

NOTICE

Commencement of procedure to amend Regulation no. 987-A/2020 of 5 November, amended by Regulation no. 596-A/2021 of 30 June.

Public notice is given, under the terms of paragraph 1 of article 98 of *Código do Procedimento Administrativo* (Administrative Proceeding Code), that the Board of Directors of Autoridade Nacional de Comunicações (ANACOM) has decided to commence a procedure to amend Regulation no. 987-A/2020 of 5 November, as previously amended by Regulation 596-A/2021 of 30 June (Auction Regulation for the Allocation of Rights of Use of Frequencies in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands - referred to hereafter as the Auction Regulation). This decision, of 12 August 2021, is made under the terms of paragraph 5 of article 15 and paragraph 8 of article 30 of *Lei das Comunicações Eletrónicas* (Electronic Communications Law - Law no. 5/2004 of 10 February, as currently worded), and under the terms of point b) of paragraph 1 and point a) of paragraph 2, both of article 9, article 10, and point b) of paragraph 1 of article 26, all of ANACOM's Statutes (approved by Decree-Law no. 39/2015 of 16 March).

1. The Auction Regulation, approved on 30 October 2020 by ANACOM's Board of Directors, defines the procedures applicable to the auction and the conditions to which the rights of use of frequencies allocated under this auction are subject in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands, with a view to the allocation of new rights of use of frequencies in these bands, which are considered essential to enable the installation of networks and the provision of electronic communications services compatible with 5G technology, as well as the installation or enhancement of networks using other technologies.
2. The implementation of 5G is, as is known, considered an imperative of utmost urgency, at both European Union and national level.

The European Union objective is to secure a position of global leadership for Europe in the deployment of 5G networks, ensuring availability of 5G in at least one city in each Member State, the availability of the 700 MHz band in all Member States in 2022, and the accomplishment of the "Gigabit Society" by 2025, with 5G available in major cities and along principal transport routes.

Meanwhile, at a national level, the swift implementation of 5G is an important "*instrument that will bring development and competitiveness to our economy, social and territorial cohesion and improvements and transformations in our way of life, social innovation and the quality of public services*" (see Resolution of the Council of Ministers no. 7-A 2020 of 7 February). Furthermore, the COVID-19 pandemic has confirmed how electronic communications are critical for society and for the functioning of the economy, as well as for citizens in general. Achieving a substantial improvement in digital connectivity becomes even more pressing, enhancing coverage where there are deficiencies (particularly in less densely populated areas) and promoting greater competition in the market.

All of this adds to the importance of ensuring that the spectrum made available in the auction is used within the shortest possible time, so that these deficiencies in coverage can be swiftly remedied, promoting economic and social development – especially given that a fundamental axis of the European economic recovery plan is based on the digital transformation of the economy - and to extract maximum benefit from the networks which will be supported over this spectrum.

3. The auction was launched in November 2020 with the bidding phase for new entrants. With this phase completed, the principal bidding phase began on 14 January 2021 and remains ongoing.

4. It was found, however, that the auction's progress during the principal bidding phase has been particularly slow, and there is a serious risk that, if the bidding pattern observed so far persists, the auction will take far longer to complete than initially envisaged (taking far longer than these procedures normally take in the vast majority of EU Member States). This will impact the development of terrestrial electronic communications networks and services, specifically 5G, and therefore undermine the pursuit of the public interest objectives underlying the auction and which ANACOM is responsible for accomplishing.

5. In this context and in these exceptional circumstances, ANACOM took the view that there was an urgent need for measures that, taking due account of all the interests in question, will minimise any excessive extension to the duration of the auction by streamlining its procedures.

With this purpose and taking into account, on the one hand, the way in which the auction had been proceeding and the different measures that could influence its duration, and always ensuring, on the other hand, that changes should not be introduced if they distort the procedure

or undermine the bidding strategies of the companies involved, ANACOM sought to amend the rules of the Auction Regulation, shortening the duration of rounds from 60 to 30 minutes and extending the daily bidding period by one hour until 7 pm. These changes, enabling 12 rounds per day, were enacted under the terms established in Regulation no. 596-A/2021 of 30 June, which entered into force on 05 July.

ANACOM had anticipated that, by increasing the number of rounds, this measure would be sufficient to prevent the auction from taking an excessive amount of time to conclude.

6. However, during the regulatory procedure to amend the Auction Regulation, concluding with the approval of the above Regulation no. 596-A/2021 of 30 June, it was made clear by ANACOM that, if the increase in the daily number of rounds failed to hasten the auction to the extent required by the public interest objectives and failed to avert the scenario of an excessive delay to the conclusion of the auction, it would consider introducing new amendments to the Regulation, prohibiting the use of minimum bidding increments.

7. Now that more than 300 rounds have been conducted since the Regulation was amended, it appears that, although the current rules allow bidders to proceed with the auction more quickly, if they so wish, progress remains very slow. Simply increasing the number of rounds has not been enough in terms of resolving the very low level of excess demand, and the increase to 12 daily rounds has, therefore, not achieved the speed intended.

Likewise, it can also be seen that recurrent use of lower percentage increments has largely continued.

7. Maintaining the assumptions underlying the adoption of Regulation no. 596-A/2021 of 30 June, there is a serious risk that, if the bidding pattern observed so far persists, the auction will take far longer to complete than initially envisaged and longer than required in order to accomplish the public interest objectives, as amply explained within the scope of the corresponding regulatory procedure;

And noting that ANACOM had already pointed out, in the Statement of reasons of the draft Regulation amending the Auction Regulation, that *“with specific regard to the possibility of barring use of the lowest minimum increments (1% and 3%) in a given round, for purposes of expediting procedures, it is considered that this, along with other options, may be considered in a scenario where the auction’s conclusion is subject to further delay”*;

ANACOM sees fit to commence a regulatory procedure to amend the Auction Regulation in order to prohibit use of the lowest minimum increments (1% and 3%) by bidders in a given round.

8. Given the circumscribed content of the amendments to the Regulation that ANACOM proposes to make, and the need, given the excessive prolongation of the auction, to proceed without delay in order to effect the speed of the current bidding process, ANACOM's Board of Directors has decided to grant interested parties a period of 5 working days to submit contributions and suggestions which they feel should be considered in the preparation of the draft amendment to the Regulation.

As such, written contributions should be sent, no later than 19 August 2021, by email to reg.leilao@anacom.pt.

At a later date, interested parties will have opportunity – over a period of 5 working days, taking into account the urgency already mentioned and the circumscribed content of the amendment in question - to comment on the draft amendment to the Regulation, which will be submitted to public consultation in accordance with article 10 of ANACOM's Statutes, following publication on ANACOM's institutional website and in *Diário da República* (Official Journal).

Lisbon, 12 August 2021.