

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 IX.

1. Should the envelope referred to in article 13, paragraph 1 of the Regulation, which includes the documents and elements to be filed with the application, comply with the requirements set out in paragraph 2 of article 12 of the Regulation for the request that formalises the application, that is, be addressed to the Chairman of the Board of Directors of ANACOM, and contain the reference to the documents and elements to be filed with the auction application, without any other elements that allow the candidate to be identified?

Answer: The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

2. Under the terms of article 43, paragraph 4 of the Regulation, “[**t**]he **obligations to install stations referred to in paragraphs 2 and 3 may be fulfilled through the entity’s own stations, shared stations, or third-party stations using wholesale offers**”. Could

ANACOM clarify that what is established in article 47 of the Regulation does not prevent network sharing in the first two years counting from the start date of the offer of electronic communication services accessible to the public through use of the assigned frequencies?

Answer: Article 47 of the Regulation determines that the frequency usage rights allocated may only be transferred or leased by the respective holders, 2 years after the start date of the offer of services. However, paragraph 4 of article 43 of the Regulation does not prevent the sharing of stations as part of compliance with the obligations in the first 2 years counting from the start date of the offer of services.

REQUEST X.

1. Article 10:

- Please confirm that the maximum period of validity for the guarantee deposit is 2 years. If this is the case, please confirm the understanding that “*bank guarantee template 1*”, “*bank guarantee template 2*”, “*insurance bond template 1*”, and “*insurance bond template 2*”, contained in Annex 2 of the Regulation, should be altered to expressly provide the following wording: “This guarantee deposit shall come into force on the date of its issuance and shall remain valid for a maximum period of 2 years and until ANACOM, through the Chairman of its Board of Directors, expressly authorises its release, and may not be cancelled or amended without his consent”, in the case of bank guarantee templates 1 and 2, and “This Insurance Bond shall come into force on the date of its issuance and shall remain valid for a maximum period of 2 years, and until ANACOM, through the Chairman of its Board of Directors, expressly authorises its release, and may not be cancelled without his consent” in the case of insurance bond templates 1 and 2. If this is the case, please confirm the understanding that a guarantee deposit submitted with the aforementioned wording will be accepted, without any restrictions or reservations by ANACOM.

Answer: This understanding is not correct. The doubts of interpretation indicated are not considered to be justified, and the suggestion to change the text of the draft guarantee, with the indication that it “remains valid for a maximum period of 2 years”, could lead to the presentation of guarantees with a term of less than 2 years, and is therefore not acceptable, as it may result in the exclusion of the application for violating paragraph 2 of article 10 of the Regulation.

- If this is not the case, you are requested to indicate what period of validity the aforementioned guarantee must observe.

Answer: Pursuant to article 10 of the Regulation, the guarantee deposit is provided by a bank guarantee or insurance bond in ANACOM's favour, in accordance with the forms set out in Annex 2 of the Regulation, and must remain valid for a period of not less than 2 years.

- Can you confirm the understanding that the respective period for releasing the guarantee deposit is the 5 days referred to in paragraph 2 of article 38 of the Regulation?

Answer: The understanding is correct, in accordance with the terms of paragraph 4 of article 10 of the Regulation.

2. Article 38:

- Please confirm that the maximum period of validity for the guarantee deposit is 7 years. If this is the case, please confirm the understanding that the “*bank guarantee template*” and “*insurance bond template*” contained in Annex 3 of the Regulation should be altered to expressly provide the following wording: “This guarantee deposit shall come into force on the date of its issuance and shall remain valid for a maximum period of 7 years and until ANACOM, through the Chairman of its Board of Directors, expressly authorises its release, and may not be cancelled or amended without his consent”, in the case of bank guarantee template, and “This Insurance bond shall come into force on the date of its issuance and shall remain valid for a maximum period of 7 years, and until ANACOM, through the Chairman of its Board of Directors, expressly authorises its release, and may not be cancelled without his consent”. If this is the case, please confirm the understanding that a guarantee deposit submitted with the aforementioned wording will be accepted, without any restrictions or reservations by ANACOM.

Answer: This understanding is not correct. The doubts of interpretation indicated are not considered to be justified, and the suggestion to change the text of the draft guarantee, with the indication that it “remains valid for a maximum period of 7 years”, could lead to the presentation of guarantees with a term of less than 7 years, and is therefore not acceptable, as it may result in the exclusion of the application for violating paragraph 2 of article 10 of the Regulation.

- If this is not the case, you are requested to indicate what period of validity the aforementioned guarantee must observe.

Answer: Pursuant to paragraph 11 of article 38 of the Regulation, the guarantee deposit must be valid for a period of 7 years. This guarantee deposit is provided by a

bank guarantee or insurance bond in ANACOM's favour, in accordance with the forms set out in Annex 3 of the Regulation, in which it is mentioned that they must remain valid for a period of not less than 7 years.

- Can you confirm the understanding that the procedure for releasing the guarantee deposit is defined in paragraph 11 of article 38 of the Regulation?

Answer: This understanding is correct.

3. Annex I (“technical conditions associated with the frequency”) of the Regulation

- Can you confirm the understanding that the meetings held with a view to conclude agreements between operators (to ensure synchronism. between the networks) and the conclusion of the agreements themselves, mentioned in paragraph 2.5.1 of Annex 1, will occur before the issuance of the Frequency Usage Rights? If this is not the case, please indicate when this will occur.

Answer: This understanding is not correct. After the issuance of the frequency usage rights, ANACOM will hold meetings with a view to conclude agreement(s) between the respective holders in the 3.6 GHz band.

- Can you confirm the understanding that the elimination of the current guard bands in the 2.1 GHz band (whose possibility is provided for in Implementing Decision [EU] 2020/667, of 6 May 2020, which amends Decision 2012/688/EU) and the definition of the quantity of spectrum usable in this band, will occur before the issuance of the Frequency Usage Rights? If this is not the case, please indicate when this will occur.

Answer: This understanding is not correct. As indicated in the Report on the public consultation of the draft Regulation, the Implementing Decision (EU) 2020/667, of 6 May 2020, provides that the 300 kHz guard bands can be eliminated, without prejudice to continuing to safeguard the protection of space-based services. Thus, the aforementioned Implementing Decision lacks a measure for national implementation, specifically regarding the quantity of usable spectrum and the conditions for protecting adjacent services, so that in due time it will be submitted to public consultation.

REQUEST XI.

A. CONDITIONS ASSOCIATED WITH THE FREQUENCY USAGE RIGHTS

I. In accordance with the provisions of paragraph 10 of article 45 of the Regulation, “After 8 years of the obligation provided for in sub-paragraph (b) of paragraph 5, and up to one year

before its expiry, ANACOM shall assess the need to maintain the obligation beyond the period initially established and the respective terms, determining the changes resulting from that assessment.”

1.1. With reference to the provisions transcribed above, we would be very grateful if you could clarify the criteria for analysis that will be adopted by ANACOM for the purpose of assessing the need to maintain the network access obligation.

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.

II. Pursuant to paragraph 12 of article 45 of the Regulation, unless otherwise agreed between the parties, the national roaming agreements to be negotiated under the provisions of sub-paragraph (b) of paragraph 5 of this article of the Regulation must have a minimum duration of 5 years, with the possibility of renewing them for equal periods.

2.1. In this context, it is important to clarify whether an operator on whom the network access obligation falls can refuse to conclude a national roaming agreement whose duration (initial or of renewal) exceeds the 10-year validity period of the obligation provided for in sub-paragraph (b) of paragraph 7 of article 45 of the Regulation.

Answer: Under the terms of sub-paragraph (b) of paragraph 5 of article 45 of the Regulation, the holders of usage rights must, under the scope of network access obligations to which they are bound, agree to negotiate national roaming agreements. Under the terms of sub-paragraph (b) of paragraph 7 of the aforementioned article, this obligation – to agree to negotiate agreements – shall be in force for 10 years, and, pursuant to paragraph 12 of this article of the Regulation, unless there is an agreement to the contrary between the parties, these agreements must have a minimum duration of 5 years, with the possibility of renewing them for equal periods.

Under the terms of paragraph 10 of article 45 of the Regulation, ANACOM will assess the need to maintain the roaming obligation beyond the period initially set (10 years) and the respective terms.