

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

### Auction Regulation for the allocation of frequency usage rights

#### Clarifications

Under the terms of paragraph 4 of article 11 of Regulation no. 987-A/2020, of 5 November, the substance of the requests and clarifications provided are hereby published, concealing the necessary information to ensure, in particular, the confidentiality of the applicants' identities and potential bidding strategies.

#### REQUEST XII.

##### 1. Article 6

- Can you confirm the understanding that the act provided for in sub-paragraph (d) of paragraph 1 of article 6 that will be carried out through the platform is only the tiebreaker referred to in the rule of paragraph 4 of article 35 of the Regulation? If not, express clarification is requested as to which acts of the assignment phase will be carried out through the platform, given that paragraph 5 of article 35 expressly refers to there being a face-to-face session.

**Answer:** This understanding is correct.

- An indication is requested of the email address to be used by the bidding candidates during the procedure to communicate with ANACOM, specifically, but without limitation, to submit complaints, requests, requests for extension, indications of platform errors or technical problems, requests to use alternative means of communications, etc. Also, with regard to the "4G auction" procedure, in which ANACOM has indicated different emails (which differ according to the nature/purpose of the communications), confirmation is requested that the email indicated in response to this request clarification by ANACOM is the only email to be used in the context of this Auction.

**Answer:** In the bidding phases, communication is only carried out through the electronic platform and the alternative means, under the terms specifically provided for in the Regulation. The platform does not include the functionality of bidirectional communication.

Communications with the Board of Directors of ANACOM that do not constitute requests for clarification under the terms of paragraph 1 of article 11 of the Regulation can be carried out by the means that the applicants consider most appropriate.

## 2. Article 11

- Can you confirm the understanding that all answers to all requests for clarification submitted will be made available by ANACOM on its website before the deadline for submitting applications? If so, what is the specific place on ANACOM's website where all clarifications will be made available?

**Answer:** This understanding is correct. Under the terms of paragraph 4 of article 11 of the Regulation, the Board of Directors of ANACOM will publish, on the respective website, the content of requests and clarifications provided, specifically concealing any information necessary to ensure the confidentiality of the identity of the applicants and potential bidding strategies, and this will be highlighted on the homepage of the aforementioned website.

This information is available at: Homepage > Market > Spectrum management > National planning > Spectrum allocation > Auction of 5G and other relevant bands.

## 3. Articles 12 and 13

- If, due to force majeure (specifically with regard to the restrictions resulting from the COVID-19 outbreak), the physical submission of the application is not possible, will ANACOM communicate the alternative means of submitting the application? If so, when, and by what means?

**Answer:** The Regulation contains provisions allowing the Board of Directors of ANACOM to make the decisions that are most appropriate, at any time, for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (see Article 4 of the Regulation), and they will be announced within the time periods and by the means considered most appropriate.

- Clarification is requested as to which alternative means ANACOM intends to consider.

**Answer:** See the answer to the previous question.

- Clarification is requested on what the maximum period is within which this communication can be made.

**Answer:** See the answer to the first question of this point.

- Can you confirm the understanding that, if the chosen means is via email, then the presentation of the documents and the respective formalities set out in articles 12 and 13 remain unchanged, i.e. the digitisation of the hard copy of the process will suffice for the application to be considered correctly submitted? If not, what formalities should be followed?

**Answer:** See the answer to the first question of this point.

- Considering the reduced validity periods of the declarations issued by the AT and SS respectively, can ANACOM confirm the understanding that candidates may, at the same time, submit the declaration of consent for ANACOM to consult this data, referred to in the last part of the rule of sub-paragraph (e), paragraph 1 of article 13 of the Regulation? If so, given the delivery of both documents (certificates and declaration), will ANACOM accept that this complies with the rules of the Regulation and dispenses with the need to deliver new certificates?

**Answer:** This understanding is correct. The cumulative presentation of the documents and declaration indicated in sub-paragraph (e) of paragraph 1 of article 13 of the Regulation is not a reason for excluding applications.

- In case there is a need to send new certificates, what mechanism should candidates follow?

**Answer:** In formalising the application, the presentation of the certificates and the declaration does not preclude ANACOM, within the scope and under the Regulation, from requesting their updating, if necessary.

#### **4. Article 15**

- Can you confirm the understanding that any period, provided for in article 15 and in any article of the Regulation, which ends on a non-working day, is automatically transferred to the following working day, pursuant to sub-paragraph (f) of article 87 of the Code of Administrative Procedure?

**Answer:** The calculation of the time limits envisaged in the Regulation are subject to the rules of article 87 of the Code of Administrative Procedure, as established by article 49 of the Regulation.

#### **5. Article 17**

- Can you confirm the understanding that bidders will be able, whenever they see fit, and providing it does not disturb the Auction procedure, to activate the alternative means of communication? If not, what conditions must be observed for bidders to activate the alternative means of communication?

**Answer:** This understanding is not correct. Alternative means will be used in the event of a technical problem with the platform's operation. It should be noted that the training activity to be held by ANACOM is specifically intended to convey the operational procedures related to the use of alternative means of communication, in the event of technical failure by the platform.

- Can you confirm the understanding that bidders will be able, without prior notice or ANACOM's authorisation, to activate alternative means of communication? If not, clarification is requested as to whether ANACOM will guarantee an immediate response to this request.

**Answer:** See the answer to the previous question.

- Can you confirm the understanding that ANACOM will not oppose, unless this clearly puts the regular continuation of the Auction in jeopardy, the activation of this alternative means of communication?

**Answer:** Assuming that this is a case of activation by the bidder, this understanding is not correct.

- Clarification is requested about the telephone contact which bidders should call to activate alternative means and about when it will be made available.

**Answer:** See the answer to the first question of this point.

## **6. Article 28:**

- Can you confirm the understanding that paragraph 2 of Article 28 only indicates the conditions to be met for a waiver to be activated, and that paragraph 3, in turn, determines the consequence applicable to this activation (i.e. not losing eligibility points for the next round due to the activation), if the conditions of paragraph 2 are met?

**Answer:** This understanding is correct, as per the clarification published on ANACOM's website on 17 November 2020.

## **REQUEST XIII.**

## **1. Article 12, paragraph 3 of the Regulation**

**1.1.** Is it correct to understand that, in view of the provisions of paragraph 3 of article 12 of the Regulation, applicants will be able to deliver their respective application requests to ANACOM's public service desk on working days between 9 a.m. and 4 p.m., and that it is not necessary to make a prior appointment?

**Answer:** This understanding is correct, in accordance with the information available to the public on the ANACOM website at [Homepage > Institutional > Organisation > Contacts](#).

## **2. Article 27, paragraphs 7 and 10 of the Regulation**

**2.1.** Will the electronic platform have a feature for exporting the information referred to in subparagraphs (a) to (e) of paragraph 7 of article 27 of the Regulation to a file format? If so, what type of file will be used (e.g.: Excel, CSV, XML) and what will be the respective formatting?

**Answer:** Bidders will be provided with a manual regarding the platform, which will be sent as an annex to the notification by the Board of Directors of ANACOM provided for in article 15 of the Regulation.

**2.2.** Will it be possible to download information on the best offer per lot in the last round of the day, to be published on ANACOM's website, as provided for in article 27, paragraph 10? If so, what type of file will be used (e.g.: Excel, CSV, XML) and what will be the respective formatting?

**Answer:** See the answer to the previous question.

## **3. Article 40 paragraph 1 of the Regulation**

**3.1.** With the exception of licences issued for the use of frequencies in the 900 MHz band, will the remaining titles be issued simultaneously?

**Answer:** The licences are issued within the period established in paragraph 1 of article 40 of the Regulation. The Regulation does not establish a rule for the simultaneous issuance, in accordance with the clarification published on ANACOM's website on 17 November 2020.

#### **4. Article 41, paragraph 1 of the Regulation**

4.1. How should we interpret paragraphs 3 and 4 of article 39 of the Regulation, which determines that entities that, at the end of the auction, are declared the winners of lots in the 900 MHz band, as well as holders of frequency usage rights in the 900 MHz band that do not participate in the auction or, having participated, are not declared the winners of lots in that band, **shall agree among themselves the exact location of the spectrum in this frequency band**, which must be approved by the Board of Directors of ANACOM.

**Answer:** As follows from paragraph 3 of article 39 of the Regulation, holders of frequency usage rights in the 900 MHz band, whether they held them before the auction or become holders of them during it, shall be granted a period of 30 days to agree among themselves the exact location of the spectrum in this frequency band. The Board of Directors of ANACOM, under the terms of paragraph 4 of article 39 of the Regulation, will approve the respective agreement.

#### **5. Article 41, paragraph 2, sub-paragraph (c) of the Regulation**

5.1. Should the periods of effective operation referred to therein be understood as the periods of 3 years and 1 year determined in paragraphs 1 and 2, respectively, of article 46 of the Regulation, within which they shall start offering electronic communications services accessible to the public through the use of the assigned frequencies, or should they be understood differently and, in this case, how.

**Answer:** The obligation to use frequencies effectively and efficiently arises from the law and is enforceable during the period of validity of the frequency usage rights through which they are assigned to their holders, including the obligation provided for in paragraphs 1 and 2 of Article 46 of the Regulation.

#### **6. Article 42, paragraph 1, sub-paragraphs (a), (b) and (c) of the Regulation**

6.1. We wish to know if the expression “by the end of”, established in sub-paragraphs (a), (b) and (c), with respect to each of the years, refers to the last day of the civil calendar of the respective year, or if this expression should be interpreted differently, and if so, how?

**Answer:** The expression “by the end of” in Article 42 of the Regulation refers to the last day of the civil calendar of the respective year.

**6.2.** Confirmation is requested of the understanding that the coverage obligations established in sub-paragraphs (a), (b) and (c) are considered fulfilled if, on the last day of the civil calendar of the respective year, the holders of frequency usage rights attain the coverages set.

**Answer:** This understanding is correct.

## **7. Article 42, paragraph 2 of the Regulation**

**7.1.** We wish to know whether the absence of the reference "*for the purposes of sub-paragraph (a) of paragraph 2 of article 41*", which is specifically contained in article 42, paragraph 1, should be understood as an error, or whether another interpretation should be given and, in this case, which?

**Answer:** All the obligations imposed under the terms of article 42 of the Regulation are fixed for the purposes of the provisions of sub-paragraph (a) of paragraph 2 of article 41 of the Regulation.

## **8. Article 42, paragraph 3, sub-paragraphs (a) and (b) of the Regulation**

**8.1.** We wish to know what should be understood by "*the provision of a mobile broadband service*", especially considering that other provisions of the Regulation use apparently different concepts, such as "*start offering electronic communications services*" (as per Article 46, paragraph 1).

**Answer:** For the purposes of the Regulation, the "*the provision of a mobile broadband service*", refers to the provision of a mobile electronic communications service in which the rates are defined with reference to the minimum values of 30 Mbps, 50 Mbps or 100 Mbps, in accordance with Articles 42 and 45 of the Regulation.

**8.2.** In the case of operators that become holders of spectrum in the 700 MHz band and that, at the date of entry into force of the Regulation, do not have frequency usage rights in bands designated for terrestrial electronic communications services (as provided for in article 42, paragraph 2, it is asked:

**8.2.1.** How are the obligations contained in article 42, paragraph 3, sub-paragraphs (a) and (b), which determine the obligation to provide a mobile broadband service with a minimum speed of 50 Mbps or 100 Mbps, depending on the spectrum obtained,

made compatible with the obligation contained in article 45, paragraph 9, under which the beneficiaries of the national roaming obligation are obliged to provide a broadband service with a minimum speed of 30 Mbps.

**Answer:** Pursuant to paragraphs 2 and 3 of article 42 of the Regulation, holders of frequency usage rights that, at the end of the auction, become holders of a spectrum in the 700 MHz band and that, on the date of entry into force of the Regulation, do not have rights to use frequencies in bands designated for terrestrial electronic communication services, are bound to fulfil the coverage obligations on highways, main road routes, certain rail routes and urban and suburban connections of Lisbon and Porto with the speeds determined in this article. Under the terms of the provisions of paragraphs 8 and 9 of article 45 of the Regulation, these same holders who enter into a roaming agreement are bound to comply with the population coverage obligations established therein, with the speed set in this article of the Regulation.

**8.2.2.** If the answer involves different types of coverage obligations (for highways and routes in Article 42, paragraph 3, and for the population in Article 45, paragraph 9), how will compliance with this obligation be verified? In other words, what conditions and specifications will ANACOM potentially take into account, in the decision to be taken pursuant to paragraph 10 of article 42?

**Answer:** The procedures for verifying compliance with the aforementioned coverage obligations are established in separate decisions by ANACOM, pursuant to the provisions of both paragraph 10 of article 42 and paragraph 19 of article 45 of the Regulation.

## **9. Article 42, paragraph 7 of the Regulation**

**9.1.** We wish to know if “new entrants” are prevented from fulfilling the specific coverage obligations established by article 42, paragraph 2, sub-paragraphs (a), (b) and (c), of the Regulation, through the use of a national roaming solution.

**Answer:** Yes, without prejudice to paragraph 8 of article 42 of the Regulation.

**9.2.** We also wish to know what the “*competition rules*” referred to in Article 42, paragraph 7, are.

**Answer:** The competition rules are the legal regime of competition and other legislation applicable in this area.

## **10. Article 42, paragraph 8 of the Regulation**

**10.1.** Confirmation is requested that this obligation applies impartially to the entities referred to in Article 42, paragraphs 1 and 2, who, at the end of the auction, acquire the right to use frequencies in the 700 MHz band.

**Answer:** This understanding is correct.

**10.2.** We wish to confirm that this obligation only applies to infrastructures installed after the end of the auction by entities that have frequency usage rights in the 700 MHz band.

**Answer:** This understanding is not correct.

**10.3.** In view of the provision of this rule (limitation on the installation of infrastructure in certain places or buildings), we wish to know whether it can be understood that a roaming agreement located in this zone or geographical area will meet the obligation provided herein, or is it always necessary to enter into a national roaming agreement.

**Answer:** The agreements to be entered into to comply with the obligation contained in paragraph 8 of article 42 of the Regulation are intended to provide services in places or buildings where the installation of infrastructures is only permitted for one of the holders of frequency usage rights in the 700 MHz band.

**10.4.** If the parties do not reach a consensus regarding the roaming agreement, should it be assumed that ANACOM may intervene under the terms and for the purposes of the provisions of article 10 of the Electronic Communications Law?

**Answer:** ANACOM may intervene under the terms provided for in the law.

## **11. Article 42, paragraph 10 of the Regulation**

**11.1.** We wish to know how, in other words, by what procedures, and by use of the requirements of what documentation, indicators or other evidence, ANACOM intends to verify compliance with the obligation established by article 42 of the Auction Regulation.

**Answer:** As mentioned, under the terms of paragraph 10 of article 42 of the Regulation, ANACOM will establish, *in a separate decision, the procedure for verifying compliance with the obligation.*

**11.2.** We also wish to know when ANACOM anticipates implementing a decision, subject to public consultation, to allow interested parties to comment, regarding the verification of compliance with the coverage obligations dealt with in this article.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, it is hereby stated that interested parties will be notified of the draft decision within an appropriate period.

**11.3.** We wish to know what factual elements ANACOM is considering taking into account before proceeding with the adoption of the aforementioned decision.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation.

## **12. Article 43, paragraph 1, sub-paragraphs (a) and (b) of the Regulation**

**12.1.** A more detailed explanation is requested of the term “own stations” in the context of the various ownership and sharing regimes of support infrastructures, as well as in the context of RAN sharing solutions.

**Answer:** Own base stations are understood to be transmitters and receivers, installed by the holder of the frequency usage right, including other accessory equipment, in working condition and necessary to ensure the availability of electronic communications services.

## **13. Article 43, paragraph 3 of the Regulation**

**13.1.** Confirmation is requested that the obligation established here ends within 2 (two) years after the issuance of the rights to use relevant frequencies, and that the respective holders of frequency usage rights will cease to be subject to compliance with this obligation after that date.

**Answer:** Under the terms of paragraph 9 of article 43 of the Regulation, the obligations must be fulfilled within a maximum period of 3 years after the issuance of the frequency usage rights, and in the case of the obligation contained in paragraph 3, the holders of frequency usage rights are obliged to install base stations, when requested to do so, within 2 years after the issuance of the licences.

**13.2.** Confirmation is requested that there is no specific time limit for operators to install base stations after being requested by any of the entities mentioned in the various paragraphs of paragraph 3.

**Answer:** This is incorrect. Under the terms of paragraph 9 of article 43 of the Regulation, the obligations must be fulfilled within a maximum period of 3 years after the issuance of the frequency usage rights, except for the 3.6 GHz band subject to restrictions, in which the period is calculated from the date of notification by ANACOM of the end of these restrictions.

**13.3.** Confirmation is requested that indoor coverage solutions in the facilities of the respective entities may be considered.

**Answer:** This is incorrect. Under the terms of paragraph 3 of article 43 of the Regulation, compliance with the obligation must be ensured by the installation of macro base stations or “outdoor small cells”. This does not preclude the operator from considering indoor coverage solutions to ensure the provision of the 5G compatible service(s).

**13.4.** We wish to clarify which entities should be considered “other higher education institutions”, “other entities of the national scientific and technological system” and “managers or promoters of business location areas”.

**Answer:** The other higher education institutions are polytechnic educational institutions. The other entities of the national scientific and technological system are State laboratories and public or private research institutions. The entities managing or promoting business location areas are commercial companies with private, public or mixed capital responsible for full compliance with the operating license of business location areas, in accordance with Decree-Law no. 72/2009, of 31 March.

#### **14. Article 43, paragraph 4 of the Regulation**

**14.1.** Clarification is requested on what should be understood by “shared” stations. Does it include active station sharing in both asset- (MORAN) and spectrum- (MOCN) sharing scenarios? Does it include other bands and other technologies (for example, in the 5G NSA network solution, is it also important to consider interaction with 4G)?

**Answer:** The Regulation does not establish the level of station sharing, thereby allowing greater flexibility for holders of terrestrial electronic communications rights to make the agreements they consider most appropriate to their strategies, without prejudice to the provisions of Article 47 of the Regulation.

**14.2.** Clarification is also requested on what qualifies as a “wholesale” offer. Does it include active station sharing in both asset- (MORAN) and spectrum- (MOCN) sharing scenarios? Does it include other bands and technologies? Other business models?

**Answer:** See the answer to the previous question.

#### **15. Article 43, paragraph 8 of the Regulation**

**15.1.** We wish to know the exact schedule (regarding the deadlines for each quarter) regarding compliance with the reporting obligation set out here, and from which moment it is calculated.

**Answer:** ANACOM clarifies that the deadline for sending detailed information on the requests referred to in paragraph 3 of article 43 of the Regulation must be counted from the date of issue of the frequency usage rights and ends on the day corresponding in the third month to that date and so on.

#### **17. Article 44, paragraph 1 of the Regulation**

**17.1.** Confirmation is requested that this obligation does not apply to “new entrants”, even if they acquire, within the scope of the auction, 2x10 MHz in the 700 MHz band, which, under the terms of this provision, is the minimum threshold required to trigger the obligation to reinforce the voice service signal.

**Answer:** This understanding is correct.

**17.2.** We wish to know whether the obligation imposed by this provision will have the effect of altering, under the terms of the Electronic Communications Law, the terms

of the frequency usage rights currently held by operators who, at the end of the auction, become holders of 2x10 MHz in the 700 MHz band.

**Answer: No.**

#### **18. Article 44, paragraph 4 of the Regulation**

**18.1.** Confirmation is requested that the obligation established by article 44, paragraph 1, can be fulfilled exclusively through the use of a frequency band assigned to the respective holder by the date of entry into force of the Regulation and using only UMTS, GSM or LTE technology.

**Answer:** The obligation imposed under article 44 of the Regulation can be fulfilled using any frequency band assigned within the scope of this auction or by the date of entry into force of the Regulation.

#### **19. Article 46, paragraph 1 of the Regulation**

**19.1.** Bearing in mind the significance of the effective and efficient use of frequencies, as well as of the public domain of the State (Article 14 of the Electronic Communications Law), the following question is asked:

**19.1.1.** Confirmation is requested that, in the case of the 700 MHz band, “*start offering electronic communications services*” does not necessarily mean providing the mobile broadband service described in article 42, paragraph 3.

**Answer:** This understanding is correct. However, this does not mean that the holder of the frequency usage right in the 700 MHz band is relieved from complying with the obligation defined in paragraph 3 of article 42 of the Regulation.

**19.1.2.** We wish to know the correct interpretation of the segment “start offering electronic communications services” in relation to other frequency bands available in the scope of the auction, particularly in the case of the 900 MHz and 1800 MHz bands.

**Answer:** The offering of publicly available electronic communications services shall be started by using the frequencies assigned to them within a maximum

period of 3 years from the date of issue of the respective licences, under the terms of paragraph 1 of article 46 of the Regulation, with respect to the 900 MHz and 1800 MHz bands made available in the scope of the auction.

**19.1.3.** Bearing in mind that there are no coverage obligations for “new entrants” who acquire rights to use spectrum in the 900 MHz and 1800 MHz bands, and that they benefit from access to the network of operators who hold frequency usage rights at the date of entry into force of the Regulation, we wish to know how ANACOM will assess compliance with the obligation to use these frequencies effectively and efficiently, particularly given that article 46, paragraph 1, determines that new entrants must start offering electronic communications services accessible to the public **using the frequencies assigned to them**.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation.

**19.2.** For the purposes of the previous question, please confirm that access to the network through the negotiation of agreements for virtual mobile operations or for national roaming is not equivalent to the fulfilment of the obligation, imposed on new entrants, of the effective and efficient use of the frequencies assigned in the scope of this auction.

**Answer:** See the answer to the previous question.

**19.3.** What are the consequences for the holders of usage rights arising from the non-fulfilment of the obligation to start offering electronic communications services accessible to the public through the use of the frequencies that have been assigned to them within a maximum period of 3 years from the date of issue of the respective licences?

**Answer:** The verification and possible sanction of non-compliance with any condition associated with a frequency usage right is subject to the regime of the Electronic Communications Law, namely the provisions of article 110 therein.

## **20. Article 47, paragraph 1 of the Regulation**

**20.1.** As provided for in paragraph 1 of Article 46, what is the correct interpretation of the segment "*start offering electronic communications services accessible to the public*"

through the use of frequencies assigned to them", with regards to the start of the 2 (two) year period set therein?

**Answer:** The offering of electronic communications services accessible to the public is started by using the frequencies assigned to them within a maximum period of 3 years from the date of issue of the respective licenses, under the terms of article 46 of the Regulation.

## **21. Article 48 of the Regulation**

**21.1.** Please confirm that the 20 (twenty) year validity period of the frequency usage rights will begin from the date of issue of the respective licenses, as in the case of other provisions of the Regulation (see paragraph 9 of articles 43 and paragraph 1 of article 46).

**Answer:** This understanding is correct.

**21.2.** Regarding the frequency usage rights in the 3.6 GHz band subject to restrictions (categories H and I), will the 20 (twenty) year period begin from the moment the right is acquired (even with restrictions) or only at the end of restrictions indicated by ANACOM?

**Answer:** The duration of the frequency usage rights is counted from the date of issue of the respective licenses.

## **REQUEST XIV.**

### **1. Article 37, paragraph 4 of the Regulation**

**1.1.** In view of the pandemic context currently being experienced, marked by uncertainty, anomalies, and constant changes of circumstances, under and because of the approval, publication and application of measures restricting rights, what is ANACOM's definition and understanding regarding "*duly substantiated case of force majeure*"?

**Answer:** This question does not constitute an interpretative doubt arising from documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the Regulation contains provisions allowing the Board of Directors of ANACOM to make the decisions that are most appropriate, at any time, for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (see article 4 of the Regulation).

1.2. Confirmation is requested that current legislative, regulatory, or any other type of measures that prevent or make extremely onerous the steps necessary to comply with the deposit obligations of the winning bidders (as per article 38, paragraph 1) can be, for that purpose, considered a “*duly substantiated case of force majeure*”.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the Regulation contains provisions that enable the Board of Directors of ANACOM to make decisions that, at each moment, are most appropriate for dealing with situations that may occur in the context of the pandemic or other exceptional or force majeure circumstances (see in particular Article 4 of the Regulation), which will be communicated within the deadlines and through the means considered most adequate.

## 2. Article 38, paragraph 1, of the Regulation

2.1. We wish to know when, on which date, and how the Board of Directors of ANACOM will notify the winning bidders of the bank account where the deposit of the final amount should be made? Will this information be part of the notification provided for in article 37, paragraph 3?

**Answer:** The communication indicating the bank account to which the final amount should be paid by the winning bidders will be part of the communication provided for in paragraph 3 of article 37 of the Regulation.

2.2. We wish to know the correct interpretation of the expression “*deposit of the final amount*” required in article 38, specifically, if compliance with this obligation requires an effective credit in the bank account indicated by the Board of Directors of ANACOM within a period of 10 days, or if the transfer order is sufficient, given within the same period, irrespective of the date when the amount becomes effectively available in the account.

**Answer:** The deposit of the final amount, in the terms of article 38 of the Regulation, requires the effective credit in the bank account indicated by ANACOM’s Board of Directors within a period of 10 days.

## 3. Article 38, paragraph 2 of the Regulation and Annex 2

**3.1.** We wish to know, given the apparent interpretation arising from a joint reading of article 38, paragraph 2, and of Annex 2, whether it is correct to interpret that the obligation to order the necessary steps to be taken to release the guarantee deposit represent an obligation of the Chairman of the Board of Directors of ANACOM, within this period of 5 days, to expressly authorise the release of this guarantee deposit, through communication to the issuing banking entity.

**Answer:** This understanding is correct, assuming that the conditions are met for the release of the guarantee deposit.

**3.2.** If the answer to the previous question is affirmative, confirmation is requested that it is admissible, for reasons of greater clarity and interpretative certainty, to provide a draft bank guarantee (respecting the model in Annex 2 of the Regulation) with the following final paragraph (highlighting the changes in bold): *“This guarantee shall come into force on the date of its issuance and shall remain valid for a period of not less than 2 years **or** until such time as ANACOM, through the Chairman of its Board of Directors, expressly authorises its release. It may not be cancelled or amended without the consent of the Chairman of the Board of Directors of ANACOM.”*

**Answer:** This understanding is not correct.

#### **4. Articles 38, paragraphs 3, 4, 6, 8 and 9 of the Regulation**

**4.1.** We wish to know how, under which terms, and within what period, the entities to whom the frequency usage rights have been assigned can exercise the right provided for in article 38, paragraph 3, to defer the 50% payment due for the acquired spectrum. For this, is it sufficient that the payment made within the period of 10 days provided for in article 38, paragraph 1, is only and solely, 50% of the final amount of the acquired spectrum?

**Answer:** The possibility provided for in paragraph 3 of article 38 of the Regulation should be exercised through the presentation of the guarantee deposit referred to in paragraphs 10 and 11 of this article, which should be sent to the Chairman of the Board of Directors of ANACOM within the period of 5 days, after making the deposit of 50% of the final amount to be paid by the winning bidders, in accordance with the provisions of paragraph 10 of article 38 of the Regulation.

## **5. Article 38, paragraphs 5 and 6 of the Regulation**

5.1. We wish to know if it is correct to understand that these provisions should be interpreted in accordance with the general rules for the counting of deadlines, contained in article 279 of the Civil Code, applicable to the calculation of the end of the period for complying with the payment obligation.

**Answer:** This understanding is correct.

## **6. Article 38, paragraph 11 of the Regulation**

6.1. As this provision makes no determination, it is asked whether the understanding is correct that article 38, paragraph 2, which provides rules regarding the release of the initial guarantee deposit presented at the auction, should be considered applicable to the responsible entity and the deadline for undertaking the steps necessary regarding the provisions in article 38, paragraph 11.

**Answer:** The Board of Directors of ANACOM is responsible for determining the partial release, each year, according to the payments made, in an adequate time frame.

## **7. Article 45, paragraph 1 of the Regulation**

7.1. Please confirm that the network access obligations defined in article 45 apply, **exclusively**, to the holder of the frequency usage rights who, at the end of the Auction, hold 2x10 MHz in the 700 MHz band, or at least 50 MHz in the 3.6 GHz band, and who, at the date of entry into force of the present Regulation, already hold frequency usage rights in bands designated for terrestrial electronic communications services.

**Answer:** This understanding is correct.

7.2. Please confirm that the network access obligations defined in article 45 apply to all the bands held by the obligated entities, that is, whether those bands were assigned under the present auction or before it.

**Answer:** This understanding is correct.

## **9. Article 45, paragraph 5 of the Regulation**

9.1. With regards to sub-paragraph (a):

Please confirm that the network access pursuant to this sub-paragraph, insofar as its objective is limited to the “*provision of electronic communications services to end users*”, excludes requests intended to provide wholesale operations or services through this access.

**Answer:** This understanding is not correct. There is no intention to restrict the type of electronic communication services provided, and as such the reference to the “*provision of electronic communications services to end users, equivalent to those offered to their own customers*” aims to guarantee that the services provided include those that are equivalent to those offered to their own customers.

**9.2.** With regards to sub-paragraph (b):

Please confirm that this obligation applies to third parties that, at the date of entry into force of the Regulation, do not have frequency usage rights in the bands designated for terrestrial electronic communications services and that, at the end of the auction, become holders of frequency usage rights, **regardless of the categories, lots, or amount of the spectrum assigned.**

**Answer:** This understanding is correct.

**10. Article 45, paragraph 6 of the Regulation**

**10.1.** Please confirm that the obligation to allow network access provided for in sub-paragraph (a) of paragraph 5 of article 45 (full and light MVNO) benefits entities that, at the date of entry into force of the Regulation, do not have frequency usage rights.

**Answer:** This understanding is not correct. The obligation to allow access to the network as provided for in sub-paragraph (a) of paragraph 5 of article 45 of the Regulation, under the terms of paragraph 6, benefits entities that do not have frequency usage rights in the bands designated for terrestrial electronic communications services.

**11. Article 45, paragraph 7, sub-paragraph (b) of the Regulation**

We wish to know by whom and under what terms will the verification of the “geographic areas where the beneficiary does not have mobile coverage using the frequencies that it has been assigned” be done, for the purpose of determining if there is a right – and corresponding obligation – of access to the network, distinguishing situations in which

“new entrants” have coverage obligations, such as in the 700 MHz band, from situations where new entrants have no coverage obligations, as is the case with the 900 MHz and the 1800 MHz bands.

**Answer:** It is the responsibility of the parties that negotiate the network access agreement to define the conditions of this agreement, under the terms of sub-paragraph (b) of paragraph 7 of article 45 of the Regulation, notwithstanding the intervention of ANACOM, if it is necessary, under the terms of paragraph 17 of this article.

## **12. Article 45, paragraph 8 and paragraph 9 of the Regulation**

**12.1.** Is it correct to understand that, to fulfil these coverage obligations, the entities benefiting from the access obligation can choose the geographic areas where they must guarantee the coverage of 25% or 50% of the national population, particularly, by choosing areas of greater population density, to the detriment of more rural or remote areas?

**Answer:** The benefiting entity must assure compliance with the coverage obligations provided for in paragraph 8 of article 45 of the Regulation, in accordance with the requirements specified in this paragraph.

**12.2.** As article 45, paragraph 9, does not contain a rule similar to that of article 42, paragraph 4, it is asked if:

**12.2.1.** It is correct to understand that the minimum speed of 30 Mbps referred to in this rule must correspond, similarly to that established in article 42, paragraph 4, to the maximum theoretical download rate possible for a user, including signal/encoding traffic.

**Answer:** This understanding is correct.

**12.2.2.** In the case of a negative answer to the previous question, what is the correct interpretation of the minimum speed of 30 Mbps established in article 45, paragraph 9.

**Answer:** See the answer to the previous question.

## **13. Article 45, paragraph 10 of the Regulation**

**13.1.** We would like to know what criteria ANACOM will take into account to assess the need to maintain the access obligation provided for in sub-paragraph (b) of paragraph 5 after the initially established period.

**Answer:** The assessment made under the terms of paragraph 10 of article 45 of the Regulation will specifically take into consideration the conditions of the market and its level of competition.

**13.2.** If ANACOM considers that the conditions to maintain the access obligation provided for in sub-paragraph (b) of paragraph 5 are met, beyond the period initially set, it is asked what is the additional period ANACOM can decide, and whether that decision can imply the maintenance of this obligation throughout the whole period of validity of the frequency usage rights, i.e., 20 years.

**Answer:** See the answer to the previous question.

#### **15. Article 45, paragraph 13 of the Regulation**

**15.1.** We would like to know the correct interpretation of the expression “availability of the relevant retail services by the holders of frequency usage rights (...) to their own customers”.

**Answer:** The relevant services are those that are identified as such by the benefiting entity, for the purpose of entering into the agreement referred to in paragraph 5 of article 45 of the Regulation, and that are made available by the operator subject to network access obligations.

#### **16. Article 45, paragraph 14 of the Regulation**

**16.1.** Because the access obligation — specifically, the obligation to negotiate national roaming agreements — benefits the entities who, at the end of the auction, acquire frequency usage rights, regardless of the categories, lots, or amount of the spectrum, in order to implement the provisions in article 45, paragraph 14, we would like to know whether **the alterations to the quantity of the spectrum held by the benefiting entities will be sufficient for this network access obligation to no longer apply**, namely in the 900 MHz and 1800 MHz bands.

**Answer:** Paragraph 14 of article 14 of the Regulation applies both to the holders of the frequency usage rights with network access obligations, and to the entities benefiting from these obligations, and in the case of the latter, it applies if they cease being holders of frequency usage rights in bands designated for terrestrial electronic communications services.

## **17. Article 45, paragraph 19 of the Regulation**

**17.1.** For the purposes of the decision to be made by ANACOM, we would like to know what the criteria, terms and conditions are that will be taken into account to verify compliance with the continuing obligation of article 45, paragraph 8 of the Regulation, and to what extent these criteria, terms and conditions will be identical to those to be determined under the terms of article 42, paragraph 10, to verify compliance with coverage obligations provided for in article 42.

**Answer:** As already set out in previous requests for clarification, the verification of compliance with these coverage obligations is made in separate decisions by ANACOM, under the terms provided for in paragraph 10 of article 42 of the Regulation and in paragraph 19 of article 45 of the Regulation.

**17.2.** In the event that the criteria, terms and conditions to be defined under article 45, paragraph 19, are different (or potentially different) to those to be defined under article 42, paragraph 10, we would like to know ANACOM's understanding of the basis or grounds on which this difference may be justified.

**Answer:** See the answer to the previous question.

## **REQUEST XV.**

### **A. ARTICLE 12 (ARRANGEMENTS AND DEADLINE FOR SUBMITTING APPLICATIONS)**

Regarding paragraph 1 of article 12 of the Regulation, the following clarifications are requested:

1. Is it correct to understand that, in the application request to be sent (in writing and in Portuguese, to the Chairman of the Board of Directors of ANACOM) there should only be included, with no need for other information or documents, (i) the applicant's identification, (ii) the reference to the Regulation, (iii) the date, and (iv) the signature of the applicant's

legal representative(s) with sufficient powers to enter into binding commitments, with this capacity being recognised under the terms legally permitted? If that understanding is not correct, what additional information must be present in the application request?

**Answer:** This understanding is correct.

2. Is it correct to understand that, in the application request referred to in article 12, paragraph 1, of the Regulation, it is not necessary to indicate, either in reference to the bidding for new entrants, or in reference to the main bidding, (i) the categories and lots in which the applicant is interested, and (ii) the amount of lots and points of eligibility selected by the candidate for the first rounds of each bidding phase? If that understanding is not correct, what is the relevant information that must be present in the application request?

**Answer:** This understanding is correct.

3. Is it correct to understand that in the application request referred to in article 12, paragraph 1, of the Regulation, it is not necessary to indicate that the candidate is a “new entrant”?

**Answer:** This understanding is correct.

## **B. ARTICLE 13 (FILING OF THE APPLICATION REQUEST)**

Regarding article 13 of the Regulation, the following clarifications are requested:

4. Is it correct to understand that in the declaration referred to in article 12, paragraph 1, subparagraph (g), it is sufficient to include a diagram with an ownership structure of the applicant and the group to which the applicant belongs, identifying who holds interests in the share capital and the respective percentage held?

**Answer:** The declaration in question should be clear and complete, indicating who the owners are, whether natural or legal persons, and in what amount they hold an interest in the share capital of the applicant; and in the case of any or some of the partners being a legal person, they should include information that will allow ANACOM to verify compliance with the provisions of paragraph 2 of article 8, taking into account the criteria established in article 21 of the Securities Code.

5. In case it is not sufficient that the declaration referred to in article 13, paragraph 1, subparagraph (g) merely include a diagram with an ownership structure of the applicant, is it

considered sufficient for compliance with article 13, paragraph 1, sub-paragraph (g) that an application be filed with a combination of (i) this declaration, (ii) the diagram, and (iii) the commercial registry certificate of the applicant required by article 13, paragraph 1, sub-paragraph (b)?

**Answer:** See the answer to the previous question, noting that the declaration provided for in sub-paragraph (g) of paragraph 1 of article 13 of the Regulation is separate from the commercial registry certificate provided for in sub-paragraph (b) of paragraph 1 of the same article.

6. To comply with article 13, paragraph 2, sub-paragraph (b), is it correct to understand that the application should be filed only with a simple draft that includes the draft statutes and, therefore, does not need (i) the draft to be signed by the representatives of the future shareholders of the applicant to be incorporated, or (ii) a declaration by future shareholders that they make a binding commitment to the draft (as this already results from the aforementioned article), or (iii) the recognition of any signatures and their capacity, under the legally permitted terms? If that understanding is not correct, what documents should be filed with the application under article 13, paragraph 2, sub-paragraph (b)?

**Answer:** As provided for in paragraph 2 of article 13 of the Regulation, the entities to be incorporated that apply to the Auction will be exempt from submitting the documents indicated in sub-paragraphs (b), (c) and (e) of paragraph 1 of article 13 of the Regulation. However, they must present:

- a binding protocol of the constituents, with the respective signatures recognised under the legally permitted terms, expressly stating acceptance of the present Regulation, the auction conditions and undertaking to fulfil the obligations arising from the application and the respective bids, as well as acceptance of the conditions applicable to the frequency usage rights in the event of their allocation;
  - draft statutes, to which the nominees are bound;
  - a current business name admissibility certificate.
7. To comply with article 13, paragraph 2, sub-paragraph (c), is it correct to understand that the application should be filed only with a simple copy of the current business name admissibility certificate and, therefore, there is no need for (i) the current business name admissibility certificate to be signed by the representatives of the future shareholders of

the applicant to be incorporated, nor (ii) the recognition of any signatures and their capacity under the legally permitted terms? If this understanding is not correct, what documents should be filed with the application under article 13, paragraph 2, subparagraph (c)?

**Answer:** The documents presented by the applicants with registered offices outside national territory shall be issued and authenticated by the competent authorities of the country of origin. If there is no document similar to the one required, it can be replaced by an affidavit, prepared by the applicant before a judicial or administrative authority, notary or other competent authority in the country of origin.

### **C. ARTICLES 15, 17, 18, 19 AND 20 (BIDDING FOR NEW ENTRANTS)**

Regarding the combined reading of the aforementioned articles above, the following clarifications are requested:

8. Is it correct to understand that the platform that will support the auction (both in the bidding phase for new entrants and in the main bidding phase) has all the information in an English version, and that the English version can be used by the bidders? If that understanding is not correct, does the platform only contain information in Portuguese?

**Answer:** This understanding is not correct.

9. Please explain, with the analysis of a hypothetical case, how the activity rule provided for in article 18 of the Regulation works, in each of its paragraphs, given that its interpretation is unclear.

**Answer:** In the terms of the provisions of paragraph 4 of article 18 of the Regulation, the guarantee deposit provided determines the number of eligibility points of the bidder. In compliance with the provisions of paragraph 1, of this article, the bidder's activity, in a given round, corresponds to the sum of eligibility points associated with the quantity of lots for which bids are submitted. In accordance with paragraph 5 of this article, a bidder's eligibility cannot increase from round to round, and, in accordance with paragraph 6, its eligibility is reduced if its activity in a specific round (translated into the number of points associated with the lots – in category B and/or D – for which bids are submitted) is less than the required activity. As a result of the above, a bidder will have to guarantee that it uses the eligibility points determined by the guarantee deposit, which serves as a way of

maintaining a level of activity that allows it to bid on the lots it desires in subsequent rounds.

On concluding the bidding phase for new entrants, under the terms of paragraph 7 of article 18 of the Regulation, each bidder maintains the eligibility points associated with lots that it has not acquired in this phase up to the limit of eligible points usable in the main phase.

10. On the platform, during the rounds, is it possible to place an offer, and remove it or modify it within the period of 30 minutes corresponding to the duration of the round (article 19)? We understand that the reply to this question also applies *mutatis mutandis* to the main bidding phase (article 27 of the Regulation); is this correct?

**Answer:** This understanding is not correct regarding the first question. This understanding is correct regarding the second question.

11. Is it correct to understand that the Board of Directors (i) cannot reduce the duration of a round, and (ii) cannot increase the duration of a round during this round (the duration of each round can only be increased before the start of each round, for technical reasons related to the functioning of the electronic platform, and bidders are informed of the alteration)? If this understanding is not correct, what is the correct interpretation of article 19, paragraphs 3 to 6 of the Regulation? We understand that the reply to this question also applies *mutatis mutandis* to the main bidding phase (article 27 of the Regulation); is this correct?

**Answer:** This understanding is not correct. As determined in paragraph 3 of article 19 of the Regulation, each round has a duration of 30 minutes, notwithstanding the provisions in paragraph 4, which provides for the possibility of a round being terminated at the moment that all the bids are submitted, by all the bidders, and notwithstanding the provisions of paragraph 5, which provide for the possibility of the duration being increased, for technical reasons related to the functioning of the electronic platform. It is confirmed that the provisions of paragraphs 4 and 5 of article 27 of the Regulation are equivalent, notwithstanding that these are different bidding phases whose rounds have different durations.

12. On the platform (in both the bidding phase for new entrants and in the main bidding phase), can each bidder see, in real time, who the other bidders are, and what their bid

is, once entered onto the platform? If that understanding is not correct, what is the correct interpretation of the Regulation?

**Answer:** This understanding is not correct. The identity of the bidders and the respective number will not be published by ANACOM during the bidding phases.

13. Is there a maximum number of rounds per lot (both in the bidding phase for new entrants and in the main bidding phase)?

**Answer:** No.

#### **D. ARTICLE 21 (SUBSEQUENT ROUNDS)**

Regarding article 21, the following clarifications are requested:

14. Article 21, paragraph 1 establishes that *“In each round, the bidder must submit its bid specifying the quantity of lots per category that it intends to purchase at the price determined by the Board of Directors of ANACOM, except where communicating its withdrawal from this bidding phase, through the electronic platform.”*. Is it correct to understand that the price to be proposed in each round following the first can be equal to (and not necessarily higher than) the one determined by the Board of Directors of ANACOM? If that understanding is not correct, what is the correct interpretation of article 21?

**Answer:** This understanding is not correct. Under the terms of the provisions of paragraph 1 of article 21 of the Regulation, the bidder submits a bid specifying only the quantity of lots it intends to purchase in each category, at the price that is determined by the Board of Directors of ANACOM in each round, under the terms of the provisions of paragraph 2, 3 and 4 of this article.

15. With what minimum prior notice, between rounds, does the Board of Directors of ANACOM determine the increase of prices of the lots?

**Answer:** The information regarding the prices of lots per category is supplied, under the terms of paragraph 6 of article 19 of the Regulation, before the start of each round, with a minimum prior notice of 15 minutes, as provided for in paragraph 2 of article 19 of the Regulation.

## **E. ARTICLES 22 AND 23 (FINAL ROUND AND DETERMINING THE WINNER)**

Regarding the combined reading of the aforementioned articles above, the following clarifications are requested:

16. In the event that, in a specific round, no bidder presents a bid, is the “last round” considered to be the previous round, and do the prices presented in that previous round remain valid?

**Answer:** This understanding is not correct. The last round is considered to be the one in which the demand (total quantity of lots bid on, in each category, by the various bidders) does not exceed the offer (amount of lots available in each category) in any of the categories. When that condition is fulfilled, the Board of Directors of ANACOM informs the bidders that this round was the last one.

17. If, in a specific round, no bidder presents a bid and, in the previous round, two or more bidders presented the same price, who will be the winner under the terms of article 23 of the Regulation?

**Answer:** Winners will not be determined. See the answer to question 19.

## **F. ARTICLE 26 (ACTIVITY RULE)**

18. Please explain, with the analysis of a hypothetical case, how the activity rule provided for in article 26 of the Regulation works, in each of its paragraphs, given that its interpretation is unclear.

**Answer:** In the terms of the provisions of paragraph 4 of article 26 of the Regulation, the guarantee deposit provided and the lots available in this phase determine the number of eligibility points of the bidder for the first round. In compliance with the provisions of paragraph 1, the bidder’s activity corresponds to the sum of eligibility points associated with the quantity of lots for which bids are submitted in a given round, with the points associated with the lots in which it holds the best offer in the beginning of that round. In accordance with paragraph 5 of this article, a bidders’ eligibility cannot increase from round to round, and, in accordance with paragraph 11, its eligibility is reduced if its activity (translated into the number of points associated with the lots for which bids are submitted in a given round added to the points associated with the lots in which it holds the best

offer at the start of that round) is less than that required. As a result of the above, a bidder will have to guarantee that it uses the eligibility points determined by the guarantee deposit, which serves as a way to maintain a level of activity that allows it to bid on the lots that it intends to purchase. Please note that, in conformity with the provisions of article 26 of the Regulation, the level of activity required starts at 70%, increasing in the following rounds to 85% or 100%.

## **REQUEST XVI.**

### **1. Technical conditions associated with the 3.6 GHz band (section 2.5 of Annex 1)**

Some European countries follow a recommendation by CEPT [ECC Decision (11)06], applicable to the 3.6 GHz band, which guarantees the compatibility and non-existence of interference with existing systems that operate in adjacent bands below 3.4 GHz, such as military radars.

This CEPT recommendation defines the following limits:

- The EIRP should be inferior to -59 dBm/MHz in the band below the 3.4 GHz for non-AAS systems.
- The EIRP should be inferior to -52 dBm/MHz for AAS systems.

We would be grateful for clarification on whether this CEPT recommendation will be adopted by Portugal for the 3.6 GHz band and, if so, will it have national application or be geographically limited?

**Answer:** Under the terms of section 2.5.3 of Annex I of the Regulation, the holders of usage rights of the 3.6 MHz band must implement the mitigation techniques in conformity with the Annex of the Commission Implementing Decision (EU) 2019/235, of 24 January 2019, namely Table 6. This Implementing Decision and ECC Decision(11)06, as amended on 26 October 2018, are based on the results of CEPT Report no. 67 regarding the technical conditions for spectrum harmonisation intended to support the introduction of wireless systems, and contain the equivalent technical conditions.