

DECISION

Issue of the title of Rights of Use for Frequencies allocated to Dense Air Portugal in the 3.6 GHz band following the Auction governed by Regulation No 987-A/2020, of 5 November

1. Framework

By determination of 23 November 2021, Autoridade Nacional de Comunicações (ANACOM) approved the final report of the Auction for the allocation of Rights of Use for Frequencies (RUF) in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands, governed by Regulation No 987-A/2020, of 5 November (Auction Regulation), which includes the decision to allocate the corresponding RUF.

Within the scope of this Auction, Dense Air Portugal, Unipessoal, Lda. (DENSE AIR) was allocated the right to use 40 MHz in the 3.6 GHz frequency band (3400-3800 MHz) corresponding to the 4 lots won by the company.

Under paragraph 1 of article 40 of the Auction Regulation, the titles granting the rights of use for frequencies are issued by ANACOM's Board of Directors at the latest 20 days after fulfilment of the deposit obligation provided for in article 38 of the same Regulation.

The titles that certify the rights of use allocated in this procedure must indicate the conditions associated with the respective exercise referred to in articles 41 *et seq* of the Auction Regulation (cf. paragraph 3 of article 40).

Paragraph 3 of the aforementioned article 40 also establishes that, in the case of holders of RUF in force on the date on which the Auction Regulation takes effect, the titles of RUF allocated in this procedure are integrated into the respective single titles, by means of the addition of chapters relating to the frequency bands in which they now hold RUF.

For the purpose of the issue regime set out in the Auction Regulation, ANACOM's Board of Directors is required to promote the prior hearing of RUF holders pursuant to article 121 *et seq* of the Administrative Procedure Code, which, accordingly, suspends the course of the period set out in paragraph 1 of article 40 of that Regulation.

2. Analysis

In this context, and considering that, on 24 November 2021, the deposit of the final amount due for the spectrum assigned to DENSE AIR was made, as required by article 38 of the Auction Regulation, ANACOM believes it is timely and appropriate to include, in a single title, the conditions applicable to the exercise of the rights of use for frequencies assigned to the company (prior to and after the Auction), thus maintaining the approach adopted for the other holders of rights of use for frequencies for the provision of publicly available electronic communications services.

The title will therefore include:

- a) a general part the provisions of which apply to all rights of use for frequencies contained therein (Part I);
- b) A part listing the general conditions provided for in article 27 of the Electronic Communications Law, which also apply to all rights of use for frequencies (Part II);
- c) A final part divided into two chapters, each of which sets out the specific conditions attached to the different rights of use for frequencies allocated to DENSE AIR in accordance with article 32 of the same law (Part III).

The issue of this single title naturally implies some adjustments to the title already issued to DENSE AIR, namely as regards structure, updating of legal references and ANACOM's name, and the update of the general conditions that apply as a result of legislative developments, in particular the 2011 amendment to the Electronic Communications Law, which, as results from the title in annex, are merely formal and/or editorial and do not entail, as such, any amendment to the conditions of exercise of the rights of use for frequencies already allocated to the company and included in the pre-existing title.

Taking into account that ANACOM is responsible for publishing and keeping up to date the National Frequency Allocation Table (NFAT), which includes, inter alia, the frequency bands and spectrum allocated to providers of public communications networks or publicly available electronic communications services, including the date on which the allocation is reviewed, the allocation to DENSE AIR of RUF concerned, as well as the date of expiry of its validity, must now be incorporated in this table.

Finally, in compliance with the provisions of paragraph 5 of article 40 of the Auction Regulation, the draft decision, approved by ANACOM on 24 November 2021, was submitted to the prior hearing of DENSE AIR, pursuant to article 121 *et seq* of the Administrative Procedure Code, a period of 10 working days having been set for this purpose.

In this context, the company's statement was received on 26 November 2021, which expressed that *«taking into account the new single title of the rights of use for frequencies to be issued subsequently to the said auction, its systematic organisation and the terms thereof, also interpreted in the light of such systematic organisation, the company has no comments, amendments or additions to propose to the notified draft decision, including the draft single title in annex thereto, as it believes that such terms are in accordance with the position hitherto held by Dense Air regarding the matters dealt with in the draft single title submitted for prior hearing.»*.

In compliance with "ANACOM's consultation procedures", DENSE AIR's statement will be made available at this Authority's website, safeguarding information of a confidential nature.

3. Decision

In the light of the above, pursuant to article 40 *et seq* of the Auction Regulation, and pursuant to paragraph 3 of article 29 of ANACOM's Statutes, approved in annex to Decree-Law No 39/2015 of 16 March, **I hereby decide as follows:**

1. To issue the single title for the rights of use held by DENSE AIR for the provision of publicly available terrestrial electronic communications services, in accordance with the title in annex to this decision and which forms an integral part hereof.
2. To incorporate in the National Frequency Allocation Table the allocation of the new RUF to DENSE AIR, in accordance with the provisions of article 16 of the Electronic Communications Law.
3. To notify the company of the final decision through the auction email address - leilao5G@anacom.pt.
4. To submit this decision for ratification by the Board of Directors at its next ordinary meeting.