREAS, the members of the Oversight Committee, the NTC, and the Philippine Competition Commission (PCC) evaluated these comments, recommendations, questions and position papers in the completion of this MC;

NOW, THEREFORE, pursuant to RA 7925, Act No. 3846 (Radio Control Law, as amended), Executive Order No. 546, series of 1979, and in faithful compliance with DICT Memorandum Order No. 001, series of 2018, as amended, and Administrative Order No. (AO) 11 dated 06 April 2018, and after due consideration of the comments, recommendations, and position papers, the following rules to govern and facilitate the selection of a NMP in the public telecommunications market are hereby promulgated:

SECTION 1. DEFINITION OF TERMS

As used in this Memorandum Circular (MC), the following terms shall be defined as:

- 1.1 ***“Capital and Operational Expenditure”*** means the cumulative sum of Capital and Operational Expenditures in the Philippines of the Participant directly related to the installation, operation and maintenance of fixed (wired and wireless) networks, mobile networks, and offer all types of national and

international telecommunications services including broadband, calculated in accordance with applicable accounting standards associated with the provision of Nationwide Population Coverage and Minimum Average Broadband Speed by the Participant.

In accordance with Philippine Financial Reporting Standards (PFRS) and Philippine Accounting Standards (PAS), as applicable, Capital and Operational Expenditures are further defined as follows:

- a. **Capital Expenditures** shall refer to the initial cost of property and equipment which includes its purchase price and any cost attributable to bringing the property and equipment to its intended location and working condition. The term also includes:
 1. Expenditures which result in an increase in the future economic benefits expected to be obtained from the use of an item of property and equipment beyond its originally assessed standard of performance;
 2. Interest and other financing charges on borrowed funds specifically used to finance the acquisition of property and equipment to the extent incurred during the period of installation and construction;
 3. Assets under construction and transferred to the related property and equipment account when the construction or installation and the related activities necessary to prepare the property and equipment for their intended use are complete, and the property and equipment are ready for service; and
 4. Net present value of asset retirement obligations specifically on property and equipment installed/constructed on leased properties which arise from contracts to restore leased property to its original condition and dismantling and de-installation at the end of the contract period of the related property and equipment accounts.

For purposes of the Selection Process, Participants who have existing operations in the Philippines may include as part of their Capital Expenditures the net book value, as of its latest Annual Audited Financial Statements, of properties and equipment directly related to the installation, operation and maintenance of fixed (wired and wireless) networks, mobile networks associated with the provisioning of Nationwide Population Coverage and Minimum Average Broadband Speed by the Participant.

- b. **Operational Expenditures** refers to expenditures directly related to the installation, operation and maintenance of fixed (wired and wireless) networks, mobile networks associated with the provisioning of Nationwide Population Coverage and Minimum Average Broadband Speed by the Participant. Interest expense directly related to capital expenditures, as defined above and which are not capitalized, may be accounted for as operational expenditures. Operational Expenditures for purposes of this MC shall exclude depreciation and amortization on Capital Expenditures.

- 1.2 **“Certificate of Public Convenience and Necessity” (CPCN)** refers to the authority granted by the NTC to a qualified applicant to own, install, operate and maintain fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband. This is equivalent to a telecommunications license in foreign jurisdictions.
- 1.3 **“Congressional Franchise”** refers to a subsisting telecommunications franchise issued by the Congress of the Republic of the Philippines to own, install, operate and maintain fixed (wired and wireless) networks, mobile networks, and offer all types of national and international telecommunications services including broadband, at the time of the bid.
- 1.4 **“Dominant Telecommunications Player”** refers to a Congressional Franchise holder with a Market Share of at least a minimum of forty percent (40%).
- 1.5 **“Independent Auditor” (IA)** shall mean an independent auditor with the requisite professional qualifications based on the latest List of Accredited Auditing Firms under Group A of the Philippine Securities and Exchange Commission and appointed in accordance with the procedure in Section 13 of this MC. The IA shall test, validate and confirm the annual commitments of the NMP during the Commitment Period observing internationally accepted standards in the performance of their required functions.
- 1.6 **“Market Share”** refers to the number of telecommunications services subscribers for fixed (wired and wireless) networks, mobile networks, and all types of national and international telecommunications services including broadband, divided by the total number of telecommunications services subscribers. The term is limited to the Philippine telecommunications market.
- 1.7 **“Minimum Average Broadband Speed”** is to be measured in Megabits per second (Mbps) and means the committed minimum national average broadband speed applicable to both fixed and mobile broadband services which is available at least eighty percent (80%) of the time.
- 1.8 **“National Population Coverage”** means the service coverage of the Participant's network committed to be established in terms of specified barangays and its corresponding populations stated as a percentage of national population of the Philippines excluding any coverage provided by dominant telecommunications players under a national roaming or similar agreement. The population per barangay shall be based on the August 2015 Official Census conducted by the Philippine Statistics Authority, the details of which are contained in the Philippine Statistics Geographic Code Table as of June 2018.
- 1.9 **“Oversight Committee”** refers to the committee composed of the Secretary of the Department of Information and Communications Technology (DICT), Secretary of the Department of Finance (DOF), the Executive Secretary, and the National Security Adviser, as established by AO 11.

1.10 “Participant” refers to:

- a. A domestic corporation with a Congressional Franchise; or
- b. A Congressional Franchise holder covered by a binding Bidding Agreement entered into by committed investors seeking to become part of the NMP. The Bidding Agreement shall contain the following minimum required provisions:
 1. The Congressional Franchise holder shall increase its authorized capital stock to the levels required to comply with the terms, conditions, and obligations imposed on the NMP, in the event that it is selected as the NMP;
 2. The details of the number, amount and schedule of payments of parties to the Bidding Agreement in the event that the Congressional Franchise holder is selected as the NMP; and
 3. The parties to the Bidding Agreement acknowledge and recognize that the Congressional Franchise holder shall be the sole entity to be declared as the NMP and the recipient of the CPCN and related permits and licenses and bear the obligations arising thereto.

1.11 “Participant's Outstanding Liabilities” refers to a Participant's uncontested obligations to the NTC as of 01 October 2018, i.e., Supervision and Regulation Fees (SRF), Spectrum User Fees (SUF), including penalties, surcharges and interests.

1.12 “Related Party,” as defined under SEC Memorandum Circular No. 19, series of 2016, dated 22 November 2016, and as recommended by the Philippine Competition Commission (PCC) through its Comments submitted to the NTC, refers to a:

- a. Company's parent entity;
- b. Company's subsidiaries;
- c. Company's affiliates; or
- d. Any party (including their subsidiaries, affiliates, and special purpose entities) that:
 1. The company exerts direct or indirect control over;
 2. Exerts direct or indirect control over the company; or
 3. Together with the company, or the latter's subsidiaries or affiliates, is under common control by another person.
- e. The company's directors, officers, shareholders and related interests (DOSRI), and their family members within the fourth degree of consanguinity or affinity, as well as corresponding persons in affiliated companies. This shall also include such other person or juridical entity whose interest may pose a potential conflict with the interest of the company.

Finally, this also includes entities which have common economic interests and are not otherwise able to decide or act independently of each other.

SEC. 2. QUALIFICATIONS OF THE PARTICIPANTS FOR THE SELECTION OF THE NMP

In addition to those provided for in Sec. 1.10, every Participant shall possess the following qualifications:

2.1 Legal Qualifications

Holder of a Congressional Franchise that is not a Related Party to any Dominant Telecommunications Player and has no Participant's Outstanding Liabilities.

2.2 Financial Capability

- a. In case of a Participant under Sec. 1.10(a), has a paid capital of at least ₱10B as indicated in its latest audited financial statements; or
- b. In case of a Participant under Sec. 1.10(b), the aggregate paid capital of its members should at least be ₱10B as indicated in their respective latest audited financial statements.

2.3 Technical Capability

The Participant under Sec. 1.10(a) or one of its members under Sec. 1.10(b) shall have experience in the provisioning, delivery and operations of telecommunications services for the last ten (10) years on a national scale. The Participant and/or its members shall submit a certification to this effect from the official telecommunications agency of any of the countries where the Participant or any of its members operate.

The term "national scale" shall refer to the provisioning, delivery and operation of telecommunications services for a country, or particular regions thereof, as geographically designated by the telecommunications authority of that country.

SEC. 3. FREQUENCIES SUBJECT OF THE NMP SELECTION PROCESS

3.1 Covered Radio Frequencies:

The primary radio frequencies covered by this MC, which NTC shall assign to the NMP, are the following:

FREQUENCY BAND	FREQUENCY RANGE
700 MHz	738.0 – 748.0 MHz
	793.0 – 803.0 MHz
2100 MHz	1955.0 – 1970.0 MHz
	2145.0 – 2160.0 MHz
2000 MHz	2010.0 – 2025.0 MHz
2.5 GHz	2535.0 – 2555.0 MHz