

Terms of Reference
for the selection of an international consulting firm
to assist in the preparation and award of wireless licenses.
[DATE]

I. BACKGROUND

1. Reform Program

The Government of [COUNTRY] (GOVERNMENT) has embarked a decade ago in a series of reforms to liberalize its economy. Concrete steps taken under the reform program include the enactment of privatization laws and decrees [], foreign direct investment laws [] and liberalization laws in the utility sector []. These first series of reforms have put [COUNTRY] on a higher growth path resulting in an average annual GDP growth of []% over the past decade. The GOVERNMENT success in privatizing over [] industrial and commercial enterprises has played a significant role in the economic boom, notably through a significant increase in investments by private firms.

2. Status of the telecommunications sector

Existing legal framework. Realizing the key role efficient infrastructure services can play in accelerating broad-based economic growth at the national level, the GOVERNMENT has started in [] a reform program to improve and restructure its telecommunications sector. [LEGISLATION] provide the legal foundations for the reform. Under the first law, [] has been set up as a corporate legal entity with financial and administrative autonomy, and joint ventures involving foreign direct participation up to 50% of share distribution were encouraged. In light of the rapid changes in the sector driven by the technological revolution, the recently enacted [LEGISLATION] is intended to set the basis for an (a) accelerated opening of the sector to competition in all segments but the fixed network which remains under the monopoly of the public incumbent for [] years from the day of closure of its privatization transaction; (b) improved efficiency of the regulatory agency, through the reinforcement of its powers.

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Legal changes under consideration. To turn the principles of liberalization set in the law into reality, the GOVERNMENT is in the process of drafting application decrees to define the strengthened organization of [] which will be responsible for technical and economic regulation, interconnection, universal access, tariff regime supervision. These decrees will be finalized with the help of an international advisor.

Current operations. The telecom sector is currently served by a public company [XX] involved in the whole range of telecom activities. [XX] is currently operating a network of [] fixed lines and generated in [YEAR] a turn over of US\$ [] million with [] staff. The company has entered in [YEAR] into a [] year management contract with [], a joint venture between [] and [XX] to operate a mobile license [YYY] which currently has [] subscribers.

In the internet segment, 10 internet service providers (ISPs) serve the market. There are currently [] internet subscribers.

GOVERNMENT sector strategy. The GOVERNMENT represented by the Ministry of Transport and Communications has laid out the following overarching objectives for the sector :

- Expand telecommunications coverage throughout the country from a teledensity of [] per 100 inhabitants in [YEAR] to [] in [YEAR] with the objectives of facilitating national and international communications
- Provide high quality telecommunications access throughout the country at affordable prices
- Provide universal access
- Promote competition through introduction of private operators in the various segments to accelerate telecom services.

To meet these objectives, the GOVERNMENT is preparing a medium term sector strategy and is in the process of recruiting a policy advisor to help finalize its draft strategy. In parallel, to solve the current bottlenecks and quickly expand telecom services and improve coverage and quality, the GOVERNMENT is considering launching at the beginning of [YEAR], tenders to award mobile cellular licenses to private

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operators. The preparation for the privatization of [XX] is also scheduled to start in the beginning of [YEAR]. To develop the tender documents and bid packages for mobile licenses and assist in the competitive tender process, the GOVERNMENT has decided to recruit an international consulting firm (hereafter referred to as « the Consultant ») with in-depth expertise in the tendering and marketing process of mobile licenses to private operators and in preparation of the licensing contractual arrangements. The present Terms of Reference (« the TORs ») detail below the mandate of the Consultant.

II. MANDATE OF THE CONSULTANT

The Consultant will be working for and under the sole responsibility of the Office of the Minister of Telecommunications. The Consultant will be responsible for two main tasks :

- Drafting and finalizing the bid packages and contractual agreements for the licensing of wireless telecom services;
- Assisting the GOVERNMENT in the award process i.e. the tendering process, marketing of the operation to potential investors, **evaluation of bids and negotiation of contract with the winning bid.**

III. SCOPE OF WORK

1°) Definition of the transaction structure and services to be included in the license

Before drafting the bidding documents and contracts for the licensing of wireless telecommunications services, the Consultant will assess the market situation of the telecommunications sector in [COUNTRY]. He will analyze general economic trends, sector trends and future evolution. Given the importance of the public incumbent in the sector, the Consultant will assess impact of sector evolution on the technical and financial performance of [XX] and its mobile activity [YYY]. To put on equal footing all operators in the sector, the GOVERNMENT has decided to structurally and legally separate [YYY] activities from [XX]'s fixed services. The accounts of [XX] and [YYY] will be separated

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in order for a subsidiary to be incorporated before the end of the award process of the new mobile licenses.

The Consultant will then assist the GOVERNMENT in defining the key features to be offered as part of the license contract. It is important to assure that licenses for the same services have basically equivalent rights and obligations. Therefore, the consultant needs to prepare a generic form of license for mobile services and then apply it to the new operators and [YYY].

In particular, the Consultant will advise the GOVERNMENT in the formulation of the minimum conditions and features to be included in the wireless license package to ensure a successful competitive tender and meet the government objectives of improving rapidly coverage and quality of service through the introduction of meaningful competition. The Consultant will be responsible for defining the following key elements of the transaction structure:

- the type of services and technologies to include in the licensing agreements;
- the type of international access to mobile operators;
- the type of coverage obligations ;
- service quality obligations
- the yearly fee for frequency management
- the structure of ownership distribution in particular the level of foreign ownership participation to allow;
- the number of licenses to award given the current situation of the sector, the growth prospects, the objectives of the government in terms of coverage expansion, the upcoming privatization of [YYY] and performance of current operators.

The Consultant will develop alternative options and make recommendations to the GOVERNMENT on the above-mentioned elements. These recommendations will be presented to the GOVERNMENT in order to allow him to select an optimal solution with a view to introducing competition, improving access to reliable and affordable service and benefiting the end users.

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**2°) Review of the existing legal and regulatory framework
and amendments under consideration**

The Consultant, in collaboration with local lawyers, will analyze all laws and regulations either existing or under consideration in the telecommunications sector including international conventions in which the country participates. The Consultant will also examine existing contracts and other relevant legal and contractual documents of [XX] and [YYY] which might affect the preparation and conclusion of an interconnection agreement, a license contract or the obligations of the mobile cellular operator. As part of the legal and regulatory review the consultant will assist the Government in drafting and finalizing the decrees prepared by [MINISTRY] on (i) network access, (ii) interconnection and (iii) []'s organization and functions. [In addition, the consultants will help prepare of a draft license for [XX]]. The Consultant will also analyze all laws and regulations pertaining to radio spectrum, property rights, investments code, foreign direct investments, corporate law, concession law, and other relevant laws.

3°) Preparation of the bid package for the competitive tender

The Consultant will have the responsibility of drafting a bid package to award 1 or 2 licenses for wireless telecommunications services to private operators. As part of this assignment, the Consultant will :

- a) draft and finalize license contracts, anti-trust clauses and obligations agreement for the cellular operators specifying obligations in terms of performance, service and quality targets, geographic coverage, interconnection, universal service etc.. ;
- b) detail interconnection arrangements, conditions and penalties to be included in the license contract of operators. As the Government is currently revising its regulations, these interconnection arrangements might be temporary and subject to change depending on the future regulatory framework;

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- c) draft the complete documentation related to the request for proposals for mobile cellular licenses and the organization of the tender. The bid package includes:
- the tender documents detailing the tender process to be strictly followed (submission of technical and financial offers), and containing the following information:
 - pre-qualification criteria (minimum, objective criteria to meet for the submission of a proposal)
 - objective selection and evaluation criteria which will be applied by the GOVERNMENT to determine the winning bid ;
 - draft contract between the new private operator and the GOVERNMENT;
 - draft legal agreements detailing contractual obligations in terms of performance targets, coverage targets, universal service, type of services to be provided;
 - draft license;
 - a list detailing all legal and contractual documents necessary to finalize the transaction in accordance with [COUNTRY] laws
 - the information memorandum presenting general information regarding the telecommunications sector in [COUNTRY] and presenting opportunities offered by the transaction;
 - the economic and political background;
 - the existing legal and regulatory framework, its evaluation, laws and amendments under consideration;
 - the sector structure, the sector strategy, planned sector evolution stressing plans for introducing competition and other actors, number of mobile operators;

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- the tariff regime, automatic revision mechanisms and changes under consideration
 - other matters the Consultant deems necessary or appropriate
- d) ensure that draft documentation above-mentioned in particular those specifying the relations between future operators and the GOVERNMENT and future operators and the main public operator [XX] will include key terms of the regulatory framework under consideration/amendment, namely tariff applicable in rural areas, interconnection tariff. These specifications will provide maximum assurances to potential private operators during a transition period during which the capacity of the regulatory agency is being strengthened;
- e) draft the license between [] and the mobile operators.
- f) determine the calendar for the transaction
- g) determine the selection and evaluation criteria

4°) Assistance for the license award

The Consultant will advise the GOVERNMENT in the organization and management of the tender process :

- Elaboration of a list of potential investors;
- Launch of the tender process including assisting with list of potential bidders, telecom publications, news papers, news wires and preparation of notice tender launch;
- Answers to inquiries regarding the tender and bid packages;
- Evaluation of proposals and shortlisting qualified investors;
- Advice to the GOVERNMENT in the selection of investors;
- Negotiation of contracts and all legal and contractual agreements;
- Financial bid
- Finalization of legal documents to close the transaction.

5°) Consultant Qualifications

It is estimated that the Consultant team will be comprised of at least one international expert in legal and regulatory matters of the telecom sector, one local lawyer familiar with [COUNTRY] laws, one telecom expert and one financial/transaction expert.

Legal and regulatory expert

The Consultant legal and regulatory expert should be have in–depth, relevant experience in advising on, drafting and negotiating telecommunications mobile wireless licenses and related legal and contractual agreements and sales, and in the context of competitive tenders. In particular, the Consultant should have in-depth experience in the drafting of license contracts, interconnection arrangements, tariff policy in the context of changing telecom regulations i.e. the establishment of a competitive environment in the telecom sectors. The legal and regulatory expert should also include a qualified local lawyer.

Telecommunications: networks and mobile wireless services

The telecom expert of the Consultant is expected to have in–depth, relevant expertise in the roll out of mobile wireless telecom services and networks both at a technical and financial level. The telecom expert is expected to have a significant experience in the operations and expansion of mobile services in developing countries.

Financial/Transaction expert: private participation in telecoms

The Transaction expert of the Consultant will be responsible for advising on the transaction structure, determining investor interest for the proposed transaction in the market, on the obligations to be undertaken by the private operator. He will be primarily responsible for deploying aggressive marketing campaign and for the marketing efforts of the transactions. He should have at least 10 years practical experience in the licensing mobile wireless telecoms services to private operators.

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6°) Administration

The GOVERNMENT will facilitate the execution of the Consultant assignment by ensuring the cooperation of its key relevant bodies involved in the process. The GOVERNMENT will also ensure that the Consultant will get access to all relevant information at the start of the assignment and facilitate the Consultants visas approval process, if necessary.

7°) Deliverables:

The Consultant will deliver the following documents upon an agreed timetable with the GOVERNMENT at the beginning of the assignment :

- Comments on the possible constraints identified in the review of legal and regulatory framework and recommendations on possible constraints identified which may be an impediment to the award of mobile licenses
- Report on the recommendations on the transaction structure, strategy , including objective selection and evaluation criteria
- A draft tender package representing the call for applications, including the draft license specifications;
- A draft license
- Tender package including information memorandum, selection and evaluation criteria, tender rules and calendar
- Evaluation report of bid proposals
- Negotiate closing
- Final report on transaction closing

8°) Length of assignment

It is estimated that the assignment will last approximately [] months. It is acknowledged that the assistance during the tender process, evaluation of proposals and negotiation will be adjusted according to progress in the award process.