

## **Regulation amending Regulation no. 987-A/2020 of 5 November**

### **Preamble**

By determination of 30 October 2020, the Board of Directors of Autoridade Nacional de Comunicações (ANACOM) approved the Regulation which 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. This Regulation was published as Regulation no. 987-A/2020 in *Diário da República* (Official Journal), 2nd series, no. 216, on 5 November (Auction Regulation or Regulation no. 987-A/2020).

As established in article 4 of this Regulation, *the auction shall be carried out by ANACOM, and its Management Board shall be responsible for conducting the respective procedure.*

By means of this auction, ANACOM intends to allocate new rights of use of frequencies in these bands. This allocation is 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.

The auction was begun in November 2020. With completion of the bidding phase for new entrants, the principal bidding phase began on 14 January 2021 and remains ongoing. To date, the principal bidding phase has involved more than 700 rounds, with a maximum number of 6 rounds per day up to its 81st day and a maximum of 7 daily rounds thereafter.

Although the auction is taking place on a regular basis, the principal bidding phase has still not concluded. This is even as the rules of the auction allow bidders to proceed more quickly if they so wish. However, as is clear from the daily information published on ANACOM's institutional website, there has been successive and repeated use of the lowest price increments in bidding (often 1%). For this reason, the auction's progress has been particularly slow. In fact, if the bidding pattern observed to date is maintained, there is a serious risk that the auction will carry on far longer than initially envisaged (taking far longer than is normal for such procedures in the vast majority of EU Member States).

This could result in a delay with a severely negative impact on the development and entry into operation of 5G networks in Portugal, to the detriment of citizens and companies. A delay

would deny citizens and companies 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 improving the quality of services of public interest. A delay would also impact the benefits that could be derived from the strengthening of existing 3G or 4G networks or the development of new networks, regardless of the associated technology. In a situation where the pandemic persists over time, the impact could be even more significant.

In particular, it should be noted that, as a result of this delay, the benefits arising from the fulfilment of obligations which are attached to the allocation of rights of use of frequencies under the terms of the Regulation will not reach populations and businesses as quickly as the collective interest requires. These obligations relate to coverage, as well as the development of networks and the strengthening of the voice signal.

An excessive delay to the conclusion of the auction also makes the execution of necessary investments in networks (using spectrum made available through the auction) in the short term less likely: This will deny the population and the companies in the areas affected access to the benefits inherent to this progressive investment, so that that the opportunities provided by digital connectivity will not reach a larger percentage of the population and national territory in the shortest possible time.

Furthermore, a delay to the auction's conclusion would have an impact on the conditions of competition in the market, given the measures in the Auction Regulation that are designed to create a level playing field for all market participants.

As such, while much of Europe converges quickly to make use of 5G as a key instrument of digital transition and economic competitiveness, in Portugal, an excessive delay to the auction's conclusion would be extremely harmful to national interests, affecting the population and Portuguese companies, the country in general and jeopardizing rapid pursuit of the public interest objectives in question, particularly in more remote and less densely populated areas.

Therefore, in these exceptional circumstances, it is urgent to promote the adoption of measures that, with due consideration of all the interests in question, minimise any excessive delay by enabling a streamlining of procedure. It should be noted that following publication of the notice to commence the regulatory amendment procedure, ANACOM decided to reduce the duration between rounds in order to accommodate an additional daily round - this reduction

took place from 10 May. However, assessment of this measure's impact proved that it was insufficient to provide the streamlining that was desired.

Accordingly, considering the contributions to the drafting of the draft amendment to the Auction Regulation, presented following the notice to commence this regulatory procedure, on 31 May 2021, the Board of Directors of ANACOM approved the present draft amendment to Regulation no. 987-A/2020. This approval was granted pursuant to the provisions of paragraph 5 of article 15 and paragraph 8 of article 30 of *Lei das Comunicações Eletrónicas* (Electronic Communications Law), as well as the provisions of point b) of paragraph 1 of article 9, point a) of paragraph 2 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).

Subsequently, pursuant to article 10 of ANACOM's Statutes and articles 98 et seq. of *Código do Procedimento Administrativo* (Administrative Proceeding Code), ANACOM gave notice of this draft regulation to the Government member responsible for the area of communications and undertook its publication in 2nd series of *Diário da República* (Official Journal) and on ANACOM's institutional website, so making provision for the intervention of the Government, the entities that are constituted as bidders in the scope of the auction and other interested parties.

Following the consultation period, ANACOM examined the contributions received. This analysis is set out in the report which, for all legal purposes, gives basis to the options adopted by ANACOM in the present Regulation.

As explained in the Statement of Reasons in the Draft Regulation, and in light of what is currently known about the auction, having considered measures that may have an impact on its duration, while avoiding changes that might distort the procedure or undermine the bidding strategies of the companies involved, ANACOM took the view that, in the present circumstances in which the auction is taking place, it is important to advance with measures which reduce the duration of the rounds and increase the period over which they take place each day, enabling a greater number of rounds per day.

An adjustment of this nature does not change the information already revealed and does not undermine the feasibility of the bidding strategies used on an ex post basis, either in the case of bidders who have not yet reached the valuation they will have attributed to the lots and that continue to undergo price discovery, nor for bidders who have already withdrawn from bidding

because the price has already exceeded the value they attribute to the spectrum, that is, they have already reached discovery of the final price. Accordingly, this alteration does not affect or impact the review of the price discovery process.

Furthermore, since there is no change in the rules governing the structure of the auction, nor in the information revealed at the end of each round, and since neither is affected by an adjustment to the duration or number of rounds, this change is not considered as likely to affect the strategies of the bidders.

With these two changes, the intention is to introduce mechanisms that streamline procedures and prevent a potential extension of the auction procedure, avoiding the harmful consequences detailed above. At this time, it is considered that the proposed streamlining is appropriate and proportional, and ANACOM expects that it will be sufficient to prevent the auction from becoming excessively lengthy. These are amendments that focus purely on practical, logistical and procedural aspects, based on reasons of public interest that can be clearly addressed in specific terms, linked to an emerging set of factors and decisions external to ANACOM, including the behaviour of participants in the auction, which justify the need to expedite procedures.

Therefore, under the provisions of paragraph 5 of article 15, paragraph 3 of article 19 and paragraph 8 of article 30 of *Lei das Comunicações Eletrónicas* (Electronic Communications Law), and also under the provisions of point b) of paragraph 1 of article 9, point a) of paragraph 2 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), by decision of 28 June 2021, ANACOM's Board of Directors approved the following Regulation:

## **REGULATION**

### Article 1

#### **Amendment to Regulation no. 987-A/2020 of 05 November**

Article 27 of Regulation no. 987-A/2020 of 05 November is replaced by the following:

"Article 27

[...]

1 – The rounds shall take place on working days, between 9:00 and 19:00.

2 – [...]

3 – Each round shall have a duration of 30 minutes, notwithstanding paragraphs 4 and 5 of the present article.

4 – [...]

5 – [...]

6 – [...]

7 – [...]

8 – [...]

9 – [...]

10 – [...]

11 – [...]»

## Article 2

### **Entry into Force**

The amendments made to Regulation no. 987-A/2020 of 05 November by this regulation enter into force on the 3rd day following its publication.