

**Presidência do Conselho de Ministros e Ministério das Obras Públicas,  
Transportes e Comunicações (Presidency of the Council of Ministers and  
Ministry of Public Works, Transport and Communications)**

**Administrative Rule no 207-A/2008  
of 25 February**

The introduction of digital terrestrial television (DTT) in Portugal constitutes one of objectives set out in the Programme of XVII Constitutional Government.

This is a complex process which has already been the object of a public tender that did not produce expected results and a process which the current Government has resumed, conducting it so that it might achieve its objectives, specifically performing a broad assessment of the conditions of market functioning and extensively sounding out interested parties.

ICP - Autoridade Nacional de Comunicações (ICP-ANACOM), in accordance with its remit, decided to address the number of rights to use frequencies reserved for the service of digital terrestrial television broadcasting, as identified in the Quadro Nacional de Atribuição de Frequências (QNAF – National frequency Allocation Plan), supporting two operations in the following way: one right to use frequencies corresponding to one coverage on a national basis, which will be associated with Multiplexer A, being for the transmission of television programme services with unconditional free access, and five rights to use frequencies, to be allocated to a single entity, corresponding to two of national coverage, associated with Multiplexers B and C, and three coverages of mainland territory on a partial basis, associated with

Multiplexers D, E and F, for the transmission of television programme services, either having unconditional subscription access or conditional access.

There is therefore considered to be two distinct business models underlying the introduction of DTT: one operation that is Free to Air (FTA), being the object of the public tender launched on this same date by ICP-ANACOM, whereby it is intended, in particular and first and foremost, to ensure analogue-digital migration of the terrestrial platform, providing conditions for the continuity of the offer by the respective television operators of the television programme services which are today provided through terrestrial analogue; and a second operation that is Pay TV, which is the object of the present public tender, whereby it is intended that end users are provided with a commercial offer in competition with that available on other platforms, at the level of subscription television services.

Under the terms of paragraph 1 of article 16 of Law no 27/2007 of 30 July, ERC - Entidade Reguladora para a Comunicação Social and ICP-ANACOM having been heard and the period of public appraisal having elapsed, the Government decrees, through the Ministers of Public Works, Transport and Communications and of Parliamentary Affairs, the following:

1. A public tender is opened for:
  - a) The allocation of five rights to use frequencies, reserved for the service of digital terrestrial television broadcasting, as identified in the Quadro Nacional de Atribuição de Frequências (QNAF – National frequency Allocation Plan), corresponding to two coverages on a national basis and three coverages of mainland territory on a partial basis, being based on single frequency networks (SFN) in the frequency bands identified in the regulation annex;
  - b) The licensing of the distribution operator responsible for the selection and aggregation of programming services with unrestricted access subject to subscription or with restricted access and for their provision to the public through the aforementioned service of digital terrestrial television broadcasting.

2. Approval is granted to the respective regulation of the tender referred to in paragraph 3 of article 16 of Law no 27/2007 of 30 July, which regulation is published in annex to the present administrative rule, forming an integral part thereof.
3. Approval is granted to the respective tender specifications, as cited in paragraph 7 of article 16 of said Law no 27/2007, which specifications shall be available for permanent consultation on the website of ICP-ANACOM ([www.anacom.pt](http://www.anacom.pt)) and in its registered office, situated in Lisbon at Avenida de José Malhoa, 12, between 9am and 4pm, from the date of publication of the present administrative rule until the date and hour of the opening of the corresponding public act.
- 4.º The present administrative rule enters into force on the day following its publication.

22 February 2008.

The Minister of Public Works, Transport and Communications, *Mário Lino Soares Correia*. - The Minister of Parliamentary Affairs, *Augusto Ernesto Santos Silva*.

**REGULATION OF THE PUBLIC TENDER FOR THE ALLOCATION OF RIGHTS TO  
USE FREQUENCIES ON A NATIONAL AND PARTIAL BASIS FOR THE DIGITAL  
TERRESTRIAL TELEVISION BROADCASTING SERVICE AND THE LICENSING OF A  
DISTRIBUTION OPERATOR**

**Article 1**

**Object**

1. The public tender set out in the present regulation has as its object:
  - a) The allocation of five rights to use frequencies, reserved for the digital terrestrial television broadcasting service in the *Quadro Nacional de Atribuição de Frequências* (National Frequency Allocation Plan), corresponding to two

coverages of national territory, which shall be associated with multiplexers B and C, and three coverages of mainland territory on a partial basis, which shall be associated with multiplexers D, E and F, in all cases having basis in single frequency networks (SFN), in the frequency bands identified in Annex I;

- b) The licensing of the distribution operator responsible for the activity of television which consists of the selection and aggregation of programme services with unrestricted access subject to subscription or restricted access and for its provision to the public through the service of digital terrestrial television broadcasting referred to in the previous point.
2. The five rights to use frequencies and the distribution operator license are allocated to a single entity.
3. The rights to use frequencies contained in the present regulation may be allocated to the tenderer receiving the title of the right to use frequencies placed in public tender by Regulation of ICP-ANACOM no. 95-A./2008, of 25 February.

## **Article 2**

### **Applicable legislation**

1. The tender is governed by the provisions of Law no 5/2004 of 10 February, of Law no 27/2007 of 30 July, of the present Regulation and the tender specifications, as well as the directly applicable rules of the Code of Administrative Procedure.
2. The allocated rights of use are governed by the provisions of Law no 5/2004 of 10 February, of the present Regulation and the set of specifications, as well as by other legislation of the communications sector.
3. The exercise of the activity of distribution operator is governed by the provisions of Law no 27/2007 of 30 July and of the present Regulation.

### **Article 3**

#### **Requisites for tenderers**

1. Tenders may be entered by commercial societies, incorporated or to be incorporated, which have the exercise of the television activity as their principle object, with minimum capital of € 5 000 000 (five million euros), which fulfil the requisites set forth in the present regulation.
2. Entities which are to be incorporated may tender provided that they possess a provisional card of identification, whereas, the respective authorisation titles, in case of allocation, are issued only following presentation of original written proof that the necessary registrations have been performed.
3. The rights to use frequencies and the distribution operator licensing, in respect of the present tender, may not be allocated to:
  - a) An entity holding a share equal to or exceeding 50% of the subscription television market;
  - b) Any entity which is dominated or significantly influenced, directly or indirectly, by an entity referred to in point a);
  - c) Any entity which dominates or significantly influences, directly or indirectly, an entity referred to in point a);
  - d) Any entity which is directly or indirectly dominated by another entity which itself dominates or significantly influences, directly or indirectly, an entity referred to in point a).
4. The concept of “domination” referred to in the previous point is set out in article 21 of the *Código de Valores Mobiliários* (Portuguese Securities Code), taking into account, likewise, the relationships which, under the terms of article 20 et seq. of this Code, derive from the attribution of voting rights, irrespective of whether or not such applies to the entities concerned.

5. For the purpose of paragraph 3, “significant influence” shall be considered as the attribution of at least 20% of voting rights, such attribution being made in accordance with the criteria set out in article 20 et seq. of the Portuguese Securities Code.
6. The prohibition set out in paragraph 3 shall apply for a period of 8 years following the date upon which the rights to use frequencies and the distribution operator license is allocated, at the end of which period ICP-ANACOM and the ERC shall assess the need and decide on the maintenance of the prohibition, defining, where such is the case, the respective period of continued application, particularly under the terms of article 20 of Law no 5/2004 of 10 February.
7. Notwithstanding the provisions of the previous paragraph, the prohibition set out in paragraph 3 may, at any time, be amended or suppressed, in the event that such is justified by the occurrence of technological or market developments, including under the terms of article 20 of Law no 5/2004 of 10 February.

#### **Article 4**

##### **Preparation of tenders**

The set of specifications is available for consultation by interested parties on the website of ICP-ANACOM as well as in the office of public attendance at its registered office at Avenida José Malhoa, 12, in Lisbon, on all working days between 9am and 4pm until the day and hour of opening of the public act set out in paragraph 1 of article 11.

#### **Article 5**

##### **Provisional bond**

1. To guarantee compliance with the commitments assumed through the presentation of the proposals and with the obligations inherent to the tender, tenderers shall provide a provisional bond to a value of € 750,000 (seven hundred and fifty thousand euros).
2. Said bond shall be provided by bank guarantee or insurance bond made out to ICP-ANACOM, in any of the duly documented cases.

3. The bond may be withdrawn by the tenderers upon the expiry of the deadline for the submission of proposals, in the event that a proposal has not been submitted or where such has not been admitted, or further in the event that the rights to use frequencies and the distribution operator licence is not allocated upon completion of the tender.
4. In the event of the exclusion of tenders under paragraph 4 of article 12, the provisional bond shall be forfeit in favour of ICP-ANACOM.
5. For the purposes of paragraph 3, ICP-ANACOM shall perform, in the subsequent 10 working days, the necessary diligence.

## **Article 6**

### **Requests for clarification**

1. Interested parties may seek, during the continuance of the period for submitting tenders and up to 15 working days prior to the expiry of such period, the clarification of any query that they might have in the interpretation of any document of the tender process.
2. Requests for clarification must be presented in the public attendance service in the registered office of ICP-ANACOM, in writing and in exchange for proof or receipt, or sent by registered letter with notice of reception, addressed to the Chairman of the Board of Directors of ICP-ANACOM.
3. Requests for clarification which involve the hearing of the ERC shall be sent immediately to said entity, which, within a period of 5 working days, shall provide the necessary clarifications, sending them to ICP-ANACOM.
4. Clarifications are provided by ICP-ANACOM by registered letter with notice of reception, sent no later than 10 working days following the date of reception referred to in the previous paragraph.
5. The requests for clarification are included in a book which is kept at the disposal of the interested parties who intend to consult it, at the registered office of ICP-

ANACOM, on all working days between 9am and 4pm, which information shall also be available on the website of ICP-ANACOM at [www.anacom.pt](http://www.anacom.pt).

6. The information contained in the consultation book prevails, for all purposes, over that provided on the website of ICP-ANACOM.
7. The consultation book is closed and archived in ICP-ANACOM on the date on which the public act of the tender is performed.
8. The companies which offer publically available electronic communications networks and services, as well as companies which use electronic communications networks and services, specifically the operators of television programming services, are bound by the present Regulation and for the purposes of this tender, specifically in order to ascertain the prohibition set out in paragraph 3 of article 3, to provide all such clarification that ICP-ANACOM requests of them, within the period set for such, particularly in order to allow compliance with the provisions of the above paragraph 4.

## **Article 7**

### **Delays**

In the situation set out in the previous article, where use is made of the postal services, the tenderers shall be solely responsible for any delays and may not present any complaint in the event that the delivery of the request for clarification to ICP-ANACOM occurs after the expiry of the applicable deadline.

## **Article 8**

### **Form and deadline for the presentation of tenders**

1. Tenders must be formalised by means of written application, in the Portuguese language, addressed to the Chairman of the Board of Directors of ICP-ANACOM, which application shall include the identification of the tenderer, reference to the present tender regulation, as well as the date and the signature of the tenderer.



2. The tender applications must be delivered in the public attendance service in the registered office of ICP-ANACOM, in exchange for proof or receipt, on working days between 9am and 4pm.
3. The deadline for the delivery of tenders expires 40 working days following the date upon which the present regulation of the tender enters into force, whereas no tender may be accepted where this deadline is exceeded.

## **Article 9**

### **Application examination**

1. The tenderers shall present, with the respective application for tender set out in the previous article, the following documents and items:
  - a) Declaration by the entity with powers to legally bind the tenderer, recognised in this quality under legally admissible terms, where there shall be express acceptance of the conditions of the tender and submission to the obligations arising from the act of tender and respective proposals, in the event of allocation of the authorisation titles, as well as respect for the general rules of competition and concentration;
  - b) Certificate of registration and prevailing inscriptions issued by the competent Companies Registry or access code to the permanent certificate of the tendering entity under terms that allow verification of said items:
  - c) Photocopy of the respective articles of association;
  - d) Document proof that a provisional bond has been provided under the terms of article 5;
  - e) Document providing evidence of compliance with the criteria of share capital structure and the attribution of voting rights established in article 3;

- f) Document providing proof of compliant status with regard to social security and to payment of taxes, under legally defined terms, in order for ICP-ANACOM to consult the tax and contribution payment status of the tenderer;
  - g) Proof of an organised accounting system under the terms of the Official Chart of Accounts;
  - h) Document which outlines the organisational structure of the tendering entity, identifying the persons in main positions of responsibility;
  - i) A technical plan drawn up in accordance with the structure of the tender specifications;
  - j) An economic and financial plan drawn up in accordance with the structure of the tender specifications;
  - k) General description outlining the television offer, in function of the area of coverage and type of programme services, reservation of network and distribution capacity for services of regional television programming and for the broadcast of educational or cultural activities, pursuant to the provisions of paragraph 6 of article 25 of Law 27/2007 of 30 July, and their contribution to the production of European works and for the broadcast of creative works of original production in the Portuguese language;
  - l) Declaration by the entity with powers to legally bind the tenderer that all copies presented, irrespective of their format, conform to the originals and that it is accepted that such prevail for all purposes;
  - m) Any other items which the tenderer considers relevant to the assessment of the tender
2. For the purposes of point e) of paragraph 1, the tenders shall, in particular, identify the holders, natural or legal persons, of the share capital of the tendering entity, the amount of their participation, as well as, where one or more of the shareholders is a legal person, provide, with respect to these, the same specified indication.

3. The entities referred to in paragraph 2 of article 3 are not required to deliver the documents set out in points a), b), c), f) and g) of paragraph 1 and shall present:
  - a) A binding protocol made between the incorporating persons, providing express declaration of acceptance of the conditions of the tender and submission to the obligations arising from the act of tender and respective proposals, in the event of allocation of the usage right;
  - b) Draft articles of association to which the constituents are bound;
  - c) Provisional identification card.
4. The entities referred to in paragraph 2 of article 3 shall provide express indication of the address to which they wish all correspondence in respect of the tender to be sent.
5. The companies whose incorporation occurred in the 90 days preceding the date of tender application are exempted from the requirement referred to in points f) and g) of paragraph 1.
6. Documents submitted by tenderers whose registered office is outside the national territory must be issued and authenticated by the competent authorities of the country of origin, and should no document identical to those requested be available, such can be substituted by a declaration made under oath by the tenderer before a legal or administrative authority, notary or other competent authority of the country of origin.
7. All documents accompanying the application must be written in Portuguese or, if not, be accompanied by a duly legalised translation regarding which the tenderer states that, for all purposes, it is agreed that the latter shall prevail over the original.
8. All documents comprising the application submitted by tenderers shall not be returned but will remain in the possession of ICP- ANACOM

## **Article 10**

### **Distribution of tender documents**

1. The tender application shall be submitted in a sealed envelope that is separate from the other elements of the tender, on the face of which envelope the name of tenderer shall be identified, as well as the frequency usage rights and distribution operator licence to which the tender relates.
2. Documents accompanying the tender application shall be submitted in three sealed volumes, in order that the non-violation of the contents is guaranteed, which volumes shall be numbered by reference to their total number and duly identified, being so distinguished the chapters in respect of the identification of the tenderer, the technical plan, and the economic-financial plan, in accordance with the structure demanded in the bid specifications, as well as the chapter in respect of the description of the outline of the composition of the television offer, referred to in point k) of paragraph 1 of article 9.
3. The original documents in respect of the chapter of identification of the tenderer shall be sequentially numbered on all pages, which shall be initialled by one of the legal representatives of the tenderer and contain the indication that the document is an original copy.
4. Two copies of all documents referred to in the previous paragraph shall be submitted and shall be duly identified as such.
5. The items in respect of the chapter of the technical plan, the chapter of the economic-financial plan and the chapter in respect of the description of the outline of the composition of the television offer shall be contained in plain folders, with sequential numbering of pages per chapter, which shall be initialled on the first page of each folder by one of the representatives of the tenderer and contain the indication that it the document is an original copy.

6. Five copies of the items referred to in the previous paragraph shall be presented on non re-recordable CD-ROM, with the respective files in PDF format (*Adobe Acrobat*), which shall maintain the same sequential numbering of pages by chapter.
7. Geographical maps referring to radio coverage are exempt from the provisions of paragraphs 5 and 6, which maps shall respect the requisites of submission set out in the tender specifications, including an original, initialled by one of the representatives of the tenderer, as well as a duly indentified copy.
8. The parameterisation of access to the files referred to in paragraph 6 shall ensure that such may only be made by means of permission through the use of a password, which, in this case, shall be indicated to the Committee alluded to in paragraph 3 of article 11, by way of a declaration in a sealed envelope
9. The content of said files may further be encrypted, in which case the tenderers shall supply the keys or certificates necessary for their consultation under the terms set out in the previous paragraph.
10. The envelopes with the declarations referred to in paragraphs 8 and 9, duly identified, shall be enclosed in the envelope which contains the tender application.
11. The parameterisation inherent to the registry of the files in the format set out in paragraph 6 shall guarantee that their content may not be altered and that no other record be made, by any means.

## **Article 11**

### **Public Act of Tender**

1. The public act of tender to open tender applications shall take place at 10 am on the 1st working day following the expiry of the deadline for the delivery of tenders stated in paragraph 3 of article 8, in conformity with an announcement to be published in the press by ICP-ANACOM and made available on their website, which will also identify the location where the public act of tender will take place.

2. Only representatives of the tenderers, up to a maximum of three persons per tenderer, may be present at the public act of the tender, provided that such persons are duly empowered to represent the tenderers in said act.
3. The public act of the tender is conducted by a committee appointed by determination of the Board of Directors of ICP-ANACOM within a period of 5 working days following the date on which the present tender regulation enters into force, and shall consist of three suitable individuals with recognised technical competence, of which one shall be indicated by the Regulatory Board of the ERC, which committee in this respect is charged with:
  - a) Confirming reception of the envelope containing the tender applications, as well as the packages containing their accompanying documents and items;
  - b) Opening the envelopes containing the tender applications, including the envelopes cited in paragraph 10 of the previous article, where such exist, as well as the packages containing the documents and items pertaining to identification of the tenderer, the technical plan, the economic and financial plan and the outline of the composition of the television offer;
  - c) Initialling the tender applications and declarations referred to in paragraphs 8 and 9 of the previous article, where such exist, simultaneously ensuring the seal of the original documents in respect of the chapter of identification of the tenderer, of the first pages of the folders in respect of the technical plan and of the economic-financial plan, of the geographical maps and of the outline of the composition of the television offer, as well as fixing a limit of time for consultation of the processes tender application by the tenderers;
  - d) Whenever so required, checking the capacity of the persons intervening in the act;
  - e) Providing tenderers with a maximum time limit of fifteen working days in order to rectify any omissions or errors verified in the bid application, when such rectification is considered feasible;

- f) Drawing up a proposed and reasoned list of admissible or rejected tenders for submission to the regulatory board of ERC:
  - g) Accepting and deciding on all complaints submitted during the public act by the representatives of the tenderers, suspending the said act where necessary.
4. An appeal, which does not suspend the effects of the appeal decision, may be lodged against the decisions referred to in point g) of the previous paragraph with the Board of Directors of ICP-ANACOM.

## **Article 12**

### **Admission and exclusion of tenderers**

1. The act of admitting or excluding the tenders shall be object of determination of the Board of Directors of ICP-ANACOM according to a reasoned proposal from the Committee following the prior binding opinion of the ERC in respect of the conditions with respect to its competence.
2. Conditional proposals shall not be admitted, such being considered as proposals in which the tenderer makes its validity dependent on the occurrence of a future or uncertain event.
3. Bids shall be rejected at any stage of the tender proceedings in the event of any of the following situations:
  - a) Non compliance with the provisions of articles 8, 9, 10 and 14;
  - b) Non compliance with the requisites and conditions of the tender.
4. Tenders which do not fulfil one of the following minimum requisites are excluded, particularly under the terms set out in the tender specifications:
  - a) Use of the DVB-T (*Digital Video Broadcasting for Terrestrial Television*) system;
  - b) Fulfilment of the obligations of coverage set out in paragraph 2 of article 18

- c) Fulfilment of the condition set out in paragraph 5 of the present article
- 5 The tenderers which, at the moment of submission of the tenders, do not fulfil the requisites set out in paragraph 3 of article 3 of the present regulation are admitted under condition that they demonstrate, no later than 10 working days prior to the termination of the appraisal period, set out in paragraph 1 of article 15, that they are not covered by the cited prohibitions, presenting the documents necessary for such purpose.

### **Article 13**

#### **Assessment of Applications**

1. The assessment of applications, based on a principle of cooperation between the regulatory bodies, shall be based on the following selection criteria, identified in Annex II:
- a) The economic and financial costs associated with the project, taking into consideration the contribution to the rapid massive spread of digital terrestrial television and the promotion of competition, the technologically innovative character and the contribution to the development of the Information Society, as well as the quality of the technical plan and the quality of the economic-financial plan;
  - b) Their contribution to the qualification of the television offer, to the production of European works and for the broadcast of creative works with Portuguese as the original language.
2. The tenderers will be graded and classified in accordance with the following formula:

$$\text{Final classification} = \underline{3a + 2b}$$

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3. For the purpose of calculating criteria  $a$  of the final classification formula set out in paragraph 2, the following weighting shall be employed:

Criteria  $a_1$  (36%) - Contribution to the rapid massive spread of Digital Terrestrial Television (DTT) and promotion of competition;

- Sub-criteria  $a_{1.1}$  (38%) - Contribution to the rapid massive spread of Digital Terrestrial Television (DTT) at an infrastructure level (by multiplexer);
- Sub-criteria  $a_{1.2}$  (62%) - Contribution to the rapid massive spread of DTT and promotion of competition at the level of services;

Criteria  $a_2$  (22%) – Adoption of technologically innovative solutions, promotion of interoperability and contribution to the development of the Information Society;

- Sub-criteria  $a_{2.1}$  (3%) – Adoption of compression formats;
- Sub-criteria  $a_{2.2}$  (40%) – Availability of network(s) supporting interactive services;
- Sub-criteria  $a_{2.3}$  (34%) - Availability of interactive services including *Electronic Program Guides* (EPG);
- Sub-criteria  $a_{2.4}$  (9%) – Flexibility of techniques for updating reception equipment software;
- Sub-criteria  $a_{2.5}$  (14%) - Interoperability in terms of reception equipment;;

Criteria  $a_3$  (33%) - Quality of the technical plan, including the adoption technologies, specifically in terms of reception equipment, which enable access for persons with special needs;

- Sub-criteria  $a_{3.1}$  (12%) - Quality of the design and topology of the presented network, as well as of the network equipment;
- Sub-criteria  $a_{3.2}$  (18%) – Quality of the digital broadcast centre to be implemented;
- Sub-criteria  $a_{3.3}$  (8%) - Quality of the solution to be implemented for the transport network and its suitability in respect of the characteristics of the broadcast network;

- Sub-criteria  $a_{3.4}$  (36%) - Quality of the broadcast network to be implemented, with special relevance given to its configuration and respective infrastructure;
- Sub-criteria  $a_{3.5}$  (22%) – Flexibility and breadth of availability of modules of conditional access and description of the respective system;
- Sub-criteria  $a_{3.6}$  (4%) - Availability of reception apparatus which enable access to the transmission of television by persons with special needs;

Criteria  $a_4$  (9%) - Quality of the economic-financial plan;

- Sub-criteria  $a_{4.1}$  (52%) - Quality of the business plan;
- Sub-criteria  $a_{4.2}$  (32%) - Quality of the project feasibility and risk assessment;
- Sub-criteria  $a_{4.3}$  (16%) – Impact of the project in terms of the economic activity of the country;

4. For the purpose of calculating criteria  $b$  of the final classification formula set out in paragraph 2, the following weighting shall be employed:

Criteria  $b_1$  (60%) – Qualification of the television offer;

- Sub-criteria  $b_{1.1}$  (70%) – Diversity in the composition of programme services, in line with the legal ends of the television activity and the obligation of the distribution operator set forth by paragraph 2 of article 9 of Law no 27/2007 of 30 July;
- Sub-criteria  $b_{1.2}$  (10%) – Offer of regional television programme services or the provision of network and distribution capacity for this type of programme services;
- Sub-criteria  $b_{1.3}$  (10%) - Offer of programme services of a educational or cultural nature or network and distribution capacity for this type of programme services;
- Sub-criteria  $b_{1.4}$  (10%) - Offer of contents in high definition;

Criteria  $b_2$  (20%) - Offer of programme services which contribute to the production of European works;

Criteria  $b_3$  (20%) – Offer of programme services with relevance to the broadcast of creative production works with Portuguese as the original language.

5. In the event of a draw between the tender applications, the following criteria shall be applied successively:
  - a) The largest participation of television operators which use the hertzian spectrum in the tendering entities;
  - b) The tenderer with the highest score in the criteria of contributing to the rapid massive spread of digital terrestrial television and promotion of competition;
  - c) The tenderer with the highest score in the sub-criteria of diversity in the composition of programme services, in line with the legal ends of the television activity and the obligation of the distribution operator set forth by paragraph 2 of article 9 of Law no 27/2007 of 30 July.
6. The Committee shall perform the assessment and application of the criteria *a* of the formula set out in paragraph 2, being able to seek from the services of ICP-ANACOM the technical opinions that are appropriate as to the decision, as well as all necessary cooperation.
7. The ERC is charged with the assessment and application of *b* of the formula set out in paragraph 2.
8. For the purposes of the previous paragraph, the Committee, within a period of 5 working days following the determination of the Board of Directors of ICP-ANACOM which decided on the admission of tenderers under the terms of article 12 of this Regulation, shall send to the Regulatory Board of ERC the document set out in point k) of paragraph 1 of article 9, as well as the remaining items which allow the Regulatory Board of ERC to determine as to the assessment of the criteria concerned, without prejudice to the remittance of others considered necessary by this body.
9. The ERC shall send the determination taken under the terms of the previous paragraph to the Committee within a period of not more than 20 days following the reception of the assessment request.

## **Article 14**

### **Clarification to be provided by Tenderers**

The tenderers, through a representative qualified for such purpose, undertake to provide the Committee with all clarifications that are sought of them, within a period and in a way set by the Committee, in order to complete the assessment of the applications.

## **Article 15**

### **Final Decision**

1. The committee shall draw up a final report, containing a list classifying the tenderers, with due basis, proposing to the Board of Directors of ICP-ANACOM and the Regulatory Board of ERC, within a time limit of 40 working days following the closure of the public act of the tender, or from the period of rectifying possible insufficiencies, respectively, the allocation of the rights to use frequencies and the distribution operator licence that are the object of the present tender to the tenderer which, satisfying the conditions of the tender and the selection criteria, has earned the best classification.
2. The period set in the previous paragraph may exceptionally be extended, on the reasoned proposal of the Committee, by decision of the Board of Directors of ICP-ANACOM, having heard the ERC.
3. The Board of Directors of ICP-ANACOM and the Regulatory Board of the ERC are charged with the ratification, with a period of 10 working days, of the proposed allocation, respectively, of the rights to use frequencies and the distribution operator licence, following the prior hearing of interested parties, under the terms of articles 100 et seq. of the Code of Administrative Procedure, conducted by the Board of Directors of ICP-ANACOM as conductor of the process.
4. The decision on the allocation of the rights to use frequencies and the distribution operator licence shall be communicated by ICP-ANACOM to all tenderers by registered letter with notice of reception.

5. In the case of the entity to which the rights to use frequencies and the distribution operator licence is allocated, the communication cited in the previous paragraph shall make express reference to the obligation to raise the bond set out in the following article.

### **Article 16**

#### **Definitive bond**

1. The entity authorised under the terms of the present tender shall be obliged, within a period of 10 working days following the reception of the communication cited in paragraph 4 of article 15, to raise the bond to the value of € 2,500,000 (two million five hundred thousand euros).
2. The bond referred to in the previous paragraph shall have continuance for a maximum period of 42 months, being released upon verification of compliance with the staging of obligations of coverage contained in the tender specifications or arising from the commitment assumed in this respect in the winning proposal.

### **Article 17**

#### **Issue of titles**

1. The titles of allocation of the rights to use frequencies shall be issued by ICP-ANACOM, within a period of 25 working days following compliance with the provisions of paragraph 1 of the previous article, which titles shall contain the conditions associated with the respective exercise under the terms of articles 27 and 32 of Law 5/2004 of 10 February
2. The authorisation title in respect of the distribution operator will be issued by ERC, within a period of 25 working days following compliance with the provisions of paragraph 1 of the previous article, as well as with paragraph 5 of article 11 of the Television law, which title shall contain the conditions associated with the respective exercise.

3. For the purposes of the provisions of the previous paragraphs ICP-ANACOM and ERC shall conduct, respectively, the prior hearing of the title holder of the usage rights and the of the licence of distribution operator under the terms of articles 100 et seq. of the Code of Administrative Procedure.
4. Whenever, without grounds, the tenderer to whom the rights to use frequencies and the distribution operator licence are allocated fails to comply with the provisions of paragraph 1 of the previous article, the proposal classified in subsequent place according to the classification list of tenderers shall be ratified by the competent entities, provided that said tender fulfils the conditions of the tender and selection criteria.
5. The ratification of the new proposal determines the revocation of the previous acts of allocation of the rights to use frequencies and the distribution operator licence.

#### **Article 18**

#### **Obligations of the holder of the rights to use frequencies and the distribution operator licence**

1. The obligation resulting from the terms of the tender and the commitments assumed in the winning proposal shall form an integral part of the title of allocation of rights to use frequencies, constituting, for all purposes, one of the conditions associated with the allocated rights, under the terms of article 32, paragraph 1, point g) of Law no 5/2004 of 10 February.
2. Except where the commitments assumed in the winning proposal result in more demanding values, the holder of the rights to use frequencies shall guarantee the following final coverages, 42 months following the issue of the respective authorisation titles, which shall constitute a condition of effective and efficient use of frequencies, under the terms of article 32, paragraph 1, point b) of Law no 5/2004 of 10 February.

- a) 75% of the population of the national territory, respecting an equal distribution in all the Districts of the mainland territory and the Autonomous Regions, with respect to *Multiplexers B and C*.
  - b) 75% of the population of the coverage area associated with *Multiplexers D, E and F*, marked in the Annex.
3. During the period of the continuance of the prohibition set out in paragraph 3 of article 3, the entity holding the rights to use the frequencies and the distribution operator licence may only alter the composition and ownership of its share capital according to the prior authorisation of do ICP-ANACOM and ERC
4. The allocation of the rights to use the frequencies does not confer on its holder any other rights which do not result from the exact terms contained in the allocation title, whereas no facts arising from the allocation, in any way, of new services or rights of use or modification incidentally of circumstances may be cited.
5. The holder of the allocated rights to use the frequencies is bound to comply with the standards which may be published in the future, even where these prescribe provisions not foreseen at the date of the allocation of the rights of use, but result from the needs or demands of public use of the service which they provide, under the terms of the regime set out in article 20 of Law no 5/2004 of 10 February.
6. The holder of the allocated rights to use the frequencies shall reserve network and distribution capacity for services of regional television programming and for the broadcast of educational or cultural activities, under the terms contained in the tender application and in the allocation title of the rights to use the frequencies.
7. The network capacity cited in the previous paragraph shall take into account the services of programmes specifically contained in the proposals submitted to the tender, of other programme services to be subjected to the authorisation process, in accordance with the proposed timetable, as well as the form of use of this reserve while not wholly taken up with the offer of programme services.

## **Article 19**

### **Continuance of the authorisation titles**

1. The rights to use the frequencies have a validity of 15 years and may be renewed under the terms of Law no 5/2004 of 10 February.
2. The authorisation title in respect to the quality of distribution operator is issued for a period of 15 years and is renewable for equal periods, under the terms of article 22 of Law no 27/2007 of 30 July.

## **Article 20**

### **Counting the Time Limits**

The method for counting the time limits set out in the present Regulations shall be governed by the rules of article 72 of the Code of Administrative Procedure.



## ANNEX I

The frequencies to be used on the Mainland and in the Autonomous Regions for providing coverages in respect of *Multiplexer B, C, D, E and F* are the following:

### MAINLAND TERRITORY

#### NATIONAL

MUX B ⇔ Channel 69 - 854-862 MHz

MUX C ⇔ Channel 60 - 782-790 MHz

#### PARTIAL

MUX D ⇔ Channel 65 - 822-830 MHz

MUX E ⇔ Channel 66 - 830-838 MHz

MUX F ⇔ Channel 68 - 846-854 MHz

The zone covered by these 3 Multiplexers D, E and F is composed of the coastal area of the mainland territory up to around 80km from the frontier marked on the map contained in this annex, whereas it shall be ensured that, in Spanish territory, the interfering field does not exceed 22 dB $\mu$ V/m, at a height of 10m. The value of the usable minimum field corresponding to the parameters used for network configuration shall, at the maximum, be attained at the test points specified at the end of this annex, which correspond to the delimitation marked on the map.

## **AUTONOMOUS REGION OF THE AZORES**

MUX B ⇔ Channel 48 - 686-694 MHz (Ilha de São Jorge)

Channel 57 - 758-766 MHz (Ilha do Pico)

Channel 62 - 798-806 MHz (Ilhas de S. Miguel e Graciosa)

Channel 65 - 822-830 MHz (Ilha do Faial)

Channel 68 - 846-854 MHz (Ilhas da Terceira, S. Maria, Flores e Corvo)

MUX C ⇔ Channel 49 - 694-702 MHz (Ilha de São Jorge)

Channel 58 - 766-774 MHz (Ilha do Pico)

Channel 63 - 806-814 MHz (Ilhas de S. Miguel e Graciosa)

Channel 66 - 830-838 MHz (Ilha do Faial)

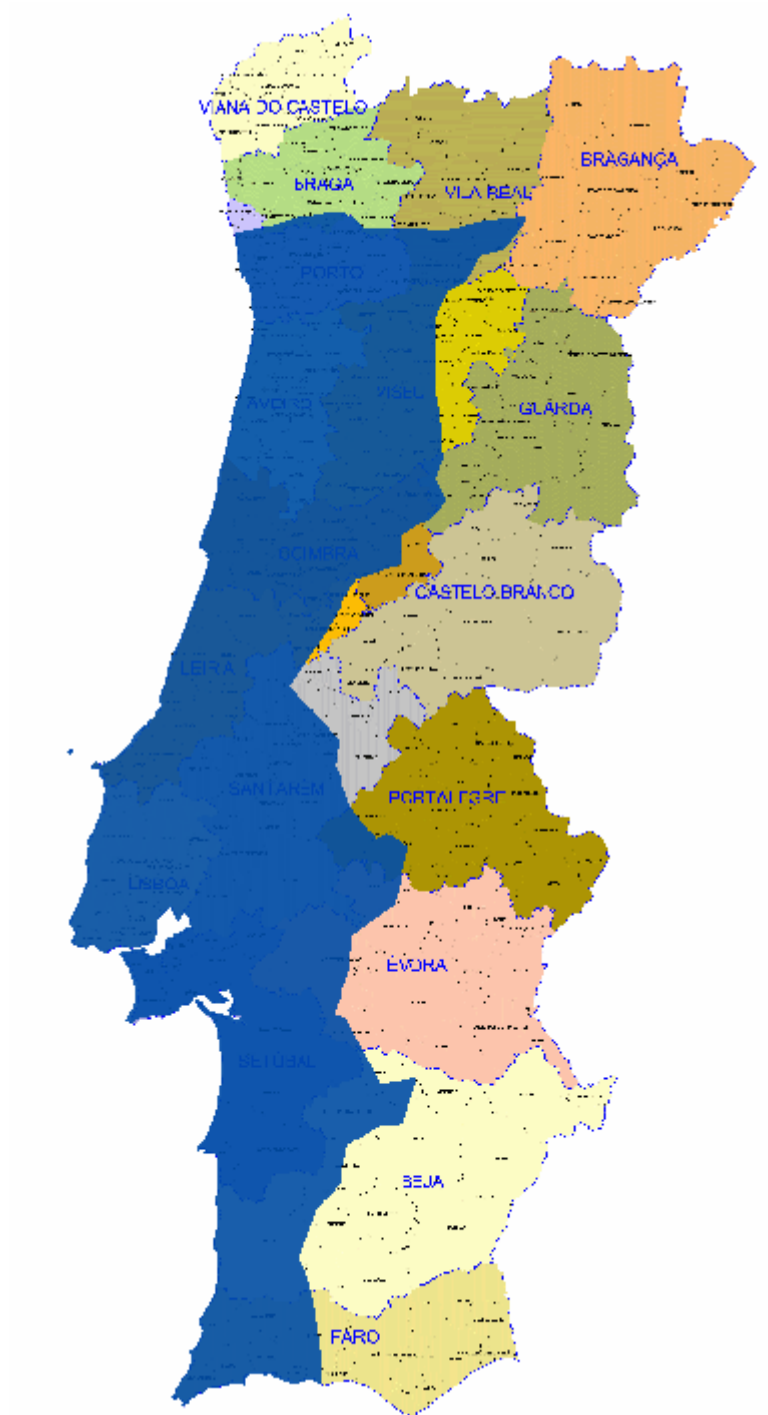
Channel 69 - 854-862 MHz (Ilhas da Terceira, S. Maria, Flores and Corvo)

## **AUTONOMOUS REGION OF MADEIRA**

MUX B ⇔ Channel 63 - 806-814 MHz

MUX C ⇔ Channel 69 – 854-862 MHz

## Zone of partial coverage in respect of Multiplexers D, E and F



Test points in the delimitation marked in the above map:

	<b>Longitude</b>	<b>Latitude</b>		<b>Longitude</b>	<b>Latitude</b>
<b>1</b>	008W19 07	37N05 25	<b>27</b>	007W56 22	40N07 22
<b>2</b>	008W19 08	37N11 27	<b>28</b>	007W56 43	40N10 05
<b>3</b>	008W21 12	37N22 48	<b>29</b>	007W56 43	40N13 19
<b>4</b>	008W22 54	37N27 56	<b>30</b>	007W48 35	40N17 21
<b>5</b>	008W25 18	37N33 03	<b>31</b>	007W43 37	40N21 07
<b>6</b>	008W20 14	37N43 37	<b>32</b>	007W46 47	40N25 43
<b>7</b>	008W13 47	37N49 34	<b>33</b>	007W44 38	40N30 35
<b>8</b>	008W11 24	37N57 57	<b>34</b>	007W45 17	40N39 14
<b>9</b>	008W03 12	38N02 16	<b>35</b>	007W46 19	40N44 22
<b>10</b>	007W56 22	38N02 48	<b>36</b>	007W46 38	40N53 01
<b>11</b>	007W52 34	38N12 31	<b>37</b>	007W46 14	41N02 12
<b>12</b>	008W02 10	38N10 55	<b>38</b>	007W42 59	41N07 19
<b>13</b>	008W12 06	38N25 31	<b>39</b>	007W36 53	41N09 59
<b>14</b>	008W15 53	38N26 19	<b>40</b>	007W33 16	41N15 23
<b>15</b>	008W11 05	38N36 36	<b>41</b>	007W26 49	41N16 41
<b>16</b>	008W10 24	38N44 26	<b>42</b>	007W23 34	41N19 06
<b>17</b>	007W59 00	38N50 55	<b>43</b>	007W19 12	41N23 40
<b>18</b>	007W54 49	39N03 36	<b>44</b>	007W31 03	41N22 39
<b>19</b>	008W00 21	39N06 35	<b>45</b>	007W43 15	41N20 33
<b>20</b>	008W03 29	39N05 30	<b>46</b>	007W52 56	41N21 07
<b>21</b>	008W10 46	39N12 48	<b>47</b>	008W06 12	41N20 52
<b>22</b>	008W15 18	39N22 15	<b>48</b>	008W12 18	41N24 55
<b>23</b>	008W14 16	39N27 40	<b>49</b>	008W18 02	41N24 55
<b>24</b>	008W28 16	39N39 48	<b>50</b>	008W23 46	41N23 49
<b>25</b>	008W18 20	39N51 42	<b>51</b>	008W33 27	41N21 54
<b>26</b>	008W09 13	40N04 00	<b>52</b>	008W44 11	41N19 58

## **Annex II**

### **Assessment Criteria**

CRITERIA	SUB-CRITERIA	INDICATORS
<b>Criteria a<sub>1</sub> (36%)</b>  Contribution to the rapid massive spread of DTT and promotion of competition	<b>Sub-Criteria a<sub>1,1</sub> (38%)</b> Contribution to the rapid massive spread of DTT at an infrastructure level (by multiplexer)	<ul style="list-style-type: none"> <li>• Rapidity of coverage</li> <li>• Percentage of the population covered at the end of implementation of the network, in comparison to the total population (with basis on the most recent provisional estimates derived from the definitive results of the 2001 Census) of the potential coverage area of the multiplexer</li> <li>• Portable interior reception</li> <li>• Capacity of the broadcast network</li> <li>• Network quality of service</li> </ul>
	<b>Sub-Criteria a<sub>1,2</sub> (62%)</b> Contribution to the rapid massive spread of DTT and promotion of competition at the level of services	<ul style="list-style-type: none"> <li>• Diversity and distinction of the commercial offer</li> <li>• Diversity and distinction of the policy of reception equipment</li> <li>• User support, including help desk service</li> <li>• Sales / distribution network</li> </ul>
<b>Criteria a<sub>2</sub> (22%)</b>  Adoption of technologically innovative solutions, promotion of interoperability and contribution to the development of the Information Society	<b>Sub-Criteria a<sub>2,1</sub> (3%)</b> Adoption of compression formats	
	<b>Sub-Criteria a<sub>2,2</sub> (40%)</b> Availability of network(s) supporting interactive services	
	<b>Sub-Criteria a<sub>2,3</sub> (34%)</b> Availability of interactive services including EPG	
	<b>Sub-Criteria a<sub>2,4</sub> (9%)</b> Flexibility of techniques for updating reception equipment software	
	<b>Sub-Criteria a<sub>2,5</sub> (14%)</b> Interoperability in terms of reception equipment	
<b>Criteria a<sub>3</sub> (33%)</b>  Quality of the technical plan, including the adoption of technologies, specifically in terms of reception equipment, which enable access for persons with special needs	<b>Sub-Criteria a<sub>3,1</sub> (12%)</b> Quality of the design and topology of the presented network, as well as of the network equipment	<ul style="list-style-type: none"> <li>• Design and topology of the network and digital broadcast centre</li> <li>• Network equipment</li> </ul>
	<b>Sub-Criteria a<sub>3,2</sub> (18%)</b> Quality of the digital broadcast centre to be implemented	<ul style="list-style-type: none"> <li>• Multiplexing</li> <li>• Play out systems</li> <li>• Content automation and management system</li> <li>• System for creating, managing and inserting PSI/SI tables</li> <li>• System for creating and inserting data generated by the conditional access system</li> <li>• System for managing and inserting other data</li> <li>• Multiplexer employment plan</li> <li>• General configuration of the digital broadcast centre</li> </ul>
	<b>Sub-Criteria a<sub>3,3</sub> (8%)</b> Quality of the solution to be implemented for the transport network and its suitability in respect of the characteristics of the broadcast network	<ul style="list-style-type: none"> <li>• Infrastructure to be used</li> <li>• Security and redundancy policy</li> </ul>
	<b>Sub-Criteria a<sub>3,4</sub> (36%)</b> Quality of the broadcast network to be implemented, with special relevance given to its configuration and respective infrastructure	<ul style="list-style-type: none"> <li>• Network configuration</li> <li>• Spectrum characteristics</li> <li>• Management of radiocommunications infrastructure</li> <li>• Security and redundancy policy</li> </ul>
	<b>Sub-Criteria a<sub>3,5</sub> (22%)</b> Flexibility and breadth of availability of modules of conditional access and description of the respective system	
	<b>Sub-Criteria a<sub>3,6</sub> (4%)</b> Availability of reception apparatus which enable access to the transmission of television by persons with special needs	
<b>Criteria a<sub>4</sub> (9%)</b>  Quality of the economic-financial plan	<b>Sub-Criteria a<sub>4,1</sub> (52%)</b> Quality of the business plan	<ul style="list-style-type: none"> <li>• Characterisation of the current market situation</li> <li>• Market projections</li> <li>• Strategic and marketing plan</li> <li>• Special offers</li> </ul>
	<b>Sub-Criteria a<sub>4,2</sub> (32%)</b> Quality of the project feasibility and risk assessment	
	<b>Sub-Criteria a<sub>4,3</sub> (16%)</b> Impact of the project in terms of the economic activity of the country	

CRITERIA	SUB-CRITERIA
<p><b>Criteria b<sub>1</sub> (60%)</b></p> <p>Qualification of the television offer</p>	<p><b>Sub-criteria b<sub>1.1</sub> (70%)</b> - Diversity in the composition of programme services, in line with the legal ends of the television activity and the obligation of the distribution operator set forth by paragraph 2 of article 9 of Law no 27/2007 of 30 July</p>
	<p><b>Sub-criteria b<sub>1.2</sub> (10%)</b> - Offer of regional television programme services or the provision of network and distribution capacity for this type of programme services;</p>
	<p><b>Sub-criteria b<sub>1.3</sub> (10%)</b> - Offer of programme services of a educational or cultural nature or network and distribution capacity for this type of programme services</p>
	<p><b>Sub-criteria b<sub>1.4</sub> (10%)</b> - Offer of contents in high definition</p>
<p><b>Criteria b<sub>2</sub> (20%)</b></p> <p>Offer of programme services which contribute to the production of European works</p>	
<p><b>Criteria b<sub>3</sub> (20%)</b></p> <p>Offer of programme services with relevance to the broadcast of creative production works with Portuguese as the original language.</p>	