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**INSTRUCTIONS TO REQUEST OPINION WITH RESPECT TO ECONOMIC COMPETITION BEFORE THE FEDERAL TELECOMMUNICATIONS INSTITUTE TO TAKE PART IN THE INTERNATIONAL TENDER NO. [XX] WHOSE AIM IS TO AWARD A PUBLIC-PRIVATE PARTNERSHIP PROJECT FOR THE INSTALLATION AND OPERATION OF THE SHARED WHOLESALE NETWORK (RED COMPARTIDA)**

**INSTRUCTIONS** for Economic Entities that require an opinion with regard to economic competition before the Federal Telecommunications Institute to take part in the INTERNATIONAL BID NO. \_\_\_\_\_ TO AWARD A PUBLIC-PRIVATE PARTNERSHIP PROJECT AS PER THE PUBLIC-PRIVATE PARTNERSHIP ACT, FOR THE INSTALLATION AND OPERATION OF THE PUBLIC TELECOMMUNICATIONS SHARED NETWORK REFERRED TO IN THE SIXTEENTH TRANSITORY ARTICLE OF THE EXECUTIVE ORDER, THROUGH WHICH SEVERAL PROVISIONS IN ARTICLES 6TH., 7TH., 27, 28, 73, 78, 94 AND 105 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES GET AMMENDED AND ADDED ON THE SUBJECT OF TELECOMMUNICATIONS, PUBLISHED IN THE DAILY GAZETTE OF THE FEDERATION ON JUNE 11, 2013, PROVIDING THE USE OF THE SPECTRUM FREQUENCY BAND THAT INCLUDES SEGMENTS FROM 703 TO 748 MHz AND FROM 758 TO 803 MHz, WITH A TOTAL OF 90 MHz AT A DOMESTIC LEVEL, UNDER THE LEASE SCHEME, AND A COUPLE OF FIBER OPTIC WIRES OF THE BACKBONE REFERRED TO IN THE FIFTEENTH TRANSITORY ARTICLE OF THE EXECUTIVE ORDER THEREOF (Instructions).

These instructions are issued by the Federal Telecommunications Institute (Institute) pursuant to provisions in articles 28, paragraphs fifteenth and sixteenth, of the Political Constitution of the United Mexican States (CPEUM - for its acronym in Spanish); 5, first paragraph, 12, subsection XIX, and 98, of the Federal Economic Competition Law (LFCE for its acronym in Spanish); 38, 39, second paragraph, and 41, third paragraph, of the Public-Private Partnership Law (LAPP for its acronym in Spanish); 51, fifth paragraph, 122, subsection III, and 123, of the Regulatory Provisions of the Federal Economic Competition Law for the Telecommunications and Broadcasting Sectors (Regulatory Provisions); and 1, 4, subsection V, item vi), 46 and 50, subsection VI, of the Organic Law of the Federal Telecommunications Institute.

For the effects of these instructions, those who are interested in participating shall be deemed Economic Entities, until the Economic Interest Group has been defined, under the terms of article 3, subsection I, of the Federal Economic Competition Law.

The Economic Entities who wish to take part in the Bid shall meet the following requirements:

- 1) Send a request for opinion document (Request for Opinion) to the Institute's Economic Competition Department as per articles 98 of the LFCE and 123 of the Regulatory Provisions, attaching the information and documentation described in the questionnaire herein included. (Questionnaire.)
- 2) The interested Economic Entities shall submit the Request for Opinion on the dates provided in the rules of the Competitive Bidding.
- 3) Both, the complete information and documentation aforementioned are indispensable requirements to start the opinion procedure before this authority.

Not submitting any of the elements requested, will prevent this authority from beginning the procedure, and may hinder or stop the analysis of the competition set forth in articles 58, 59, 63 and 64, of the LFCE; and 5, 6, 7 and 8, of the Regulatory Provisions.

- 4) In the event the Economic Entities do not submit the information and documentation provided in these Instructions and Questionnaire, or fail to comply with any of the requirements in article 123 of the Regulatory Provisions, the Institute, as per article 98, subsection II, of the LFCE, shall issue a warning notice within the next ten business days upon submittal of such request.

The Economic Entities shall respond to the warning notice, within the next ten business days upon notification of such warning. In case the Economic Entities fail to submit either the information or the documentation required, as per the warning notice, or these are incomplete, the Request for Opinion shall be deemed not filed, pursuant to article 98, subsection II, of the LFCE.

- 5) The Institute shall issue a notice of acceptance of the Request for Opinion within the next ten business days upon submittal of such request, should the Economic Entities submit the complete information and documentation herein requested; or notice

through which the missing information or documentation shall be deemed filed within the next ten business days upon response to the warning notice.

- 6) The Economic Entities shall submit the information and documentation in Spanish, and may submit it in a different language only if a translation into Spanish, by an expert translator, of the key aspects the entities may deem suitable respectively, is provided; though the Institute may request the Economic Entities for additional or full translation into Spanish by an expert translator when appropriate. The Institute shall not take into consideration documents written in languages other than Spanish.

Should the information or documents be submitted in languages other than Spanish, translations and additions thereof by an expert translator shall be at the expense of the due Economic Entity. In the event the Economic Entity does not submit the additional translation requested by the Institute, the documents shall be deemed not filed.

- 7) In addition to submitting the information and documents in writing, the Economic Entities shall electronically submit them in a portable storage device (USB or CD) in open format applications such as Spreadsheet and/or Word Processor. Electronic file names shall fully match those in the printed documents.
- 8) False information or documentation shall result in penalty of perjury, as set forth in articles 121 and 127, subsection III, of the LFCE; 193, of the Regulatory Provisions; as well as other penalties provided in the applicable legislation.
- 9) The Request for Opinion shall be submitted to the Institute's Filing Desk in business days, from 9:00 to 18:00 hours, at the following address:

**Insurgentes Sur 1143, Col. Nochebuena, Delegación Benito Juárez,  
México, D.F. C.P. 03720.**

- 10) The submittal of the information and documentation hereinabove does not bind the Institute to render a favorable opinion to the requester.
- 11) Pursuant to article 125 of the LFCE, the information and documentation submitted by the Economic Entities, may be classified as confidential when advised to do so: they will need to certify that such information and documentation are of such nature, and submit an abstract of the information at the Institute's satisfaction, so that the

dossier may be explanatory, or if applicable, the rationale for not submitting such abstract, in which case the Institute may perform the due abstract.

- 12) Confidential information shall be defined as such that, when disclosed, could cause damage or harm the competitive position of the information provider, contain personal data whose disclosure requires its consent, put its security at risk or when it is banned through legal provisions. In this last assumption, it must be certified why the information must comply with this legal assumption appealed for. Information found in public registries or public access sources (internet, public registries of property and commerce, etc.) shall not be deemed confidential.
- 13) Questions and clarifications in relation to these Instructions and Questionnaire shall be addressed by the Institute's General Directorate of Concentrations and Concessions. Please call 5015-4047, during business days and hours.

The Economic Entities shall hereunder submit the information and documentation provided in the following Questionnaire.

PRELIMINARY DRAFT

## QUESTIONNAIRE

### 1. GENERAL DATA AND CORPORATE INFORMATION

- 1.1. Name or corporate name and nationality of requester (Requester) and, if appropriate, name of each individual or corporation forming a consortium (Consortium, as defined in the rules of the Competitive Bidding.)<sup>1</sup>
- 1.2. Name of the legal representative of the Requester, and notarial certificate or certified copy of the document or instrument containing the representation powers in conformance with the formalities set forth in the applicable legislation, which shall credit his/her capacity, domicile in Mexico City to hear and receive notifications and individuals authorized under the terms of the second and third paragraphs in article 111 of the LFCE, as well as phone number, e-mail address and other data that may facilitate quick contact.

In the case of a Consortium, the individuals involved shall appoint a representative and a common domicile, as well as common authorized individuals, for the effects of the above paragraph.

- 1.3. Simple copy of the Articles of Incorporation and, if applicable, of the recent reforms to the bylaws of the Requester, or, if appropriate, of each of the individuals/corporations of the Consortium in the Bid. In addition, in conformance with the Information for Bidders, the consortium must be registered under a public deed;
- 1.4. In the case of Consortiums, the common representative shall describe the following in detail:
  - a) The legal concept to be adopted by the Consortium, the management process thereof, and the activities to be carried out during the Bid and, if the case may be, upon awarded;

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<sup>1</sup> **Consortium:** group of Mexican and/or foreign individuals or corporations acting as only one Bidder through a common representative, and the execution of a Consortium Contract for such purpose, provided that, if the Consortium wins and gets awarded with the PPP Contract, the members of the Consortium shall incorporate a Corporation with Express Purpose so that the PPP Contract may be executed between such Corporation and the Calling Agency.

- b) The activities of each of the individuals/corporations of the Consortium, as well as their roles therein;
  - c) Any type of agreement, contract, or formal or informal assignment of obligations and rights to each of the individuals/corporations in the Consortium; as well as the process to demand full compliance therewith;
  - d) How individuals/corporations in the Consortium will relate to each other, for the effects of the Bid, pursuant to such agreements or contracts;
  - e) How individuals/corporations in the Consortium will aim to fulfill their rights and obligations derived from the Bid, in the event they get awarded;
  - f) Information and cooperation rules among the individuals/corporations of the Consortium to take part in the Bid; and
  - g) How they shall obtain funding to fulfill the obligations and guarantees derived from probable defaults, set forth in the Information for Bidders.
- 1.5. Description of the capital stock structure of the Requester or, if applicable, of the Consortium and each of the individuals/corporations therein, whether these are Mexican or foreign partnerships.

In the case of the Consortium, the certification of the capital stock and the current stock structure of each of the individuals/corporations therein, may be submitted. This document shall be issued by the Chair of the Board of Directors, Sole Administrator, or authorized person.

Indicate shares percentage for each of the direct or indirect partners or shareholders, for the Requester, up to the level of individuals bearing 5% of shares or more. At a last resort, indicate the individuals/corporations with majority ownership versus the Requester. If applicable, submit this information to the Consortium and to each of the individuals/corporations in the Consortium.

For each of the corporations mentioned in your response to the paragraph above, specify kinship, consanguinity or affinity, and those who are directly or

indirectly involved in the telecommunications or broadcasting sectors in México.<sup>2</sup>

- 1.6. With respect to the Requester or the Consortium, and each of the individuals conforming the Consortium, as well as the individuals or corporations, indicated in item 1.5, provide the following information for each of them:
  - a) Corporate purpose, activities performed, and products and services they provide.
  - b) Direct and indirect shareholding, whether majority or minority, they may have with other partnerships. Regarding the latter, indicate name or corporate name; describe corporate purpose, and economic activities actually performed; products and services offered, as well as concessions and permits granted by the federal government.

Submit corporate flowchart(s) showing the relationship between the Requester or, if applicable, each of the individuals/corporations of the Consortium, the individuals mentioned in item 1.5, and the partnerships they are involved with.

- 1.7. Specify if the Requester, or whether each of the individuals/corporations of the Consortium, as well as the individuals mentioned in items 1.5 and 1.6, are part of some economic interest group. If so, provide the group description, specifically:
  - a) Horizontal and vertical shareholding, operation, commercial relationships among the individuals/corporations involved;
  - b) The economic activities each member carries out abroad and in Mexico; and
  - c) A detailed description of the products or services offered.

In addition, provide a corporate flowchart illustrating the information required in item a) above, specifying direct or indirect shareholding of all individuals and corporations who are members of the economic interest group identified.

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<sup>2</sup> Regarding kinship, consanguinity or affinity, these shall be up to the fourth degree.

- 1.8. Specify if the individuals or corporations, partnerships, members or shareholders referred to in items 1.5, 1.6 and 1.7, have corporate business, commercial, organization, economic or judicial ties with individuals or partnerships, which are currently directly or indirectly involved in providing services to the telecommunications and broadcasting sectors. If so, state the main terms and provide relevant information and documentation to clearly understand each of those ties.

Specially identify, if appropriate, the existence of such ties with the predominant economic entity in the broadcasting sector<sup>3</sup> or with the predominant economic entity in the telecommunications sector.<sup>4</sup>

- 1.9. Regarding the holding companies and the individuals/corporations, which are currently involved directly or indirectly in the provision of services in the telecommunications and broadcasting sectors, identified in items 1.5, 1.6 and 1.7, during last year, specify:
- a) Date of appointment, position and duration therein, of the members of the General Shareholders Meetings, and Board of Directors, as well as the main directors;

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<sup>3</sup> For further information on such group, refer to the *Resolution through which the Full Session of the Federal Telecommunications Institute defines the economic interest group, the following belong to: Grupo Televisa S.A.B., Canales de Televisión Populares. S.A. de C.V., Radio Televisión, S.A. de C.V., Radiotelevisora de México Norte. S.A. de C.V., T.V. de los Mochis, S.A. de C.V., Teleimagen del Noroeste. S.A. de C.V., Televimex. S.A. de C.V., Televisión de Puebla, S.A. de C.V., Televisora de Mexicali, S.A. de C.V., Televisora de Navojoa. S.A., Televisora de Occidente. S.A. de C.V., Televisora Peninsular, S.A. de C.V., Mario Enriquez Mayans Concha, Televisión La Paz, S.A., Televisión de la Frontera, S.A., Pedro Luis Fitzmaurice Meneses, Telemisión, S.A. de C.V., Comunicación del Sureste. S.A. de C.V., José de Jesús Partida Villanueva, Hilda Graciela Rivera Flores, Roberto Casimiro González Treviño, TV Diez Durango, S.A. de C.V., Televisora de Durango, S.A. de C.V., Corporación Tapatía de Televisión. S.A. de C.V., Televisión de Michoacán. S.A. de C.V., José Humberto y Loucille, Martínez Morales, Canal 13 de Michoacán, S.A. de C.V., Televisora XHBO, S.A. de C.V., TV Ocho. S.A. de C.V., Televisora Potosina. S.A. de C.V., TV de Culiacán, S.A. de C.V., Televisión del Pacífico, S.A. de C.V., Tele-Emisoras del Sureste. S.A. de C.V., Televisión de Tabasco. S.A. and Romana Esparza González, as a predominant economic entity in the broadcasting sector, setting up the necessary measures to prevent impact on the competition and unrestricted competition," whose public version is available at [www.ift.org.mx](http://www.ift.org.mx) webpage.*

<sup>4</sup> For further information on such group, refer to the *Resolution through which the Full Session of the Federal Telecommunications Institute defines the economic interest group, the following belong to: América Móvil, S.A.B. de C.V., Teléfonos de México, S.A.B. de C.V., Teléfonos del Noroeste, S.A. de C.V., Radiomóvil Dipsa, S.A.B. de C.V., Grupo Carso, S.A.B. de C.V., and Grupo Financiero Inbursa, S.A.B. de C.V., as a predominant economic entity in the telecommunications sector, setting up the necessary measures to prevent impact on the competition and unrestricted competition," whose public version is available at [www.ift.org.mx](http://www.ift.org.mx) webpage.*

- b) If such members or executives are also part of the General Shareholders Meetings, or Board of Directors, or are General Managers of other companies, if so
- c) Specify the corporate name of such companies and the economic interest group they belong to; and
- d) If such companies are directly or indirectly involved in the provision of services in the telecommunications and broadcasting sectors, indicate the services provided and the geographic areas covered.

Specify, in particular, if applicable, if they count on executives or members of decision bodies, General Shareholders Meetings, Board of Directors, or any equivalent body, that they are also executives or members of decision bodies (interlocking directorates and advisors) of the predominant economic entity in the broadcasting sector, or predominant economic entity in telecommunications.

- 1.10. Submit individual and consolidated financial statements for each of the last three years, of the holding companies of the Requester as a last resort and, if applicable, of the holding companies as a last resort, of each of the individuals/corporations of the Consortium. Include annexed notes to such documents.
- 1.11. Describe the structure of the current debt of the Requester stating main creditors and total debt interest amount. In the case of a Consortium, submit the information of each of the individuals/corporations, whether these are Mexican or foreign partnerships.

Submit the same information requested in this item for the holding companies as a last resort, and for the individuals/corporations, who are currently, directly or indirectly, involved in the provision of services in the telecommunications and broadcasting sectors identified in items 1.5, 1.6 and 1.7.

- 1.12. In the event there are purchase/sale transactions, exchange of shares, convertible debt into equity or any other transaction involving procurement, or when control is exerted, directly or indirectly, in fact and by right, over the Requester or over one or more individuals/corporations in the Consortium; or when buying assets, shares upon trusts, partnership interests or shares, directly

and indirectly, in fact and by right over the Requester or such individuals/corporations, submit:

- a) Copy of the contracts or agreements executed among the parties involved;
- b) An abstract stating the terms of the contracts or agreements;
- c) The shares or securities percentage to be purchased, in relation to the capital stock;
- d) Terms and amounts or purchase price;
- e) Name or corporate name of the purchasing company, as well as that of direct and indirect shareholders;
- f) Shareholding structure that shall result, at a last resort, from the transaction(s) abovementioned.

Submit the same information requested in this item for the holding companies as a last resort, and for the individuals/corporations, who are currently, directly or indirectly, involved in the provision of services in the telecommunications and broadcasting sectors identified in items 1.5, 1.6 and 1.7.

The Requester, or each of the individuals/corporations in the Consortium, and the individuals, partnerships, members or shareholders identified in items 1.5, 1.6, 1.7 and 1.8, including those who are part of the economic interest groups listed, shall be hereinafter known as **the Economic Entities Involved/Related**.

## 2. PRODUCTS AND MARKETS INFORMATION

### Information on the Project, subject matter of the Competitive Bid

- 2.1. Submit a copy of the business project, or related documents generated by the Economic Entities Involved/Related, to carry out the project, subject matter of the Bid. Specifically, describe in detail:
- a) Investment provided for the installation of the necessary infrastructure, commissioning and operation of the *Red Compartida*; include amounts and terms of such investment;
  - b) Funding sources;
  - c) The average capital cost per funding source;
  - d) The operating expenses including administration and maintenance costs, in an annual basis;
  - e) Domestic and foreign suppliers;
  - f) Current and potential competitors;
  - g) Return on investment terms to start making profit;
  - h) Efficiency earnings foreseen; and
  - i) Profit planning derived from this activity. Describe type and amount of potential clients identified, yearly expected return, market share and time-frame provided to obtain all these earnings.
- 2.2. Specify if the Economic Entities Involved/Related have executed service level contracts or agreements with other Economic Entities involved in the telecommunications and/or broadcasting sectors. If so, state the relevant terms from such contracts and agreements, including purpose and scope, as well as the technical and operational characteristics. Submit a copy of such proceedings.

2.3. Provide the estimated infrastructure investment, as well as the time frame and equipment required, and the yearly operating costs, to develop the *Red Compartida*, considering levels of coverage equivalent to 25%, 55%, 85%, 90% and 95% of the total domestic aggregate population.

**Participation in the telecommunications and broadcasting sectors**

2.4. Identify the concessions and licenses each of the Economic Entities Involved/Related hold, which were granted by the federal government.

Use the following table for your response:

	Name of concessionaires or licensees	Shareholding Structure	Concessions and licenses	Coverage area and services authorized
1				

2.5. Identify in which of the following services, equipment and products, the Economic Entities Involved/Related, directly or indirectly participate in the production, sale, marketing or distribution:

- Mobile retail telecommunication services. Including:
  - Mobile telephony services; and
  - Mobile internet access services.
  
- Mobile wholesale telecommunication services. Including but not limited to:
  - Access to individual elements, to a network or services capabilities, including interconnecting services;
  
- Equipment used for the production, sale and distribution of mobile telecommunication products and services. Including, but not limited to:
  - Website leasing –passive infrastructure- for mobile telecommunications;
  - Production and sale of active infrastructure equipment, and connected and not connected services, for mobile telecommunication networks;
  
- Mobile telecommunication products. Including but not limited to:
  - Production and sale of terminal equipment (cellular phones and other devices) for mobile telecommunication services;

2.6. With respect to each of the Economic Entities Involved/Related, indicate the effects expected from each of the services, equipment and products identified in item 2.5, in the event you result being awarded the Project.

2.7. For each of the services, equipment and products identified in item 2.5,

- a) State their characteristics and uses in the telecommunication sector, as well as in other activities. If appropriate, provide the trademarks under which they are marketed;
- b) Specify monthly average prices for each of the last three years;
- c) Submit sales or income value and volume (in current Pesos), number of subscribers, users, or clients, capacity, number of sites, or other indicators that may allow to estimate the market share of each of the Entities Involved/Related and each of their competitors.

The foregoing, for each of the last three years at a domestic level and, if applicable, for each of the locations in which the Entities Involved/Related offer each of the services, equipment and products. Provide the source of information and explain the methodology used regarding the data submitted.

- d) Identify the top 20 (twenty) clients and the income generated on an individual basis, as well as their contribution (in percentage) to the total income derived from the sale of each of the services, equipment and products;
- e) Describe the stages which make up the production chain of each of the services, equipment and products, as well as the raw material used for their manufacturing, and submit breakdown in relation to total production costs (monetary value and percentage).

Likewise, mention access conditions and restrictions found by the economic entities to purchase them. State how often long term supply contracts have to be executed.

Provide main suppliers and demanders in Mexico for each of the stages. Describe in detail in which of these activities the Entities Involved/Related are involved.

- f) Specify the location of the facilities of the Entities Involved/Related, the location of their main distribution centers and the type of relationship they have with such economic entities.
- g) Describe the installed capacity and the level of use by the Entities Involved/Related, and if applicable, the installed and use capacity in the market by those operated by competitors.
- h) State the investment amount a new competitor would require to start operations and provide each of the due services, equipment and products. As a reference, use a facilities size similar to that in which the Entities Involved/Related currently operate.

In addition, specify the time it would take that new competitor to enter the market; consider the following phases: planning, design, time to obtain government permits, construction and refurbish of facilities, operation, startup of operations, marketing, testing time period to meet customer requirements and distribution and final marketing; mention the phases that may overlap.

- i) Describe the distribution channels used by the Involved/Related Entities for the marketing of each of the services, equipment and products, and submit sales breakdown per channel. State the means of transportation used; lead times; sales conditions and methods of payment, as well as logistic hindrances in the distribution.

Specify if there are corporate ties, or ties between interlocking directorates and advisors of the economic entities involved and their distributors. Likewise, mention if there are exclusive agreements and how often the Entities Involved/Related and their competitors execute them for distribution and marketing purposes.

- j) Describe the importance of brands, and marketing of such brands in terms of the economic entities capability to compete by providing each of the

services, equipment and products; Specify the amount and percentage of marketing expenses allocated by the entities in relation to sales.

In addition, submit brand recognition and importance surveys, as well as the consumers' reaction towards such recognition and importance.

- k) Specify if there are exclusive agreements for the production, distribution and/or marketing of services, equipment and products. If applicable, state the main terms and provide a copy of at least three of the most recent agreements with different clients or suppliers.
- l) Name the suppliers who have entered or left the markets, to which each of the services, equipment and products belong, during the last 5 years.
- m) If appropriate, specify the substitutes for each of the services, equipment and products. Provide the following information regarding such substitutes:
  - i. Characteristics, uses and other elements which may be relevant to complete such substitution;
  - ii. Monthly average prices during the last three years.
  - iii. Sales value and volume data, number of subscribers, capacity and other indicators that may allow to estimate the market share, per economic entity and economic group at a domestic level or, if applicable, in each of the relevant locations.

Specify the source of information.

- n) Define if the Entities Involved/Related are members of Chambers and Associations; if so, mention the type of information exchanged among them.
- o) Describe the regulatory requirements and proceedings for the production, installation or provision of services, equipment and products.

2.8. Provide the following information, besides the information required in item 2.7, in case the Entities Involved/Related offer Mobile retail telecommunication services:

For radio-electric spectrum frequency concessionaires:

- i. Amount of radio-electric spectrum (MHz) granted in each of the geographic coverage areas in the national territory; and the type of services authorized, as well as those actually provided in such areas;
- ii. The individual(s)/corporation(s) operating the concession(s) and the economic interest group those operators belong to.

If services are provided as a Marketing Company, as per defined in the LFTR:

- i. Authorization and expiration date;
- ii. Acquisition capacity in each of the geographical coverage areas in the national territory; and, the type of services actually provided in each of them.
- iii. Submit contract or contracts through which it acquires concessionaire capacity. Describe the relevant terms therein, and specifically indicate if there are exclusivity conditions set forth.
- iv. Monthly acquisition rates or prices per type of service, from the beginning of supply up to date.

PRELIMINARY DRAFT