

Draft Auction Regulation for the Granting of Frequencies Rights of Use in the frequency bands 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 2,1 GHz and 2,6 GHz

CHAPTER I General Matters

Article 1 Object

- 1 - The object of this regulation is the granting of rights of frequency use in the following frequency bands:
 - a) 455,80625 – 457,45 MHz / 465,80625 – 467,45 MHz (450 MHz);
 - b) 790 – 862 MHz (800 MHz);
 - c) 880 – 890 MHz / 925 – 935 MHz (900 MHz);
 - d) 1710 – 1740 MHz / 1805 – 1835 MHz (1800 MHz);
 - e) 1900 – 1910 MHz (2,1 GHz);
 - f) 2500 – 2690 MHz (2,6 GHz).

- 2 - Granting of frequency rights of use are intended for the provision of publicly available terrestrial electronic communication services, not constrained by the use of a specific technology, without prejudice of the constrains identified in the Radio Regulation of International Telecommunication Union (ITU) as well as in the National Frequency Allocation Plan (NFAP).

Article 2 Definitions

For the purposes of this regulation, the following definitions are adopted:

- a) **Category:** group of lots with similar characteristics within the same frequency band;

- b) **Allocation Stage:** stage which includes the assignment of the rights of frequency use, publication of the results, deposit of the final amount and issuance of the enabling titles;

- c) **Assignment Stage:** stage where the winning bidders from the distribution stage choose the exact location of the acquired lots, within each frequency band, subject to the condition that all the lots won by all the winning bidders in each category are contiguous;
- d) **Distribution Stage:** stage where bidders may submit their bids for the lots in each category. This stage determines, after consecutive sequences of bids of ascending price, how many lots within each category are allocated to each winning bidder, as well as the final prices to be paid for each lot;
- e) **Qualification Stage:** initial stage of the auction, which establishes the entities participating in the next stages of the auction (bidders);
- f) **Increment:** minimum variation, fixed by the Board of ICP-ANACOM, to be added to the best offer of the previous sequence, calculated as a percentage of the reserve price of each lot;
- g) **Spectrum caps:** maximum amount of spectrum that can be acquired by each winning bidder in some categories;
- h) **Lot:** object subject to bidding which corresponds to a pre-defined quantity of radio spectrum;
- i) **Best Offer:** highest bid amount submitted in each sequence;
- j) **Bid Amount:** amount included in the bid which corresponds to the maximum value that the bidder is willing to pay for the allocation of a given lot in a given sequence, formulated in multiples of tens of thousands of euro;
- k) **Reserve price:** minimum amount to be paid for the allocation of rights of use of a given lot;
- l) **Lot price:** amount established for each lot which, in the first sequence, corresponds to the reserve price, and in the following sequences, if existing, corresponds to the best offer of the previous sequence added by the increment;
- m) **Final Price:** corresponds to the best offer of the last sequence in which valid bids were submitted for a given lot;

- n) **Round:** corresponds to the whole set of categories with available lots which are subject to a number of consecutive sequences;
- o) **Sequence:** set of submitted bids for each lot of a given category, during a given period of time, where all such bids have the same lot price, which must correspond to the minimum bid amount. .

Article 3 Applicable legislation

- 1 - This auction is governed by the provisions of Law 5/2004, of February 10, of the Decree-Law 151-A/2000, of July 20, and by this Regulation.
- 2 - The rights of use for frequencies are governed by the provisions of Law 5/2004, of February 10, by this Regulation, and also by all the other legislation applicable to the electronic communications sector.
- 3 - The holders of rights of use for frequencies must comply with the legal orders that may be approved in the future, even if these define obligations not foreseen or specified at the date of granting of the rights of use, but execution objectively result from requirement of public use of the service provided compliance to the regime specified in article 20 of Law 5/2004, of February 10.
- 4 - The holders of rights of use must also comply with orders or injunctions that, in accordance with law, are imposed upon them by the competent authorities.

Article 4 Board

- 1 - The auction is carried out by ICP-ANACOM, its Board being responsible for conducting the respective procedure.
- 2 - The Board of ICP-ANACOM, hereinafter referred to as “the Board”, has the following responsibilities:
 - a) To grant the applicants a maximum period of 24 hours to rectify any omissions or mistakes found in their application whenever they can be rectified
 - b) To decide on any complaints presented to it during the auction, suspending the act when necessary;

This is an unofficial translation of the rules for the forthcoming Portuguese auction.
Please note that the legally binding text is the original Portuguese version only.

- c) To assess the validity of all the bids received and determine the winning bidders given the terms of this regulation;
- d) To decide on the modification of dates and terms of the different stages of the auction in the event of special circumstances;
- e) To ask applicants or bidders for clarifications at any stage of the auction;
- f) To exclude a bidder, whether or not it has been named as winner, in the event of infringement of the rules of this auction or of practices of collusion;
- g) To validate the choices of the bidders during the assignment stage, given the terms of clause 5 of article 22.

Article 5 Clarification to be provided

- 1 - The applicants and bidders undertake to present, before the Board, all explanations requested from them, within the time period and by the means, both determined by the Board.
- 2 - Non-compliance with the provisions of the previous clause shall result in the exclusion of that applicant from the auction, except in cases that are duly justified by the applicant and accepted by the Board.

CHAPTER II The Auction

Section I

Auction model, lots and reserve prices

Article 6 Auction model and stages

- 1 - The auction model is ascending, sequential and open.
- 2 - For the purpose of the provisions of the previous clause, the auction model is:
 - a) Ascending, meaning that the price lot in each sequence is increased;
 - b) Sequential, meaning that the lots are available for bidding in a sequence;

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- c) Open, meaning that information about the best offer in each sequence is available to all bidders, however the identification of each bidder is not revealed;
- 3 - The auction is supported by an electronic platform, and runs a maximum of two rounds.
- 4 - The auction is composed of the qualification stage, distribution stage, assignment stage and the allocation stage.

Article 7 **Available lots and reserve prices**

The categories, available lots and respective reserve prices are identified in the following table:

Categories	Available lots	Number of lots	Reserve prices per lot (millions of euro)
A	455.80625 - 457.45 MHz 465.80625 - 467.45 MHz	1 lot of 2 x 1.25 MHz	2
B	791-821 MHz 832-862 MHz	6 lots of 2 x 5 MHz	55
C	880-890 MHz 925-935 MHz	2 lots of 2 x 5 MHz	30
D	1710-1740 MHz 1805-1835 MHz	6 lots of 2 x 5 MHz	3
E	1900-1910 MHz	2 lots of 5 MHz	2
F	2500-2570 MHz 2620-2690MHz	14 lots of 2 x 5 MHz	3
G	2570-2595 MHz	1 lot of 25 MHz	3
H	2595-2620 MHz	1 lot of 25 MHz	3

Article 8 Spectrum caps

- 1 - No *spectrum caps* are imposed, except for categories B, C and F, where the following *caps* apply:
 - a) For category B, the spectrum cap is defined as 2 x 10 MHz;
 - b) For category C, the spectrum cap is defined as 2 x 5 MHz for bidders which already provide publicly available terrestrial mobile service (MS) and who hold rights of frequency use in the 890 - 915 MHz / 935 – 960 MHz band, and as 2 x 10 MHz for the remaining bidders;
 - c) For category F, the spectrum cap is defined as 2 x 25 MHz.
- 2 - Each one of the caps defined in the previous clause is applicable to bidders individually, or to a group of bidders in case there is a direct or indirect control or significantly influence between those bidders, assessed by the terms of the "*Código dos Valores Mobiliários*".

Section II Qualification Stage

Article 9 Requirements for the applicants

- 1 - Legal entities, constituted or to be constituted, that comply with the requirements set forth by Article 19 of Law 5/2004 of February 10, may apply for the granting of the rights of use that are the subject of this regulation.
- 2 - Entities yet to be constituted may also apply provided that they have a provisional identification card. The respective enabling title is, in the event of granting the right of use for frequencies, only to be issued after presenting a certificate that proves that the necessary registrations have been made.

Article 10 Provisional Deposit

- 1 - To safeguard the commitment assumed with the submission of the applications and the obligations inherent to the auction, applicants shall provide a provisional deposit,

the amount of which depends on the categories where they intend to submit bids, in the following terms:

- a) To allow bid submission in categories A, E, G, or H, the amount of the deposit corresponds to one million euro, *per* category;
 - b) To allow bid submission in all the categories, the amount of the deposit corresponds to twenty million euro.
- 2 - Applicants may only submit bids that are allowed by the amount deposited, in accordance with the terms of the previous clause.
 - 3 - Bidders should clarify whether the provisional deposit is provided for purposes of provisions a) or b) of clause 1, and, should the former be the case, indicate the number of categories that the provisional deposit intends to cover, without identifying the categories.
 - 4 – The provisional deposit referred to in clause 1 can either take the form of a bank guarantee or a deposit insurance to the order of ICP–ANACOM, which in either case must be duly documented.
 - 5 - For winning bidders, the provisional deposit is released when the final amount is deposited.
 - 6 - The provisional deposit is released by ICP-ANACOM within 5 working days, exclusively in the following cases:
 - a) When the application has not been admitted;
 - b) When the bidder has not been determined as a winning bidder at the end of the distribution stage;
 - c) When the winning bidder has deposited the final amount, in the terms of article 24.

Article 11 Requests for clarification

- 1 - Interested parties may request, during the period set for the submission of applications, and up to 3 working days before the period ends, clarification of any queries regarding the interpretation of any document constituting the auction process.

- 2- Requests for clarification should be presented at the public service desk at the headquarters of ICP–ANACOM, on working days between 9 am and 4 pm, in writing, with return receipt requested. Alternatively such requests may be sent by registered letter or, preferably by electronic means, to the email address leilao-multifaixa@anacom.pt, in all cases being addressed to the Chairman of the Board.
- 3 - Clarifications shall be given by the Board by electronic means up to two working days after the date of receipt referred to in the previous clause.

Article 12 **Applications submission deadline and method**

- 1 - Applications must be submitted by written request addressed to the Chairman of the Board of ICP–ANACOM, containing identification of the applicant, a reference to these regulations, the date, and the applicant's signature.
- 2 - The application must be submitted in a closed envelope, bearing the applicant's name.
- 3 - The application shall be written in Portuguese.
- 4 - The applications shall be delivered to the public service desk at the headquarters of ICP–ANACOM, with return receipt requested, on working days between 9 am and 4 pm.
- 5 - The deadline for delivery of the applications shall end 10 working days after the coming into force of this auction regulation, and delivery may not be accepted after this period has elapsed.

Article 13 **Items to be submitted with the application**

- 1 - Applicants must present in a close envelope, separate/autonomous from that which contains the application in the terms of the previous clause, the following documents and items:
 - a) A declaration signed by the entity that has powers to bind the applicant, recognised as such in the legally admitted terms, explicitly containing the acceptance of the conditions of the auction and compliance with the obligations

arising from the application and the respective bids in the event of granting of rights of use.

- b) Certification of the registry and enrolment, currently valid, issued by the relevant Trade Register, or reference to the code that enables access to the permanent certificate of the applicant in terms that allow the verification of the corresponding elements.
- c) A non-authenticated copy of the respective by-laws or articles of association.
- d) A document proving that the provisional deposit has been made in accordance with the terms of article 10.
- e) Documents proving that it is up to date with social security contributions and taxes, or consent, in the terms provided by law, for ICP–ANACOM to consult the applicant's tax and contribution situation.
- f) A declaration signed by a person with powers to bind the applicant, recognized as such, appointing a maximum of two people to submit bids in his name and on his behalf, as well as the respective electronic and phone number contacts.
- g) For the purposes of clause 2 of article 8, applicants should specifically indicate the identities of the holders - private individuals or legal entities - of the applicant's capital stock, as well as the amounts they hold; if one or any of the partners is a legal entity, the same information should be provided.

2 - The entities referred to in clause 2 of article 9 are exempt from submission of the documents specified in sub-items b), c) and e) of clause 1, and must present:

- a) A protocol binding the constituent parties to each other, with the respective signatures recognized in the terms admitted by law, in which there is an explicit statement of acceptance of the conditions of the auction and compliance with the obligations arising from the act of application and from the respective bids, in the event of allocation of rights of use.
- b) Draft by-laws/articles of association, to which the constituents are bound.
- c) Provisional identification card.

- 3 - The entities referred to in the previous clauses must explicitly indicate the postal and email address to which they wish all correspondence in relation to the auction to be sent.
- 4 - Companies whose acts of constitution have taken place 90 working days before the date of submission of the application are exempt from the requirement referred to in sub-item e) of clause 1.
- 5 - Documents presented by an applicant whose headquarters are outside the territory of Portugal shall be issued and authenticated by the competent authorities of the origin country or, if there is no document identical to the one required, it may be substituted by a statement made under oath by the applicant before a court or administrative authority, notary or other competent authority of the origin country.
- 6 - All the documents that accompany the application shall be written in Portuguese or otherwise shall be accompanied by a duly certified translation in relation to which the applicant declares that he accepts its primacy, for all purposes, over the respective originals.
- 7 - All documents presented by the applicants that accompany the application will not be returned, remaining in the possession of ICP–ANACOM.

Article 14 Assessment of the applications

The Board shall verify, within 2 working days from the deadline for the submission of the applications, compliance with the requirements set by articles 9, 10, 12 and 13.

Article 15 Admission and exclusion of applications

- 1 - It is the responsibility of the Board of ICP–ANACOM to decide on admission or exclusion of the applications.
- 2 - Applications may be rejected if they do not comply with the provisions of articles 9, 10, 12 or 13.
- 3 - ICP–ANACOM shall notify via electronic means or by protocol, within 24 hours, all applicants of their admission or exclusion from the auction, providing information to

the admitted applicants regarding the starting date of the distribution stage, which may take place at the first working day after the referred notification.

Section III Distribution Stage

Article 16 Bidding process

- 1 - In this stage bidders may submit bids distributed along the eight categories defined in clause 7, through an anonymous, open and transparent procedure,
- 2 - This stage consists of either one or two rounds, and aims at allocating the lots referred to in the previous clause.
- 3 - The bidding procedure is supported by an electronic platform, the terms and conditions of which, regarding both access and use, will be communicated together with the notification referred to in clause 3 of previous article.
- 4 - In case of technical problem with the electronic platform that precludes the possibility of proceeding with the bidding process, the Board may make available an alternative mean for conveying the bids, with the necessary adaptations/changes while respecting the rules.
- 5 - ICP-ANACOM is not responsible for the technical problems imputable to the bidder's equipments or systems, which does not allow them to access/use the platform.

Article 17 Rounds and Sequences

- 1 - The first round begins with the unique lot of category A, and then, lot by lot, evolves through the following order of categories: B, C, D, E, F, G and H.
- 2 - A second round will take place whenever lots remain available after the end of the first round.
- 3 - Bidders are informed of the starting, duration and lot price, for each sequence.
- 4 - The bid amounts submitted during the first sequence for each lot must be greater than or equal to the reserve price defined for that lot.
- 5 - The first sequence ends:

- a) When no bids are submitted, in which case the lot remains available and the first sequence for the lot of the next category is started, when applicable.
 - b) When only one bid is submitted, in which case the lot is won at the amount bid and the first sequence of the following lot starts.
 - c) When more than one bid is submitted, in which case a second sequence takes place.
- 6 - Only bidders which have submitted bids in the first sequence can participate in the second sequence, and the bid amounts must equal, at least, the best offer of the previous sequence added by the increment.
- 7 - For the following sequences the process continues according to the procedure described in the previous clause until a bidder is determined winner, in which case this bidder wins the lot at a price equal to his last submitted bid amount.
- 8 - Bidders who have won lots in category B in any given round must submit bids to the same number of lots in category F, during the same round.

Article 18 Duration of sequences

- 1 - Each sequence will last 3 minutes.
- 2 - The Board may, for technical reasons, increase the duration of each sequence, informing the bidders of that change.

Article 19 Increment

- 1 - From the second to the fourth sequence of a given lot, the increment corresponds to 10% of the reserve price for that lot for all the categories, except for category B in which the increment corresponds to 5% of the reserve price.
- 2 - From the fifth to the ninth sequence, the increment corresponds to 20% of the reserve price for that lot for all categories, except for category B in which the increment corresponds to 10% of the reserve price.

- 3 - From the tenth sequence on, the increment corresponds to 30% of the reserve price for that lot for all categories, except for category B in which the increment corresponds to 15% of the reserve price.

Article 20 Winning Bidder determination

- 1 - A bidder is determined winner whenever, at any given sequence:
 - a) No bid is submitted, in which case the bidder who has submitted the best offer of the previous sequence wins;
 - b) Only one bid is submitted, in which case the bidder that has submitted that bid wins.
- 2 - In the case of sub-item a) of the previous clause, if more than one bidder has submitted a bid amount equal to the best offer, the lot will be won by the bidder who has submitted its bid in the first place.

Article 21 Final amount

The final amount to be paid by a given winning bidder is the sum of the final price of the lots won by that bidder.

Section IV Assignment Stage

Article 22 Assignment Stage

- 1 – In this stage all the winning bidders that have won lots in the distribution stage can choose the exact location of those lots within each frequency band;
- 2 – After the distribution stage the Board produces a list of winning bidders in each category, ranked by the following criteria:
 - a) The highest average final price per lot in that category;
 - b) The highest number of categories where the winning bidder has won lots.

- 3 – For the cases where a tie stands up, a random draw is to be performed, within 24 hours after the end of the distribution stage, and the location, date and hour are fixed and notified by the Board to the winning bidders via electronic means.
- 4 – The winning bidder placed first in the ranking, provided the terms of clauses 2 or 3, has priority when choosing the preferred lots in that category, followed by the others bidders in accordance to the established ranking, until all lots allocated during the distribution stage are chosen.
- 5 - The lots chosen by the winning bidders referred to in this article are validated by the Board, in order to guarantee that all the choices are compatible with a contiguous lot assignment for all winning bidders.

Section V Allocation Stage

Article 23 Final Decision

- 1 - The board approves the final report of the auction, which will be open for comments from all bidders and applicants, according to the terms of article 100 and following of the “Código do Procedimento Administrativo” with a deadline of 10 working days.
- 2 - The Board has the responsibility of approving and deciding, within 2 working days after the period defined at the previous clause, about the assignment of the rights of use to the winning bidders.
- 3 - The decision about the assignment of the rights of use to the winning bidders is communicated within 24 hours to all bidders, via electronic means or by protocol and the results are published on ICP-ANACOM's website.
- 4 - The communication referred to in the previous clause should contain:
 - a) The identification of the winning bidders;
 - b) The number of assigned lots to each winning bidder;
 - c) The frequencies assigned to each winning bidder;
 - d) The final amount to be paid by each winning bidder, which is not subject to VAT;

- e) The deadline to make the final deposit which corresponds to the final amount, fixed in the terms of article 24;
 - f) Copy of the report referred to in clause 1.
- 5 - The act of granting rights of use shall be revoked whenever the entities to which said rights were granted do not comply with the provisions of clause 1 of article 24, without justified grounds, except where duly reasoned grounds are provided and these are recognized as such by ICP-ANACOM.
- 6 - In the situation referred to in the previous clause, the provisional deposit given under article 10 is forfeited in favour of ICP-ANACOM.

Article 24 Final deposit

- 1 - Entities to which rights of use are granted are required, within 2 working days upon receipt of the notice referred to in clause 3 of the previous article, to deposit the final amount in a bank account to be indicated by ICP-ANACOM.
- 2 - Once the deposit has been made, ICP-ANACOM shall carry out the necessary procedures for the release of the provisional deposit made under article 10 within the following 5 working days.

Article 25 Enforcement of the holder of the right of use of frequencies

- 1 - The holders of the rights of use must comply with the terms fixed at article 32, clause 1, sub-items b), c), e), f) and h) of the Law 5/2005, of February 10, namely:
- a) To use the assigned spectrum in an effective and efficient manner;
 - b) Comply with the coverage obligations fixed for the 800 MHz band, according to the terms of article 26;
 - c) Comply with the technical conditions referred to in the annex of this regulations;
 - d) Inform ICP-ANACOM beforehand of any intention to trade the right of use, as well as the conditions of that trade, by the terms of article 37 of the Law 5/2005, of February 10, and by those identified in the NTFA.

- e) To pay the following fees:
- (i) Relating to the exercise of the activity of electronic communications networks and services provider in the terms of article 105, clause 1, sub-item b) of the Law 5/2004, of February 10, and also in the terms set out by Ministerial Order 1473-B/2008 of December 17.
 - (ii) Relating to the granting of rights of use, of an amount to be set by order of the Government member responsible for the area of electronic communications, in the terms of sub-item c) of clause 1 of article 105 of Law 5/2004, of February 10, and which amount is set out by Ministerial Order 1473-B/2008 of December 17.
 - (iii) Relating to the spectrum use, in the terms of article 105, clause 1, sub-item f) of Law 5/2004, of February 10, the terms of article 19 of Decree-Law 151-A/2000, of July 20, republished in the annex of the Decree-Law 264/2009, of September 28, and which amount is set out by Ministerial Order 1473-B/2008, of December 17.
- f) Comply with the conditions set out in the international agreements related to the spectrum use.
- 2 - With regards to the terms of sub-item b) of the previous clause, the coverage obligations may be fulfilled with the 900 MHz band, whether the rights of use for that band have been granted in this auction or previously.
- 3 - The fee amount referred to in sub-sub-item (ii) of sub-item e) of clause 1, takes into account administrative, technical and operational costs, which have been incurred throughout the process leading to the granting of the rights of use.

Article 26

Enforcement of the coverage obligations

- 1 - For the propose of terms of sub-item b), of clause 1 of article 25, each lot of the 800 MHz band carries an associated coverage obligation of a maximum of 60 parishes, which have none or little provision of broadband mobile services, in accordance with the criteria adopted by the operators of the mobile services publicly available.

- 2 - Within one year after the issuance of the title which grants the rights of use for the 800 MHz band, ICP-ANACOM is to publish a list with a maximum of 360 parishes that fulfill the condition stated in the previous clause.
- 3 - The holders of the rights of use for the 800 MHz band must, within 15 working days after the publication of the list referred to in the previous clause, choose a number of parishes, in accordance with the number of lots which have been granted to him and taking into consideration the criteria expounded in clauses 2 and 3 of article 22 applicable to category B.
- 4 - Once the choice has been made by the holders, ICP-ANACOM will inscribe the coverage obligations into the titles which will be part of the frequency rights of use.
- 5 - In order to fulfill the coverage obligations, a parish will be considered covered if at least the parish council is provided with broadband mobile service.
- 6 - The broadband mobile service to be made available should allow a bit rate equal to the highest bit rate among those associated with the commercial offers subscribed, in each moment, by the costumers located in the lowest quartile of those offers, ranked by ascending bit rate.
- 7 - The coverage obligations referred to in this article should be fulfilled within a maximum of 6 months after the notification sent by ICP-ANACOM informing the holders about the end of the existing restrictions for the operation of the 800 MHz band, as identified in the annex of this regulation.

Article 27 **Issuance of the titles**

- 1 - The titles for the granting of rights of use shall be issued by ICP-ANACOM within 20 working days following compliance with the provisions of clause 1 of the article 24.
- 2 - The titles which substantiate the rights of use should contain the associated service conditions referred to in the previous clause.
- 3 - For the purpose of the provision of the previous clauses, ICP-ANACOM shall consult the holders of the rights of use in accordance with articles 100 and the following articles of the “Código do Procedimento Administrativo”.

Article 28
Enforcement of the holder of the right of use of frequencies

- 1 – The holders of rights of use should begin the commercial operation of the services within a period of 3 years after the date of issuance of the titles, making use of the assigned frequencies, without prejudice of the conditions established in the annex of this regulation for the 800 MHz band.
- 2 - Without prejudice of other applicable penalty mechanisms, non-compliance with the conditions associated with the exercise of the activity may lead to total or partial repeal, by ICP–ANACOM, of the respective frequency right of use, under article 110 of Law 5/2004, of February 10.

Article 29
Period of right of use of frequencies

The rights of use are granted for a period of 15 years, and can be renewed pursuant to Law 5/2004, of February 10.

CHAPTER III

Final provisions

Article 30
Counting of periods

The rules of article 72 of the “Código do Procedimento Administrativo” apply to the counting of the periods specified in this regulation.

Article 31
Effective Start Date

The present regulation enters into force at the next working day after its publication.

Lisboa, ____ of March of 2011.