

## **DECISION**

### **Issue of the title of Rights of Use for Frequencies allocated to NOWO in the 1800 MHz, 2.6 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, NOWO Communications, S.A. (NOWO) was allocated the rights to use the frequencies corresponding to the seven lots won by this company, as follows:

- ❖ 2 x 10 MHz in the 1800 MHz frequency band (1770-1785 MHz / 1865-1880 MHz);
- ❖ 2 x 5 MHz in the 2.6 GHz band (2500-2510 MHz / 2620-2630 MHz);
- ❖ 40 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 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).

For the purpose of the issue regime set out in the Auction Regulation, ANACOM 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 the option to defer part of the payment, as provided for in paragraph 4 of article 38 of the Auction Regulation was exercised on 29 November 2021, with the deposit of 50% of the amount due for the spectrum assigned to NOWO having been made, and that, pursuant to paragraph 10 of article 38, NOWO provided a new bank guarantee, it is now incumbent on ANACOM to approve the title concerning the rights of use for frequencies this company now holds as the result of the Auction, under article 40 of the Auction Regulation.

The title includes:

- 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 chapters, each of which sets out the specific conditions attached to the different rights of use for frequencies allocated to NOWO, in accordance with article 32 of the same law (Part III).

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 NOWO 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 was submitted to the prior hearing of NOWO, 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 30 November 2021, the company's statement was received, which expressed its agreement with the referred draft decision, merely requesting some editorial rectifications in the draft title:

- *«In paragraph 1, where the registered office is identified, an “at” should be placed before the address, which should read “with registered office at Alameda dos Oceanos”»*

- «Point n) of paragraph 3 should conclude with “amended by Law No 8/2011, of 11 April,” so as to reflect the current wording of ECL»
- «Point q) of paragraph 3 refers to “the provisions of paragraph 5 of this title” when it should refer to “the provisions of paragraph 4 of this title”»
- «Paragraph 15.1, 3<sup>rd</sup> line,: it reads “Auction Regulation”, instead it should read “5G Auction Regulation”»
- «Paragraph 22.2, last line: it reads “Auction Regulation”, instead it should read “5G Auction Regulation”».

In view of the company’s statement, ANACOM corrected the clerical errors, with the exception of point n) of paragraph 3, given that the Regulatory Authority takes the view that the reference to statutory instruments in the title always concerns the wording in force.

In compliance with “ANACOM’s consultation procedures”, NOWO’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 title for the rights of use of 2 x 10 MHz in the 1 800 MHz frequency band, 2 x 5 MHz in the 2.6 GHz frequency band (FDD) and 40 MHz in the 3.6 GHz frequency band which were allocated to NOWO, 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 provisions in annex to this decision and which form an integral part hereof.
2. To incorporate in the National Frequency Allocation Table the allocation of RUF to NOWO, in accordance with the provisions of article 16 of the Electronic Communications Law.
3. To submit this decision for ratification by the Board of Directors at its next ordinary meeting.

Lisbon, 30 November 2021.