

## Notice

### Commencement of a procedure to amend Regulation no. 987-A/2020 of 5 November

Public notice is given that, under the terms of paragraph 1 of article 98 of *Código do Procedimento Administrativo* (Administrative Proceeding Code) and for the purposes set out therein, 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 (*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 Regulation or Regulation no. 987-A/2020). This decision, of 8 April 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), as well as 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 Regulation, approved by ANACOM on 30 October 2020<sup>1</sup>, 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 following bands: 700 MHz, 900 MHz, 1800 MHz, 2,1 GHz, 2,6 GHz and 3,6 GHz.

By means of this auction, ANACOM intends to allocate new rights of use of frequencies in these bands, which are considered essential for the installation of networks and the provision of electronic communications services compatible with 5G technology, as well as for the installation and enhancement of networks using other technologies.

2. Implementation of 5G has been designated with urgency within the European Union (EU). The objective is to secure a position of global leadership for Europe in the deployment of 5G networks, ensuring the 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 major transportation routes.

Meanwhile, at a national level, the rapid implementation of 5G in Portugal 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

---

<sup>1</sup> <https://www.anacom.pt/render.jsp?contentId=1567663>

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, which was launched in due time and which is currently ongoing in Portugal, began in November 2020, with the bidding phase for new entrants complete and the principal bidding phase in progress. The principal phase began on 14 January and, to date, has involved more than 330 rounds, with a maximum number of 6 rounds per day.

Although the auction is taking place regularly, the principal bidding phase is not yet concluded. While the rules in force already allow bidders to speed up the auction if they so wish, there has been successive and repeated bidding using the lowest price increments (often 1%), as is clear from the daily information on the auction's progress, published on ANACOM's institutional website. For this reason, the auction's progress 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).

**4.** If the procedure is too lengthy, potentially impacting the development of networks, including 5G networks, this would disproportionately undermine accomplishment of the public interest objectives which underlie the auction and to which ANACOM is committed.

In fact, a delay to the conclusion of the auction would inevitably lead to a delay in the development and entry into operation of the networks concerned. Such a delay would be to the detriment of citizens and companies, denying them the economic and social benefits resulting from 5G-driven digital transition, in terms of the development and competitiveness of the Portuguese economy, social and territorial cohesion, social innovation and improvement to the quality of services of public interest. A delay would also impact the benefits that can be derived from the enhancement of existing 3G or 4G networks as well as the development of new networks, regardless of associated technology. In a situation where the pandemic extends over time, the impact could be even more significant.

In particular, it should be noted that, with this delay, the benefits which stem from the fulfilment of coverage obligations, the development of networks and the strengthening of the voice signal (obligations which are attached to the allocation of rights of use of frequencies under the terms of the Regulation) will not be felt by people and businesses as quickly as determined by the collective interest.

Notably, in this regard, there will be an impact on the obligations to install base stations supported by the 3.6 GHz band, on the one hand, with a view to providing services compatible with 5G, especially in municipalities with low population density and in the Autonomous Regions, but also, when requested, in hospitals and health centres, educational establishments, ports and airports and entities managing business parks and industrial estates (installation of these base stations is essential to enable urgent use of the ample opportunities offered by 5G).

Furthermore, there are the benefits which are due from the strengthening of coverage obligations, in particular for parishes of low population density and parishes in the Autonomous Regions of the Azores and Madeira. Although these obligations, which seek remedy of the insufficient coverage and capacity currently in these areas, are established by reference to specific dates, in the short term and in order to accomplish them, operators need to initiate investments in the respective networks. In this context, it is evident that an

excessive delay to the conclusion of the auction will make it less likely that these investments (using the spectrum made available as a result of the auction) will be executed promptly, denying the public and the companies covered access to the benefits inherent to the progressive and consolidated improvement of networks.

**5.** Therefore, in these exceptional circumstances, there is 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 has been proceeding and the different measures that may have an impact on 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 intends to introduce amendments to Regulation no. 987-A/2020 as the most appropriate solution to pursue its aim: to enable a greater number of rounds each day (reducing the duration of each round to 15 minutes and/or extending the daily bidding period), as well as to provide ANACOM's Board of Directors with the option of disallowing use of the minimum increments of 1% and 3% in the formulation of bids.

**5.1.** In effect, the scheduling of rounds lasting significantly less than the 60 minutes provided for in the Regulation (see article 27, paragraph 3) and/or a longer daily bidding period (see paragraph 1 of article 27), will allow an increase in the number of rounds taking place per day, without compromising the bidding process.

As a rule, the initial bidding rounds require more time for preparation of bidding strategies, given the variations in lot prices and in demand between the different lots and categories. However, as the rounds progress, excess demand starts to decrease and bidder expectations become firmer and more refined in terms of the spectrum they are most likely to win and the maximum amounts they are willing to bid; this leads to a reduction in the time required by the bidders to prepare and complete their bidding. Likewise, there is also an increase in situations where bidders have achieved all (or most) of their eligibility points in best offers, without needing to place any bid, or not having to bid for all they intend to acquire, while retaining this condition. As such, in the various spectrum auctions held recently in Europe, the auctioneer has been allowed to define different durations for rounds and intervals between rounds throughout the bidding phase.

**5.2.** As regards the option of establishing, if deemed necessary, minimum increments that bidders can apply in a given round, this is a rule that has been used in other multiple-round spectrum auctions, especially in ascending auctions, including in auctions held recently in Europe, for example in Germany (2018), Finland (2018), Italy (2018) and Slovakia (2020).

In the principal bidding phase that is currently in progress, the 1% increment has been widely used, so that lot prices have evolved very slowly. With no evident gain in terms of price discovery, conclusion of the principal bidding phase and of the auction itself has been delayed. In this context, it is deemed appropriate to provide for the option of excluding use of the smallest increments (1% and 3%). If necessary, use of this option will make the auction faster, while continuing to provide the bidders with flexibility in determining the price, given that the remaining increments continue to be available (5%, 10%, 15% and 20%).

**6.** Whereas, under Article 6-C (point c) of paragraph 1) of Law no. 1-A/2020 of 19 March (amended by Law no. 4-B/2021 of 1 February), deadlines were suspended for the practice of acts in administrative procedures, with regard to the practice of acts by private individuals, it is only subsequent to the lifting of this suspension on 6 April 2021, under the terms of Law

no. 13-B/2021 of 5 April, that conditions now permit ANACOM's Board of Directors to formally commence the procedure to amend Regulation no. 987-A/2020, with interested parties able to comment.

7. Given the immediate need to advance with the proposed amendments to the Regulation, in order to expedite the current and ongoing bidding process, and given the limited content of the amendments, which aim merely to introduce mechanisms on a precautionary basis to prevent a possible excessive prolongation of the auction, ANACOM's Board of Directors has decided to grant interested parties a period of five working days to submit contributions and suggestions which they feel should be considered in preparation of the draft amendment to the Regulation.

As such, **contributions should be submitted in writing no later than 15 April 2021**, and should be sent by email to [reg.leilao@anacom.pt](mailto:reg.leilao@anacom.pt).

Subsequently, interested parties may - within a further period of 5 working days, taking into account the urgency already stated - comment on the draft amendment to the Regulation that will be submitted to public consultation, in accordance with the provisions of article 10 of ANACOM's Statutes, following publication on ANACOM's institutional website.

Lisbon, 8 April 2021.