

DECISION

Issue of the title of Rights of Use for Frequencies allocated to NOS in the 700 MHz, 2.1 GHz and 3.6 GHz bands 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, NOS - Comunicações, S.A. (NOS) was allocated the rights to use the frequencies corresponding to the fifteen lots won by this company, as follows:

- ❖ 2 x 10 MHz in the 700 MHz frequency band (703-733 MHz / 758-788 MHz);
- ❖ 2 x 2 MHz in the 900 MHz band;
- ❖ 2 x 5 MHz in the 2.1 GHz frequency band (1954.9-1959.9 MHz / 2144.9-2149.9 MHz);
- ❖ 100 MHz in the 3.6 GHz band (3400-3800 MHz).

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 allocating rights of use for frequencies in the 900 MHz band must be issued within 20 days after the approval of the agreement referred to in paragraph 4 of article 39 or after the decision referred to in paragraph 5 of that article has been taken.

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 NOS was made, as required by article 38 of the Auction Regulation, it is now incumbent on ANACOM to approve, in the form of an endorsement, the addition of chapters relating to the bands in which NOS now holds RUF following the Auction, which must be integrated in its single title, under paragraph 4 of article 40 of the Auction Regulation.

This addition does not include the title relating to the right of use for frequencies in the 900 MHz band allocated to NOS, which will only be issued after ANACOM's decision as referred to in paragraph 2 of Article 40 of the Auction Regulation, and as such this matter is not addressed in this draft decision.

The addition naturally implies some adjustments¹ to the single title already issued to NOS, which, as results from the endorsement in annex, are merely 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,

¹ Which result from the need to introduce the reference, namely, to the spectrum which is the object of the new Rights of Use for Frequencies, to the Auction Regulation or to list the access obligations arising from the Auction.

the allocation to NOS 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 NOS, 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, on 25 November 2021, the company's statement was received, which expressed that the draft decision, except for two clerical errors that were indicated and *«without prejudice to the matters already raised during the procedure and in the respective preparation and which is fully replicated for all legal effects, does not require any additional comment»*.

The clerical errors were identified in the draft endorsement, in number 37.7 instead of *«“NOS is required” read “NOS must”»* and in number 38.5 *«where it reads “article 45” read “article 44”»*.

In view of the company's statement, ANACOM corrected the clerical errors.

In compliance with “ANACOM's consultation procedures”, NOS'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, **the Chair of ANACOM's Board of Directors**, pursuant to article 40 *et seq* of the Auction Regulation, and pursuant to paragraph 3 of article 29 of the Authority's Statutes, approved in annex to Decree-Law No 39/2015 of 16 March, **hereby decides as follows:**

1. To approve Endorsement No 5 to ICP-ANACOM Title No 01/2012, adding to the single title of the rights of use for frequencies held by NOS the conditions applicable to the rights of use of 2 x 10 MHz in the 700 MHz band, 2 x 5 MHz in the 2.1 GHz band and 100 MHz in the 3.6 GHz band which were allocated to this company for the provision of publicly available terrestrial electronic communications services within the scope of the Auction governed by Regulation No 987-A/2020, of 5 November, in accordance with the endorsement in annex to this determination and which forms an integral part hereof.

2. To incorporate in the National Frequency Allocation Table the allocation to NOS of the new RUF, 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.

Lisbon, 26 November 2021.