



Schweizerische Eidgenossenschaft
Confédération suisse
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Département fédéral de l'environnement,
des transports, de l'énergie et de la communication DETEC
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Tender for blocks of frequencies Questions – Answers 2

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1

Compliance with applicable law: Question 31

In the answer to question 31 OFCOM indicated that the information under chapter 5.4.2 Compliance with the applicable law, shall be submitted also with regard to measures "even if they happened abroad". This raises the following issues:

- As correctly stated in section 4.3.1 of the "Invitation to tender for frequency blocks for the national provision of mobile telecommunications services in Switzerland (Edition of 19 July 2011 with amendments according to the decisions of ComCom on 16 May 2011 and 6 July 2011)", it is sufficient to show that the applicant fulfils the legal preconditions according to Art. 23 of the Telecommunications Act (TCA). On this basis, the authority must allow any applicant to the tender, that has "the necessary technical capacities" and "undertake[s] to comply with the applicable legislation, in particular this Act, the RTVA, their implementing provisions, and the licence conditions" (Art. 23(1) TCA). The reference "applicable legislation" refers to the applicable Swiss law. Therefore, there is no legal basis for requesting information that exceeds the scope of the aforementioned rules of the TCA because the OFCOM is not allowed to take such information outside of the scope into consideration for the decision.
 - o Please explain the legal basis for requesting information on measures regarding other laws, and in particular on requesting information on measures in foreign countries that are not related to the provision of telecommunications services in Switzerland.
 - o If there is no legal basis to request such information, please explain the consequences if such information is not fully supplied.
 - o If the answer would be that the candidature dossier would be considered incomplete, please explain, under which rules of the TCA the OFCOM would take into consideration measures outside of Switzerland when assessing a candidature in the light of the applicable Art. 23 TCA.
 - o In particular, please explain the reasons why e.g. employment matters outside of Switzerland could affect the ability of a telecoms provider to establish and operate a mobile phone network in Switzerland.
 - o Insofar as the answer would be that such measures abroad would not be taken into consideration, please explain the reason for requesting such information. Please note that the explanations in the Invitation do not provide any sufficient explanation to this regard.
- With regards to applicants that are part of an international group or controlled by other companies or (private or public) entities, such as e.g. by private equity funds outside of Switzerland, the collection of such information would make it necessary to collect information (that are not available to the Swiss applicant) on companies that are not controlled by the applicant in Switzerland. In particular, the applicant is in such situations not in a legal position and has no means to receive such information on sister companies or e.g. other portfolio companies (sometimes jointly) controlled by other companies or entities outside of Switzerland. Therefore, such information can in many cases not be procured due to a lack of legal possibility for the applicant in Switzerland to acquire such information.
 - o Please indicate whether information pertaining to measures regarding foreign companies that are not controlled by the Swiss applicant have to be provided.
 - o If such information has to be provided, please indicate the legal basis in the TCA for requesting such information.
 - o If the legal basis would be Art. 23 TCA, please indicate the reasoning for taking into consideration measures regarding foreign companies that are not controlled by the Swiss applicant, and in particular explain in how far measures regarding foreign companies that are not controlled by the Swiss applicant can have an influence on the ability of the Swiss applicant to establish and operate a mobile phone network in Switzerland.
 - o Please explain the legal basis that could allow Swiss applicants to request information from companies in the same group, which are not controlled by such Swiss applicants.
 - o Insofar there would be no legal basis for such Swiss applicants to request the information, please confirm that the non-provision of such information will not be considered to render the candidature dossier to be incomplete, due to the fact that the Swiss applicant has provided all information available to him.

- The obligation to provide information on such measures outside of Switzerland leads to very substantial burdens, in particular for Swiss applicants that are part of international groups or that are controlled by other companies or (private or public) entities e.g. by private equity firms.
 - o Please confirm that this very broad information request, which is not covered by any legal basis in the TCA, will be applied uniformly to all applicants, i.e. that applicants that are controlled by e.g. private firms will have to provide information on all employment law, data protection, unfair competition law, etc. matters in all portfolio companies on a worldwide basis. Please note that this may in some cases relate to several hundred companies and subsidiaries!
 - o Please confirm that this will also be applied uniformly to the Swiss applicants that have subsidiaries abroad and that they will have to provide all information regarding all these matters with regard to all of their subsidiaries/participations.
 - o Given that most likely Swisscom will also be an applicant, please confirm that Swisscom will have to provide such information also with regard to all such measures concerning companies and businesses inside and outside of Switzerland that are controlled or related to Swisscom.
 - o Given the fact that the majority of the shares of Swisscom is controlled by the Swiss state, please confirm that therefore information on measures concerning all other state-controlled undertakings will have to be provided, because these companies are related to ("verbunden mit") Swisscom. This would include e.g. the following: Post (with all its subsidiaries), SBB (with all its subsidiaries), RUAG, SNB, etc.
 - o If these companies that are related to Swisscom due to the fact that they are controlled by the same entity, are not considered to be in the scope of the information request on measures under chapter 5.4.2., please explain the applicable definition of "related" used by the OFCOM.
 - o If the answer would be that Swisscom is not controlling these entities, please confirm that the same approach will be applicable to all other applicants with regard to companies that are not directly controlled by them.

Answer: Within the framework of a tender procedure for radio communication licenses, private sector entities are granted usage rights for a fixed period which is in itself reserved for the State. For this reason, the licensing authority is required to verify whether a candidate guarantees to comply with the licensing requirements and the applicable law. Consequently, the state wishes to establish an overview of the candidates.

Under certain circumstances conclusions concerning the Swiss candidate's expected behavior can be drawn from incidents involving related companies abroad. "Related" companies are those who, in regard to the utilization of frequency, can exercise financial or logistical influence in Switzerland. We therefore adhere to our explanation in chapter 5.4.2. It applies to incidents that may have occurred at home as well as abroad. These requirements are fulfilled when an affiliated group respectively the holding company confirms that no such procedure is pending respectively has been pending during the last five years or, if applicable, provide a list of the relevant procedures.

2 Preferred lots at 900 MHz: Questions 104 and 141

In answers to Q104 and Q141, OFCOM confirms that no change is foreseen in the rules for spectrum assignment at 900MHz, in particular that it is not possible to deviate from contiguous spectrum assignment. This leaves open the possibility that one bidder could receive B1 or B4 and B5, scenarios which may be considered very undesirable (there are significant value differences between blocks due to the availability of preference GSM channel and adjacency of SBB).

- o Therefore, we would like to insist again that introducing non-contiguous bid options may be essential to ensure that a small bidder is not left with one of the four lower value lots (B1, B4, B5 or B7).

Answer: As already stated in the answer to questions 91 and 141 in the document "Questions – Answers" from 30th June 2011, contiguous spectrum assignment is a key feature of this auction mode. Therefore it is not possible to deviate from this feature without changing the design which is now fixed.

3	<p>File specifications: Question 105</p> <p>In Q105, OFCOM confirms that the information about file specifications will be published after the auction participants have been determined, currently scheduled for November 2011.</p> <ul style="list-style-type: none"> ○ As an early release of the file specifications is crucial for the participants to the auction, please provide us with a more precise timing. <p>Answer: It is not possible to provide a more precise date for the publication of the file specifications. The specification of the downloadable files as well as the winner determination software will be made available after the notification of applicants that they have been admitted to take part in the auction.</p>
4	<p>Availability of Winner and Price Determination Software: Question 109</p> <p>The response to Q109 indicates that appropriate software will be made available for approved applicants. Details will be announced after the decision on admission to the auction is made.</p> <ul style="list-style-type: none"> ○ As mentioned already above, clarity on timing is crucial for the internal preparation to the auction, therefore please provide a more precise date of the release of the software. <p>Answer: It is not possible to provide a more precise date for the release of the software. The specification of the downloadable files as well as the winner determination software will be made available after the notification of applicants that they have been admitted to take part in the auction.</p>
5	<p>Technical restrictions for 800 MHz band: Question 124</p> <p>In its answer to Q124, OFCOM highlights that the existence of the 9MHz guard band between 782MHz and 791MHz means that few problems with the protection of DTT services are expected in Switzerland. Please note that this guard band will only mitigate adjacent channel interference (ACI) issues. It will not mitigate receiver overload (blocking), which is independent of the 800MHz block and the channels being used for DTT in that area.</p> <ul style="list-style-type: none"> ○ Please confirm that blocking will not be an issue in Switzerland. ○ Please confirm that as long as 800MHz licensees operate within the proposed block edge masks (BEMs) they will not be responsible for mitigating any interference to DTT. <p>Answer: We refer to the information given in the invitation to tender and the answer of question 124 in the document "Questions – Answers" from 30th June 2011. We do not confirm the two bullet points in the question above.</p>
6	<p>Air traffic control radars: Question 129</p> <p>For the frequencies valuation work, it is crucial that costs of mitigation techniques required to prevent interference to radars are covered. Therefore, a clearer answer is needed in this context.</p> <ul style="list-style-type: none"> ○ Please specify distance from Geneva and Zurich airports within mitigation techniques might be required to prevent interference with radars. ○ Please specify 2.6 GHz blocks that are likely to be affected. <p>Answer: We refer to the information given in the invitation to tender and the answer of question 129 in the document "Questions – Answers" from 30th June 2011. Distances to ATC radars requiring mitigation techniques depend on the deployment scenario including the radio access network technology.</p>

7	<p>Invitation to Tender: Transition period for 900 and 1800 MHz spectrum</p> <p>From the Invitation to Tender we understand that operators which previously used frequencies in the 900/1800 MHz band but which do not acquire any rights to use spectrum within the framework of the auction, have no right to use the frequencies beyond 31.12.2013. This would mean that those frequencies would in theory already be available for use as of 01.01.2014 to the operators that have acquired them. At the same time, the Invitation to Tender indicates that operators which acquire frequencies in the 900/1800 MHz band previously used by other operators shall, together with the operators previously using the frequencies concerned, within three months of award of the licence submit a proposal for frequency refarming work.</p> <ul style="list-style-type: none"> ○ Does that mean that during a certain period of 2014 and a certain period of 2014-2015 (for Geneva and Basel) the concerned frequencies may not be used neither by the old owner nor by the new owner of such frequencies, at least until the date defined in the common proposal and at the latest until end 2014 and 2015 (Geneva Basel)? Please specify. <p>For the frequencies valuation work, it is in fact crucial to understand as of when precisely the acquired frequencies can be used by the new owner.</p> <p>Answer: No, such a situation will not arise. The related 900/1800MHz frequencies can be used by the new "owner" from 1.1.2014 in case of the situation arises that the current operator using these 900MHz and/or 1800MHz frequencies may not acquire any rights to use spectrum within the framework of the auction. Operators which previously used frequencies in the 900/1800 MHz band but which do not acquire any rights to use spectrum within the framework of the auction, have no right to block the usage by the new owner beyond 31.12.2013. In this situation the migration plan has to reflect that all frequencies of the old owner will be released latest at 31.12.2013. Currently the exact point in time for any migration of frequencies cannot be stated. It depends from the migration plan which has to be determined by ComCom.</p>
8	<p>Stimmt es, dass alleine der Frequenzantrag die maximale Gesamtbietberechtigungspunktzahl in der Zusatzrunde bestimmt?</p> <p>Antwort: Ja</p>
9	<p>Ist es korrekt, dass der Frequenzantrag nicht als Gebot gilt, falls die erste Vergabestufe der Auktion stattfindet?</p> <p>Antwort: Ja</p>
10	<p>Angenommen, es wurden Gebote auf n verschiedene Pakete in den Clockrunden abgegeben. Ist es korrekt, dass in diesem Fall neben den Paketen der Clockrunden im Rahmen der Zusatzrunde höchstens noch Gebote für (1000-n) zusätzliche Pakete abgegeben werden können?</p> <p>Antwort: Ja</p>
11	<p>Wird die Höhe der Gebotsinkremente für die jeweiligen Kategorien A-J in Abhängigkeit des Grades des Nachfrageüberhangs gewählt (also gewichtet nach dem Verhältnis von Nachfrage zu Angebot)?</p> <p>Antwort: Grundsätzlich ja, wobei die Berücksichtigung weiterer Faktoren vorbehalten bleibt.</p>
12	<p>Falls die Clockrunden vorzeitig abgebrochen werden, d.h. wenn nach der letzten durchgeführten Clockrunde immer noch in mindestens einer Kategorie A-J ein Nachfrageüberhang besteht, wie lauten dann die konkreten Auktionsregeln für den weiteren Verlauf der Auktion, d.h. für die Zusatzrunde? Gelten in diesem Fall die Auktionsregeln in Anhang III der Ausschreibungsunterlagen unverändert weiter?</p> <p>Welche Vorkehrungen (Regeln) sieht das BAKOM in diesem Fall vor, um eine effiziente Frequenznutzung gemäss Art. 25 Abs. 1 FMG zu gewährleisten?</p> <p>Antwort: Die Auktionsregeln haben auch in diesem Fall Gültigkeit. Ziel des Auktionsformats ist eine möglichst effiziente Frequenzallokation.</p>

13	<p>Unverkaufte Frequenzblöcke gehen an die ComCom zurück. Kann das BAKOM eine minimale Karenzfrist bis zu einer erneuten Vergabe dieser Blöcke nennen?</p> <p>Antwort: Nein, vgl. hierzu Antwort 133 im Dokument "Questions – Answers" vom 30. Juni 2011.</p>
14	<p>Werden den Bietern nach Abschluss der Auktion die Daten zum Nachvollzug der Gewinnermittlung und der Basis- und Zusatzpreise zur Verfügung gestellt oder können diese Daten eingesehen werden? Falls nicht, aus welchen Gründen?</p> <p>Antwort: Nein, das Bietverhalten bleibt zum Schutz der Bieterinnen vertraulich. Ob in einem allfälligen Beschwerdeverfahren Teile davon zu Beweis Zwecken gegenüber dem Gericht offenzulegen wären, kann zum heutigen Zeitpunkt nicht beurteilt werden.</p>
15	<p>Welche Informationen erhält die Öffentlichkeit während der Auktion? Werden insbesondere die Gebote der einzelnen Teilnehmer aus den Clockrunden oder aus dem Frequenzantrag öffentlich gemacht? Nach Abschluss der Auktion: Wird die Öffentlichkeit genau dieselben Informationen erhalten wie die Bieter? D.h.:</p> <ul style="list-style-type: none"> ➤ Identität jeder Gewinnerin ➤ Frequenzblöcke, die jeder Gewinnerin zugeteilt werden ➤ Gesamtpreis, den jede Gewinnerin bezahlen muss, einschliesslich einer Aufschlüsselung der Basis- und Zusatzpreise für die Kategorien A bis J sowie gegebenenfalls der Preis für den Frequenzblock in der Kategorie K. <p>Wenn nicht, welche genauen Informationen werden seitens der Behörden veröffentlicht? Gibt es Gründe für allfällig unterschiedliche Information der Bieter und der Öffentlichkeit.</p> <p>Antwort: Ziffer 4.10 der Ausschreibungsunterlagen gibt an, welche Informationen nach Abschluss der Auktion publiziert werden können. Es ist nicht geplant, weitergehende Informationen, insbesondere hinsichtlich des Frequenzantrages sowie des Bietverhaltens, zu veröffentlichen.</p>
16	<p>Wie sieht der Kommunikationsplan des BAKOM oder der ComCom bis zum Beginn der Auktion aus? Wird die Öffentlichkeit über die einzelnen Etappen und Entscheide informiert? Werden die Auktionsteilnehmer jeweils vorgängig darüber informiert?</p> <p>Antwort: Um mögliche Kollusion und Absprachen zwischen den Bietern zu verhindern, wird die ComCom die Namen der Bewerber nicht bekannt geben. Erst nach Abschluss der Auktion werden die Namen der Bewerber, die Gewinner, die erworbene Frequenzausstattung und der Zuschlagspreis veröffentlicht. Von Publikationen betroffene Auktionsteilnehmer werden in der Regel vorgängig informiert. Siehe hierzu auch die Antwort auf die Frage 114 des Dokuments "Questions – Answers" vom 30. Juni 2011.</p>
17	<p>What measures will BAKOM use to ensure the clock-rounds phase ends with zero excess demand?</p> <p>Answer: BAKOM can't guarantee that the clock-rounds phase will end with zero excess demand. But in defining the increments BAKOM will try to achieve such a result.</p>
18	<p>Will BAKOM progressively reduce clock-round price increments as demand drops in order to get as close as possible to market clearing?</p> <p>Answer: Yes.</p>
19	<p>Is BAKOM willing to run a very long auction process (e.g. longer than 100, or possibly even 200 rounds, over four weeks or more) in order to implement such very small increments?</p> <p>Answer: Yes. To get close to market clearing is more important than duration of the auction.</p>
20	<p>Has BAKOM set a maximum number of days this auction is allowed to run? If yes, what is the maximum number of days?</p> <p>Answer: No.</p>
21	<p>How does BAKOM ensure error-free bid-submission and processing when time between Primary bidding rounds according to rule 3.2.4 can be as short as 15 minutes and between Primary and Secondary round as short as one day according to rule 3.3.7?</p> <p>Answer: The times specified in the auction rules are absolute minima. Bakom would expect to schedule rounds in such a manner that sufficient time is available for checking submissions and processing outcomes.</p>

22	<p>How does BAKOM ensure that the bidding software and the algorithms applied to identify winning bids are absolutely free of any bugs?</p> <p>Answer: The winner and price determination algorithms will be verified and tested by an external and independent firm.</p>
23	<p>Will BAKOM allow the bidders to audit the algorithms and software as soon as possible but no later than three months prior to the start of the auction? Or will BAKOM itself audit the algorithms and software from DotEcon?</p> <p>Answer: Please see the above answer.</p>
24	<p>Wird am Termin vom 30. September 2011 für die Eingabe des Bewerbungsdossiers auf jeden Fall festgehalten?</p> <p>Antwort: Im Rahmen der Planung eines Rechtsverfahrens kann die Einhaltung von Terminen nie abschliessend garantiert werden. Aus heutiger Sicht bestehen keine Anhaltspunkte, dass es zu einer Verschiebung kommen könnte.</p>
25	<p>Bis wann wird BAKOM den endgültigen Terminplan zur Durchführung der Auktion, der Trainings, der Abgabe der Softwarespezifikationen und der Abgabe des Testtools bekannt geben?</p> <p>Antwort: Der endgültige Terminplan wird den Bewerberinnen bei der Zulassung im November 2011 bekanntgegeben.</p>
26	<p>When and how will a bidder be informed that another bidder is seeking a round extension? Without this information a bidder may have difficulty determining whether there has been a connection or software problem.</p> <p>Answer: As soon as a round goes into extension, this will be clearly indicated through the auction system.</p>
27	<p>Konkretisierung zu BAKOM Q&A Nr. 53: Der Auktionsmanager beabsichtigt die Anzahl Runden und Inkremente des Folgetages jeweils zu publizieren. Kann davon ausgegangen werden dass diese Informationen auf jeden Fall am Vortag publiziert werden? Falls ja, bis zu welcher Uhrzeit und gilt dies auch für den ersten Biетtag?</p> <p>Antwort: Die Rundenzeiten werden in der Regel bis spätestens 18.00 Uhr am Vortag bekanntgegeben. Dies gilt auch für den ersten Biетtag.</p>
28	<p>Hat das BAKOM die Verhandlungen mit den Nachbarstaaten zur Grenzkoordination über den Einsatz von LTE und UMTS aufgenommen und stellt BAKOM insbesondere sicher, dass LTE ab 2013 auch in grenznahen Regionen eingesetzt werden kann?</p> <p>Antwort: Vgl. ebenfalls die Antworten 131 und 132 des Dokuments "Questions – Answers" vom 30. Juni 2011.</p> <p>Auf Ebene CEPT wurden kürzlich die beiden Empfehlungen „ECC Recommendation (11)04 und – (11)05“ für die Frequenzbänder 800- respektive 2600MHz verabschiedet. Sie enthalten Empfehlungen für die Nutzung von LTE an den Landesgrenzen. Daher kann ab 2013 LTE in diesen zwei Bändern gemäss dieser Empfehlungen bis an die Grenzen genutzt werden.</p> <p>Empfehlungen für die Frequenzbänder 900- 1800- und später 2100MHz sind in der CEPT für eine Erweiterung mit LTE in Bearbeitung.</p> <p>Das Bakom ist in Kontakt mit Nachbarverwaltungen zur Verabschiedung von Frequenznutzungsabkommen welche ebenfalls LTE betreffen und auf den oben erwähnten Empfehlungen basieren.</p>
29	<p>Gem. 2.6.1 und 3.2.42 kann der Auktionator die Clockrunden vorzeitig abbrechen, auch wenn noch in einer Kategorie ein Nachfrageüberhang besteht. Unter den Gründen welche einen solchen vorzeitigen Abbruch erfordern würden, sind technische Störungen oder der Verdacht auf Kollusion aufgeführt. Wird in diesen oder ähnlichen Fällen ebenfalls direkt in die Zusatzrunde übergegangen, so wie dies in 2.6.1 (letzter Bulletpoint) oder 3.2.42 explizit vorsieht? Falls ja, aus welchen Gründen?</p> <p>Antwort: Diese Frage kann nicht vorgängig, generell abstrakt beantwortet werden, sondern muss im konkreten Einzelfall nach Massgabe der Gründe, die zu einem Unterbruch geführt haben, entschieden werden</p>

30	<p>Wird das BAKOM während der Auktion über den Fortschritt oder über andere mit der Auktion zusammenhängenden Themen die Öffentlichkeit informieren? Falls ja; wie häufig soll diese geschehen? Werden die Auktionsteilnehmer jeweils vorgängig darüber informiert?</p> <p>Antwort: Während der Auktion ist keine öffentliche Kommunikation geplant.</p>
31	<p>Wird es neben der Bieterschulung in den BAKOM Räumlichkeiten noch eine weitere Möglichkeit geben, dass die Bieter ihre Infrastruktur mit der BAKOM Software testen können?</p> <p>An welchen Terminen ist diese Testmöglichkeit vorgesehen?</p> <p>Antwort: Siehe Antworten 105 und 106 im Dokument "Questions – Answers" vom 30. Juni 2011. Die Versuchsauktion ist zeitlich zwischen Bieterschulung und Auktion vorgesehen.</p>
32	<p>Gemäss Abschnitt 7.2 des Ausschreibungsdokuments („Nichtteilnahme an der Auktion“) und der Antwort zur Frage Nr. 67 im BAKOM Q&A wird ein Bieter, welcher an der Auktion nicht teilnimmt und/oder in der ersten Clockrunde ein Nullgebot abgibt, von der Auktion ausgeschlossen und bleibt gemäss Ziffer 1.2.4 der Auktionsregeln (Anhang III) haftbar.</p> <p>Was bedeutet es in diesem Fall aber für die anderen Bieter, welche sich korrekt an die Auktionsregeln halten? Gelten dann die abgegebenen Gebote der ersten Clockrunde oder die Gebote in den Frequenzanträgen (gemäss Ziffer 1.2.4 der Auktionsregeln)?</p> <p>Antwort: Für Bieter, die an der Auktion teilnehmen (d.h. in der ersten Clockrunde ein Gebot abgeben) gelten alle abgegebenen Gebote.</p>
33	<p>Die Antwort auf Frage 18 im BAKOM Q&A beinhaltet die Aussage, dass das Offenlegen der eigenen Teilnahme an der Auktion keinen Einfluss auf den korrekten Verlauf der Auktion hat. Gedenkt der Auktionator, die Identität der Bieter, welche ihre Teilnahme selbst nicht öffentlich machen, vor Beginn der ersten Clockrunde bekanntzugeben?</p> <p>Antwort: Um mögliche Kollusion und Absprachen zwischen den Bietern zu verhindern, wird die Com-Com die Namen der Bewerber nicht bekannt geben. Erst nach Abschluss der Auktion werden die Namen der Bewerber, die Gewinner, die erworbene Frequenzausstattung und der Zuschlagspreis veröffentlicht.</p>
34	<p>Kann bei einer Verschiebung der Auktion nach Einreichung der Bewerbung (30.09.11), die Bewerbung insbesondere der Frequenzantrag angepasst werden?</p> <p>Antwort: Je nach den Gründen, die zur Verschiebung führten, kann eine Anpassung der bisherigen Anträge nicht von vornherein ausgeschlossen werden. Hierüber ist im konkreten Einzelfall zu befinden.</p>

Business Continuity

Scenarios can readily be constructed in which a strong bidder, who has a valid non-zero bid in primary round N, is knocked out of the auction by a combination of weaker bidders who did not submit any non-zero bids after a round N-k (where $k > 0$). This may occur even when the stronger bidder expresses full valuations for a set of packages in the supplementary round. This raises severe concerns of business continuity among existing mobile operators, and could lead to severe disruption within the industry, as well as severe service disruption for a significant proportion of mobile communications customers in the Swiss market. Ofcom does not address these concerns in the answers it provided on 30 June 2011. For the avoidance of doubt, we do not seek advice from Ofcom on means of mitigating this risk under the proposed rules, nor guidance on other aspects of bid strategy, but we do seek explicit responses to the following questions:

- a. Does Ofcom accept that such outcomes are possible?
- b. If so, does Ofcom recognise that this risk is a product of its decision to put all existing spectrum up for auction rather than incremental spectrum licences?
- c. If so, does Ofcom accept that such outcomes would potentially
 - i. Be disruptive to the industry and to existing mobile communications users in Switzerland?
 - ii. Hence be detrimental to the public interest?
 - iii. Lead to significant iniquity for existing operators and investors in the Swiss telecommunications market?
 - iv. Represent an unfavourable result from the perspective of Ofcom, that is contrary to both the intention of Ofcom and its auction design objectives?
- d. Should Ofcom disagree with any of the above, could Ofcom please outline exactly on which grounds?
- e. Has Ofcom considered this issue and explored means of mitigating this risk? If so, which measures did Ofcom consider and why did it reject them?
- f. If Ofcom agrees with (a) and one or more of the points under (c) above, will Ofcom consider possible modifications to the auction design that would address the above, such as for example:
 - i. Excluding those bids of a 'weaker bidder' (i.e. a bidder that dropped out earlier in the primary rounds) that would knock out a stronger bidder from the Winner Determination and Price calculation procedure?
 - ii. Introducing a minimum viable spectrum floor for existing mobile operators, consisting of their existing spectrum holdings or at least a significant subset thereof, including a viable mix of sub-1GHz spectrum and spectrum at 1.8GHz and above?

If not, why not?

Answer: As mentioned in Chapter 4.7 of the tender document, questions concerning the procedure, the auction rules and the structure and content of the candidature documents will be answered. The above questions are related to the principles of auction design. As already stated in the answer to question 81 of the document "Questions – Answers" from 30th June 2011 it is in the discretion of ComCom to determine the design of the auction. We will therefore not comment on the above questions and remarks.

36	<p>Adverse price differentials</p> <p>Does Ofcom accept that outcomes are possible in which a winning bidder pays more for its winning package A than a competitor pays for a superior package B (e.g. in which A is a subset of B) following the Principal Stage of the auction? If so:</p> <ul style="list-style-type: none"> a. Does Ofcom consider that such an outcome would be: <ul style="list-style-type: none"> i. Equitable? ii. Efficient? iii. Perverse? b. Should Ofcom respond to (i) or (ii) in the affirmative, then on which grounds could Ofcom consider such outcomes to be equitable, efficient or perverse? c. Would Ofcom consider amendments to the auction design to ensure that the price paid by winning bidders for their winning packages reflect uniform prices? If not, can Ofcom set out precisely why it considers that the adoption of uniform market prices (derived from bids expressed throughout the auction) would present a greater risk to the social good than (potentially widely) asymmetric prices? <p>Answer: As mentioned in Chapter 4.7 of the tender document, questions concerning the procedure, the auction rules and the structure and content of the candidature documents will be answered. The above questions are related to the principles of the auction design. As already stated in the answer to question 81 of the document “Questions – Answers” from 30th June 2011 it is in the discretion of ComCom to determine the design of the auction. We will therefore not comment on the above questions and remarks.</p>
37	<p>Tie breaking rules</p> <p>In its response to question 83, Ofcom indicates that a ‘tie-breaking’ rule based on spectrum convergence would imply that all bands were equally useful to operators. Why does Ofcom believe that such an implication would automatically follow from such a tie-breaking rule, and why does Ofcom believe that random selection provides a better solution?</p> <p>Answer: As mentioned in Chapter 4.7 of the tender document, questions concerning the procedure, the auction rules and the structure and content of the candidature documents will be answered. The above questions are related to the principles of the auction design. As already stated in the answer to question 81 of the document “Questions – Answers” from 30th June 2011 it is in the discretion of ComCom to determine the design of the auction. We will therefore not comment on the above questions and remarks.</p>
38	<p>Timetable Issues</p> <p>Invitation section 1.3.2: Would Ofcom agree that given the important issues at stake in this spectrum auction then the winner determination software needs to work reliably and produce correct results? With this in mind when will we get a copy of the winner determination software for audit and testing purposes? We would kindly request that it be made available at least six months before the auction as a minimum.</p> <p>Answer: Please see the answer to question 3 of this document.</p>
39	<p>Timetable Issues</p> <p>Annex III section 1.3.3: How much time will be given to furnish increased bank guarantees?</p> <p>Answer: As already stated in the answer to question 41 in the document “Questions – Answers” from 30th June 2011, the auctioneer will provide a time limit of max. 3 working days.</p>
40	<p>Timetable Issues</p> <p>Annex III section 3.3.7: One clear business day is potentially insufficient time to prepare for the supplementary round where we might need to submit up to 1000 bids. Can we have at least three business days to prepare?</p> <p>Answer: No, BAKOM doesn’t intend to modify this rule. Please also refer to answer 73 in the document “Questions – Answers” from 30th June 2011.</p>

41	<p>Ausschreibungsunterlagen, 3.1.5 Übergangsperiode</p> <p>Inwiefern bedeutet die Pflicht zur Koordination der Umstellungsarbeiten eine Einschränkung der Nutzungsdauer für das Spektrum im 900 und 1800 MHz Band?</p> <p>Antwort: Betreiberinnen, die bisher Frequenzen im 900/1800 MHz Band nutzten, jedoch im Rahmen der Auktion keine Frequenznutzungsrechte mehr erwerben, haben keinen Anspruch darauf, die Frequenzen über den 31.12.2013 hinaus zu nutzen (vgl. Ziff. 3.1.5 Ausschreibungsunterlagen). Betreiberinnen, die bisher Frequenzen im 900/1800 MHz Band nutzten und im Rahmen der Auktion neue Frequenznutzungsrechte erwerben, dürfen die bisherigen Frequenzen über den 31.12.2013 hinaus nutzen, um über die notwendige Zeit für die Netzumstellungsarbeiten zu verfügen. Betreiberinnen, die im Rahmen der Auktion neue Frequenznutzungsrechte erwerben, können diese erst nutzen, wenn die Netzumstellungsarbeiten der bisherigen Frequenznutzung abgeschlossen sind, spätestens jedoch ab 1.1.2015 resp. 1.1.2016.</p>
42	<p>Ausschreibungsunterlagen, 3.1.5 Übergangsperiode</p> <p>Muss davon ausgegangen werden, dass bereits im Jahr 2014 bzw. 2015 (für Genf und Basel) Frequenzen von den alten Konzessionären an die neuen Konzessionäre migriert werden müssen?</p> <p>Antwort: Die Zeitpunkte der Migration von Frequenzen ergeben sich aus dem von der ComCom festzulegenden Migrationsplan (vgl. Abschnitt 3.1.5 der Ausschreibungsunterlagen).</p>
43	<p>Ausschreibungsunterlagen, 3.1.5 Übergangsperiode</p> <p>Falls Frage 42 mit ja beantwortet wird: kann ein frühestes Datum genannt werden, ab wann die ersten Frequenzen übertragen werden müssen?</p> <p>Antwort: Die bisherigen Frequenzen dürfen über den 31.12.2013 hinaus genutzt werden, um über die notwendige Zeit für die Netzumstellungsarbeiten zu verfügen. Die Umstellungsarbeiten können einen oder mehrere Refarming-Schritte beinhalten, müssen aber auf eine möglichst zügige Umstellung ausgerichtet sein. Im Übrigen ergeben sich die Zeitpunkte der Migration von Frequenzen aus dem von der ComCom festzulegenden Migrationsplan (vgl. Abschnitt 3.1.5 der Ausschreibungsunterlagen).</p>