

Alternative means of allocating telecommunications spectra

Published: 8/08/2014 at 06:00 AM

Newspaper section: [Business](#)

Reports have been circulating since the beginning of this year that the National Broadcasting and Telecommunications Commission (NBTC) is looking to make a number of changes to the Act on Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunications Services of 2010, also known as the Frequency Allocation Act. One of the most talked-about changes would involve Section 45, which deals with allocation of spectra.

Section 45 currently provides that any person who wishes to use spectra for the purpose of operating a telecommunications business must obtain a licence under the Frequency Allocation Act by means of a spectrum auction, in accordance with the criteria, procedures, duration and conditions prescribed by the NBTC. In brief, the law stipulates that spectra must be allocated only by auction.

The proposed change to Section 45 allows for other methods of frequency allocation. While the alternatives have yet to be announced, examples can be seen in other jurisdictions. These include auctions, lotteries and "beauty contests".

In recent years, the auction has the most frequently used method. From an economic standpoint, the best part about auctions — provided they are truly competitive — is that they allocate a spectrum to those who will use it most productively. The concept is that bidders, acting rationally, will make bids based on the profits they project to generate from the spectrum.

Since superior business plans align with projections of greater profits, bidders projecting the highest profits place the highest bids. Of course, bids cannot be arbitrary, because winning bidders must actually pay what they bid, and a tremendous amount of analysis goes into their business plans, both for their own internal purposes and for the purposes of obtaining external financing. Payments for spectrum rights can be enormous, and so a secondary benefit is that the cash yielded can be a boon to government finances.

On the other hand, some have argued that auctions put operators in the position of spending too much merely to acquire spectrum rights — funds that would be better used in building out their networks. They also argue that the expense of spectrum rights ultimately pushes up the prices operators charge their customers. These arguments are not universally accepted, however, and there are solid economic arguments against each of them.

Another possible weakness of auctions is they do not work well when the number of bidders is too low relative to the number of licences being auctioned. In Thailand, where the three-bidder 3G auction drew widespread criticism, this is the key reason for seeking to amend the law to allow for the use of other methods.

As noted above, lotteries are an alternative. Following this approach, once a group of qualified applicants is established, a lottery is used to select winners at random, and the winners generally pay much lower fees for rights to use the spectra relative to what would be payable in the context of a competitive auction.

However, one problem with lotteries is bids are often placed by opportunists who do not intend to use the spectrum and simply see an opportunity to obtain it at a low price and then sell it to real operators at a much higher price. So this approach can still result in operators paying high prices for spectra, but the large profits go to winning bidders rather than to government coffers. Even worse, there are additional transaction costs associated with the sale of spectrum rights by winning bidders to real operators.

The other option is the colloquially termed "beauty contest". Formally, the process is called a "comparative hearing". Following this process, applicants must provide detailed information about themselves and their plans. The regulator then selects the strongest applicants with the best plans, and those winners pay fees that are substantially less than in a competitive auction.

But from the standpoint of the regulator running the beauty contest, it can be difficult to choose which criteria will be used to select the winners, and given all that needs to be considered, the selection process can be very lengthy and costly for the regulator.

Once the winners of a beauty contest are announced, there are risks that some applicants might perceive the results to be unfair, and they may challenge the selection. Also, some argue this method favours incumbents, as they are able to demonstrate experience, which would typically be heavily weighted in the regulator's selection process.

Ultimately, all three methods — auctions, lotteries and beauty contests — are legitimate public policy choices. Different methods can be beneficial in different scenarios, and the challenge is choosing the method that best suits the circumstances.

In the case of Thailand, the primary barrier to successful auctions is the low number of qualified bidders.

One means of increasing the number of qualified bidders would be to ease foreign ownership and control restrictions in the telecommunications sector, so that foreign operators can bid without controversy.

Ultimately, service users would be better served by a market that is more competitive regardless of the nationality of the operators providing service in that market. Until such change is made, it is likely that auctions will not work as intended, and alternative methods will be necessary.

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