

## **Regulation no. -----**

This is an unofficial, courtesy translation of the rules for the forthcoming Portuguese auction.  
Please note that the legally binding text is the original Portuguese version only.

### **AUCTION REGULATION FOR THE ALLOCATION OF RIGHTS OF USE OF FREQUENCIES IN THE 450 MHZ, 800 MHZ, 900 MHZ, 1800 MHZ, 2.1 GHZ AND 2.6 GHZ BANDS.**

Considering the international framework, especially at European Union level, and given the number of expressions of interest in using the 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz and 2.6 GHz bands evident in responses received in the context of the public consultation conducted in respect of the National Table of Frequency Allocations (NTFA) 2009-2010, and further considering the need to (i) ensure efficient use of frequencies, (ii) maximise benefits for users and (iii) facilitate the development of competition, ICP-ANACOM intends to make these frequency bands available for applications in the context of terrestrial electronic communication services and networks, in accordance with the principles of neutrality, in terms of technology and services, notwithstanding the attributions laid down in the NTFA.

In this respect, and considering that the allocation of rights of use of frequencies is required for all of the bands referred to above, as laid down in NTFA 2010-2011, by determination of 13 July 2011 and following the proper general consultation procedure, ICP-ANACOM has given approval to the decision on limiting the number of rights of use of frequencies in the 450 MHz, 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz and 2.6 GHz bands and on defining the respective allocation procedure.

Under the terms of this determination, ICP-ANACOM considered that the most appropriate method of allocating the rights of use of frequencies concerned would be by auction, given the flexibility of deployment sought – specifically by allowing the deployment of different services and the use of different technologies (neutrality, in terms of technology and services) and through the flexible allocation of spectrum according to the needs of each operator -, as well as the need to bring the value of the spectrum into line with the reality of the market.

Taking equally into account that, in the case under analysis, ICP-ANACOM is to approve the regulation governing the allocation of rights of use of frequencies, by determination of 17 March 2011, ICP-ANACOM approved a first draft of the auction

regulation (simultaneously to a draft decision on the limitation of rights). This first draft was submitted to the regulatory consultation procedure under the terms of article 11 of the Statutes of ICP-ANACOM, in annex to Decree-Law no. 309/2001 of 7 December.

In light of the complexity of the contributions received, as well as the signing, in the meantime, of the Memorandum of Understanding (MoU) agreed between the Portuguese Government and the International Monetary Fund (IMF), European Central Bank (ECB) and the European Commission (EC), significant amendments were warranted. As such, ICP-ANACOM prepared a new draft which is distinct and separate from the first and which was submitted to a new regulatory consultation procedure by determination of 13 July 2011.

The options now incorporated in the regulation are essentially based on the responses to said public consultation, as well as in the amendments which occurred subsequently in the MoU and in the positions put forward by the EC with respect to these measures and notified to ICP-ANACOM pursuant to its oversight of the Memorandum's execution.

These key options, on which all stakeholders have had opportunity to comment in the two consultations, refer principally to the auction model, to spectrum caps, reserve prices, the discount in the 900 MHz band and operator access obligations.

The provisions of the regulation which is hereby approved seek also to correspond to the objectives set out in the MoU by establishing reasonable and proportional obligations which achieve a balance between guaranteeing conditions on entry of new operators on the mobile market and maintaining the possibility of choice in the acquisition of spectrum by incumbent operators.

The final report, which examines the responses received in the context of the consultation procedure and which gives reasons to the options taken by ICP-ANACOM, has been published on ICP-ANACOM's website.

Accordingly, pursuant to point a) of article 9 of the Statutes of ICP-ANACOM, in annex to Decree-Law no. 309/2001 of 7 December and to paragraph 8 of article 30 of Law no. 5/2004 of 10 February, as amended by Law 51/2011 of 13 September, the Management Board of ICP-ANACOM approves the following regulation:

## **CHAPTER I General Provisions**

### **Article 1 Object**

1 - The present regulation concerns the definition of procedures applicable to the auction and the definition of the conditions governing the rights of use of frequencies allocated thereunder in the following bands:

- a) 455.80625 – 457.45 MHz / 465.80625 – 467.45 MHz (450 MHz);
- b) 790 – 862 MHz (800 MHz);
- c) 880 – 890 MHz / 925 – 935 MHz (900 MHz);
- d) 1710 – 1785 MHz / 1805 – 1880 MHz (1800 MHz)
- e) 1900 – 1910 MHz (2.1 GHz);
- f) 2500 – 2690 MHz (2.6 GHz).

2 - The rights of use of frequencies which are to be allocated are intended for the provision of publicly available terrestrial electronic communication services, using any technology, without prejudice to the obligations set forth in the Radiocommunications Regulation of the International Telecommunication Union (ITU) and in the National Table of Frequency Allocations (NTFA).

### **Article 2 Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- a) **Withdrawal:** option of bidders to withdraw their best offer for a given lot, in a given round, subject to penalties;
- b) **Category:** group of lots with similar characteristics within the same frequency band;
- c) **Waiver:** option of a bidder not to achieve the required level of activity in a given round, without loss of eligibility in the subsequent round;

- d) **Allocation Stage:** stage of the auction which includes the allocation of the rights of use of frequency, the publication of the auction's results, the deposit of the final amount and the issue of the authorisation titles;
- e) **Assignment Stage:** stage of the auction where the winning bidders from the distribution stage choose the exact location of the acquired lots, within each frequency band, subject to the condition that all the lots won by all the winning bidders in each category are contiguous;
- f) **Bidding Stage:** stage of the auction where bidders may submit their bids for the lots in each category. This stage determines, after successive rounds of bids of ascending price, the number of lots within each category which are to be allocated to each winning bidder, as well as the final prices payable for each lot;
- g) **Qualification Stage:** initial stage of the auction, which establishes the undertakings which are eligible to participate in the subsequent stages of the auction (bidders);
- h) **Spectrum caps:** maximum quantity of spectrum that a winning bidder may obtain in certain categories;
- i) **Lot:** object subject to bids which corresponds to a pre-defined quantity of radio spectrum;
- j) **Best offer:** submitted bid of an amount which is the highest amongst all the submitted bids in each round for a given lot, being selected after applying the tiebreak rule set out under article 21, where applicable;
- k) **Bid Amount:** amount of a bid which corresponds to the maximum value that the bidder is willing to pay for the allocation of a given lot in a given round;
- l) **Mobile Virtual Network Operator - MVNO:** undertaking which in its virtual mobile operations does not employ rights of use of frequencies and which, as a consequence, does not use its own infrastructure of radio access network instead its operations are based on the radio resources supplied by network operators holding the respective rights of use. Distinct operations may be considered as MVNO operations, depending on the extent to which the operator uses its own infrastructure and systems;

- m) **Reserve price:** minimum amount to be paid for the allocation of rights of use of frequencies in a given lot, subject to the provisions of paragraph 3 of article 25;
- n) **Lot price:** amount established for each lot which, in the first round, corresponds to the reserve price and in subsequent rounds corresponds to the amount of the best offer of the previous round, where applicable, subject to the provisions of article 24;
- o) **Final Lot Price:** corresponds to the amount of the best offer of the final round;
- p) **Round:** set of bids submitted, within a determined period, for the various lots of the different categories, provided that all such bids are of amounts that are at least as high as the respective lot prices in the different categories.

### **Article 3 Applicable legislation**

- 1 - This auction is governed by the provisions of Law no. 5/2004 of 10 February, of Decree-Law no. 151-A/2000 of 20 July and by the provisions of the present Regulation.
- 2 - The allocated rights of use of frequencies are governed by the provisions of Law no. 5/2004 of 10 February and by the provisions of the present Regulation, and will also be subject to all other legislation applying to the electronic communications sector.
- 3 - The holders of the allocated rights of use of frequencies will be bound to comply with any legal provisions which may be approved in the future, including where such provisions establish obligations which, while not provided for on the date of allocation of the right of use of frequencies, arise objectively from the necessities or requirements of public use of the service provided, in accordance with the provisions of article 20 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September.

**Article 4**  
**Responsibilities of the Management Board**

- 1 - The auction will be conducted by ICP-ANACOM, and the Management Board of ICP-ANACOM (hereinafter the Board) will be responsible for carrying out the respective procedure.
  
- 2 - The Board shall:
  - a) Grant applicants a maximum period of 2 business days to rectify any omissions or errors found in their applications where these are deemed rectifiable;
  - b) Decide on any complaints presented to it during the auction, suspending the act where necessary;
  - c) Assess the validity of all the received bids and determine the winning bidders under the terms of this regulation;
  - d) Decide on the alteration of the dates and periods of the different stages of the auction where special circumstances are deemed to apply;
  - e) Suspend the current bidding round, specifically on the grounds of force majeure and decide on the results of the bids already received;
  - f) Seek required clarifications from applicants or bidders at any stage of the auction;
  - g) Exclude bidders, winning or otherwise, in the event of infringement of the rules of the present auction or in the event that there are strong indications of acts, agreements, practices or information which may distort competition rules, immediately notifying the Competition Authority, in the latter case, as to such exclusion;
  - h) Validate the choices of the bidders during the assignment stage, for the purposes of paragraph 5 of article 27;
  - i) Decide on the levels of required activity in each round, among three pre-determined levels of 60%, 85% and 100%, in accordance with the provisions of paragraph 8 of article 17.

- j) Decide on other matters not governed by the preceding points, aiming at guaranteeing the correct functioning of the auction, whereas, in such cases, the decision is to be properly explained and is to be notified to the applicants or bidders as applicable.

**Article 5**  
**Provision of clarifications**

- 1 - The applicants and bidders are bound to present to the Board all and any clarifications related to the auction which are requested of them, within the time period and by the means so specified.
- 2 - Non-compliance with the provisions of the preceding paragraph shall result in the applicant concerned being excluded from the auction, except in cases that are duly justified by the applicant and accepted by the Board.

## **CHAPTER II The Auction**

### **Section I**

#### **Auction model, lots and reserve prices**

#### **Article 6 Auction model and stages**

- 1 - The auction model is simultaneous, ascending, open and with multiple rounds.
- 2 - For the purposes of the previous paragraph, the auction model is:
  - a) Simultaneous in the sense that all the lots are available for bidding at the same time;
  - b) Ascending, in the sense that the lot price increases in each round, subject to the provisions of paragraph 4 of article 24;
  - c) Open, in the sense that, in each round, information is made available to all bidders as to the amount, but not the identification of the submitting bidder, of the best offer for each lot, where such offers exist;
  - d) With multiple rounds, in the sense that successive rounds will take place.
- 3 - The auction comprises a qualification stage, a bidding stage, an assignment stage and an allocation stage.
- 4 - The auction's bidding stage and the random ranking procedure described in article 21 in the event of a draw between highest value bids is supported by an electronic platform, which ensures the application of the rules stipulated in the present regulation.

## Article 7 Available lots and reserve prices

The categories, available lots, respective reserve prices and eligibility points are those as listed in the following table:

Categories	Available lots	Number of lots	Reserve prices <i>per lot</i> (millions of euros)	Lot eligibility points
A	455.80625 - 457.45 MHz 465.80625 - 467.45 MHz	1 lot of 2 x 1.25 MHz	2	1
B	791-821 MHz 832-862 MHz	6 lots with 2 x 5 MHz	45	4
C	880-890 MHz 925-935 MHz	2 lot with 2 x 5 MHz	30	4
D	1710 – 1785 MHz 1805 – 1880 MHz	9 lots with 2 x 5 MHz	4	3
E	1710 – 1785 MHz 1805 – 1880 MHz	3 lots with 2 x 4 MHz	3	2
F	1900-1910 MHz	2 lots with 5 MHz	2	1
G	2500-2570 MHz 2620-2690MHz	14 lots with 2 x 5 MHz	3	2
H	2570-2595 MHz	1 lot with 25 MHz	3	2
I	2595-2620 MHz	1 lot with 25 MHz	3	2

## Article 8 Spectrum caps and holdings

1 - In the present auction, spectrum caps are established in the allocation of spectrum in categories B, C, D, E and G, on the following terms:

- a) In category B, the spectrum cap is 2 x 10 MHz;
- b) In category C, the spectrum cap is 2 x 5 MHz for bidders already holding rights of use of frequencies in the 890 - 915 MHz / 935 – 960 MHz band;

- c) In categories D and E, together, 2 x 20 MHz, including spectrum already held in the 1800 MHz band, prior to the present auction;
  - d) In category G, the spectrum cap is 2 x 20 MHz.
- 2 - Categories B and C, taken in conjunction, shall be subject, cumulatively, to a deferred limit on holdings of spectrum of 2 x 20 MHz, including the rights of use of frequencies already held in the 900 MHz band prior to the present auction.
- 3 - The stipulation of the preceding paragraphs is defined on the following terms:
  - a) From 30 June 2015, the holders of rights of use of spectrum subject to this paragraph shall transfer, pursuant to article 34 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, or return to ICP-ANACOM such frequencies as were assigned to them and which exceed the applicable limit.
  - b) The transfer or return of frequencies referred to in the preceding point shall be enacted within a period not exceeding 6 months subsequent to the date stipulated therein.
- 4 - Each one of the caps specified in paragraphs 1 and 2 is applicable to bidders in the case of paragraph 1 or to holders of rights of use in the case of paragraph 2, individually, or to groups of bidders or holders of rights of use where direct or indirect control or significant influence, determined pursuant to CVM - Código de Valores Mobiliários (Securities Code), is deemed to exist between bidders.
- 5 - The concept of 'control' referred to in the previous paragraph is assessed in accordance with the terms of article 21 of the CVM, while also taking into account the relationships which, under articles 20 et seq. of said Code, give rise to the allocation of votes, irrespective of whether or not the undertakings concerned are subject thereto.
- 6 - For the purposes of paragraph 4, 'significant influence' applies whenever there is allocation of at least 20% of the voting rights, the calculation of which is made in accordance with the criteria laid down in articles 20 et seq. of the CVM.

## **Section II Qualification Stage**

### **Article 9 Requirements for the applicants**

- 1 - Applications for the allocation of the rights of use of frequencies under the present regulation may be made by legal persons which are, or will be, incorporated..
- 2 - Undertakings which are yet to be incorporated may apply provided that they possess a valid company *certificado de admissibilidade* (certificate of admissibility), whereas, in the event that the rights of use of frequencies are allocated, the respective authorisation title will be issued only upon presentation of a certificate that proves that the necessary registrations have been completed.

### **Article 10 Provisional Deposit**

- 1 - To guarantee the commitment assumed upon the submission of the applications and to guarantee the obligations inherent to the entire auction process, applicants shall provide a provisional deposit, the amount of which depends on the number of eligibility points which the bidder seeks to obtain for the first round, taking into account the eligibility points of the lots listed in the table of article 7, and under the following terms:
  - a) Each eligibility point corresponds to a provisional deposit amount of 1 million euros;
  - b) A provisional deposit of 15 million euros, which ensures the maximum number of eligibility points for each bidder, without prejudice to the provisions in article 8.
- 2 - The provisional deposit referred to in paragraph 1 is to be provided by bank guarantee or a deposit insurance made in favour of ICP–ANACOM, in both cases on a first request basis and in accordance with the forms in annex 2 of the present regulation.
- 3 - The provisional deposits provided by the winning bidders are to remain in force until such as time as the final amount is deposited under the terms of article 30.

- 4 - ICP-ANACOM will only release the provisional deposit in the following circumstances, doing so within 5 business days:
- a) Where the application has not been allowed;
  - b) Where, upon completion of the bidding stage, the bidder has not been determined as a winning bidder;
  - c) Where, under the terms of article 30, the winning bidder has deposited the amount equal to the sum of the final amount and any penalties applied pursuant to article 24;
  - d) Where a non-winning bidder which withdraws its best offers has deposited, in accordance with article 30, the amount corresponding to the penalties applied in accordance with article 24.
- 5 - In the event of any delay in the release of the provisional deposit, the applicant or bidder who presented it is given the right to compensation, specifically with respect to additional costs incurred as a result of maintaining the deposit beyond the stipulated period.

#### **Article 11 Requests for clarification**

- 1 - Interested parties may request, during the period provided for the submission of applications, and until the sixth business day following the beginning of this period, clarification in respect of any queries arising with regard to the interpretation of any document constituting the auction process.
- 2 - Requests for clarification are to be preferably sent by email to [leilao-multifaixa@anacom.pt](mailto:leilao-multifaixa@anacom.pt), or otherwise submitted in writing to the public attendance service at ICP-ANACOM's head office, on business days between 9 am and 4 pm, in exchange for a receipt giving proof of delivery; in both cases requests for clarification are to be addressed to the Chairman of the Management Board.
- 3 - Clarifications will be given by the Board electronically within a period of 2 business days following the date of receipt referred to in the previous paragraph.
- 4 - At this stage, ICP-ANACOM will not disclose clarification requests submitted by the applicants nor the responses given thereto.

- 5- In exceptional circumstances, ICP-ANACOM may, where it deems it warranted, issue general clarifications related to the present regulation, and publish those clarifications on ICP-ANACOM's website and notify all applicants.

**Article 12**  
**Deadline and method for the submission of applications**

- 1 - Applications are to be formalized by means of a written request addressed to the Chairman of the Management Board of ICP-ANACOM, and are to include identification of the applicant, a reference to the present regulation, the date, and the applicant's signature.
- 2 - Applications are to be submitted in a closed envelope, addressed to the Chairman of the Management Board of ICP-ANACOM, bearing reference to the application to the auction, without other elements which might enable identification of the applicant.
- 3 - Applications are to be written in Portuguese.
- 4 - Applications are to be delivered to the public attendance service at ICP-ANACOM's head office, in exchange for a receipt giving proof of delivery, on business days between 9 am and 4 pm.
- 5 - The period allowed for the delivery of applications shall end 12 business days following the date on which the present regulation enters into force, following which time the submission of applications will not be accepted.

**Article 13**  
**Items to be submitted with the application**

- 1 - Applicants are required to present the following documents and items in a closed envelope, separately from the envelope containing the application request referenced in the previous article:
  - a) Declaration by the entity with powers to legally bind the applicant, legally recognised in this quality, where there shall be express acceptance of the provisions of the present regulation and of the conditions of the auction and submission to the obligations arising from the act of the application and

respective bids, as well as acceptance of the conditions governing the rights of use of frequencies in the event of their allocation;

- b) Certificate of registration and prevailing inscriptions issued by the competent Companies Registry or the code providing access to the *certidão permanente* (permanent certificate) of the applicant under terms that allow verification of the corresponding items;
- c) A non-authenticated copy of the respective by-laws or articles of association;
- d) A document proving that the provisional deposit has been provided in accordance with the terms of article 10;
- e) Document providing proof of compliant status with regard to social security contributions and to the payment of taxes, or consent, provided under legally defined terms, that ICP-ANACOM may consult the candidate's tax and contribution payment status;
- f) A declaration signed by a person with powers to bind the applicant, recognized as such, appointing a maximum of four people to submit bids in his name and on his behalf, which declaration is to be accompanied by the identification document related to said persons, as well as the respective email and phone number contacts;
- g) A declaration in which the applicants specify the identities of the legal and natural persons holding their share capital and the amounts of said holdings, including, in the event that their shareholders are legal persons, information which enables verification of compliance with the stipulations of paragraph 2 of article 8, taking into account the criteria established in article 21 of the CVM - Código de Valores Mobiliários (Securities Code);
- h) A declaration in which the applicants give express authorisation that the content of communication may be recorded in the event that there is a need to use means other than the electronic platform on which the auction is supported, in accordance with paragraph 5 of article 16 of the present regulation.

2 - The entities referred to in paragraph 2 of article 9 are not required to submit the documents specified in points b), c) and e) of paragraph 1, and shall present:

- a) A protocol binding the constituent parties, with the respective legally recognized signatures, in which there is an explicit statement accepting the conditions of the auction and submitting to the obligations arising from the act of application and from the respective bids, in the event of allocation of rights of use;
  - b) Draft by-laws/articles of association, to which the constituents are bound;
  - c) Valid company *certificado de admissibilidade* (certificate of admissibility).
- 3 - The undertakings referred to in the previous paragraphs shall explicitly indicate the postal and email address to which they wish all correspondence related to the auction to be sent.
- 4 - Companies whose acts of constitution have taken place in the 90 business days preceding the submission date of the application are exempt from the requirement referred to in point e) of paragraph 1.
- 5 - Documents presented by an applicant whose registered office is outside the territory of Portugal are to be issued and authenticated by the competent authorities of the country of origin or, where there is no document corresponding to a required document, the document concerned may be substituted by a statement made under oath by the applicant before a judicial or administrative authority, notary or other competent authority of the country of origin.
- 6 - All the documents that accompany the application are to be written in Portuguese or otherwise shall be accompanied by a duly certified translation, whereas the applicant declares that they accept that the translation will prevail, for all purposes, over the respective originals.
- 7 - The documents presented by the applicants together with the application will not be returned and will remain in the possession of ICP-ANACOM.

#### **Article 14** **Assessment of the applications**

- 1 - The Board shall, within 4 business days following the deadline for the submission of applications, verify whether or not the applications comply with the requirements set out under articles 9, 10, 12 and 13 of the present regulation.

- 2 - The deadline referred to in the previous clause may be extended should special circumstances arise, duly justified by the Board as such, including where there is a need to request an opinion from an external body.

### **Article 15 Admission and exclusion of applications**

- 1 - The Board of ICP–ANACOM is charged with deciding on the admission or exclusion of the applications.
- 2 - Applications may be rejected where they do not comply with the provisions of articles 9, 10, 12 or 13 of the present regulation.
- 3 - ICP–ANACOM shall, immediately following the decision referred to in paragraph 1, notify, electronically or by protocol, all applicants of their admission or exclusion from the auction, indicating to those applicants which are admitted:
  - a) The date on which the bidding stage will commence, which will be no earlier than the fifth business day following the date of the notification;
  - b) The terms and conditions governing access to the electronic platform referred to in paragraph 3 of article 16, as well as the alternative means referred to in paragraph 4 of the same article, and the respective conditions of use.
- 4 - Notwithstanding the notification of each applicant under the terms of the previous paragraph, ICP-ANACOM will not publicly disclose its decision, at this stage, as to the admission or exclusion of the applications.

### **Section III Bidding Stage**

#### **Article 16 Bidding process**

- 1 - In the bidding stage bidders may submit simultaneous bids for the lots, distributed among the categories defined in article 7.
- 2 - The object of this stage, which may take place over several rounds, is the allocation of the lots referred to in the previous paragraph.

- 3 - The bidding procedure is supported by a remote access electronic platform.
- 4 - In the event that a technical problem occurs with the operation of the electronic platform whereby it is not possible to proceed with the bidding process, alternative means of communication may be used which provide compliance with the rules established for the auction.
- 5 - The alternative means referred to in the preceding paragraph involve the use of telephone or fax communication, whereas in any such case, the bidder shall supply such authentication information as is requested, in accordance with the procedures laid down in the notification provided for in point b) of paragraph 3 of article 15.
- 6 - ICP-ANACOM will not be held responsible for technical problems attributable to the bidder's equipment or communication systems where such problems prevent the bidders from gaining access to the platform or which cause difficulties in such access.

#### **Article 17** **Activity rule**

- 1 - The bidder's eligibility determines the possible combinations of lots on which each bidder may bid in each round, and is expressed in number of points, in accordance with the table presented in article 7.
- 2 - The bidder's eligibility does not increase from one round to another.
- 3 - In the first round the bidder's eligibility is determined according to the provisional deposit.
- 4 - The bidder's activity in a given round corresponds to the sum of the points associated with the lots on which the bidder submits bids in that round and the points associated with the lots where the bidder holds the best offer at the beginning of that round, provided this offer has not been withdrawn, subject to the following paragraph.
- 5 - In the event that a bidder submits a bid, in a given round, for a lot where it holds the best offer, the points associated with that lot will be counted once only.
- 6 - The bidder's activity in any given round cannot exceed his eligibility in that round.

- 7 - The required level of activity for a given bidder in a given round is calculated as a percentage of the bidder's eligibility in that round, expressed in points, rounded down to the nearest integer.
- 8 - The percentage referred to in the previous paragraph is set by the Management Board in accordance with the following:
  - a) 60% in the initial round;
  - b) In following rounds, the percentage is increased successively to 85% or 100%.
- 9 - Whenever the required level of activity is altered, the Management Board will notify the bidders of such using the electronic platform, prior to the commencement of the round preceding the one to which the altered required level of activity applies.
- 10 - In the event that a bidder's activity in a given round is equal to or greater than the required level of activity for that round, that bidder maintains his eligibility points in the subsequent round.
- 11 - In the event that a bidder's activity in a given round is lower than the required level of activity for that round, the bidder's eligibility in the next round is determined by multiplying the eligibility of the current round and the ratio between the bidder's activity in that round and the corresponding required level of activity, rounded up to the next integer, without prejudice to the provisions of article 23.

### **Article 18 Rounds**

- 1 - Rounds will commence on business days, between 10am and 6pm.
- 2 - All bidders will be given no less than 15 minutes notice of the beginning of each round.
- 3 - Each round lasts 60 minutes, without prejudice to paragraphs 4 and 5.
- 4 - The Board may terminate any given round when all bids have been submitted, or when waivers have been exercised on an active basis by all bidders, informing the bidders of this decision through the electronic platform.

- 5 - The Board may extend the duration of each round, in the event that a technical problem occurs with the electronic platform, notifying each bidder about this decision.
- 6 - Before the start of each round, each one of the bidders will be notified through the electronic platform as to:
  - a) The duration of that round;
  - b) The lot prices;
  - c) The lots for which they have the best offer;
  - d) The bidder's eligibility;
  - e) The required level of activity.
- 7 - Bidders enter their bids for the lots they require, in accordance with both the activity rule and the spectrum caps, and submit them simultaneously and once only in each round.
- 8 - The time periods inherent to the rounds of the bidding stage are measured by the platform server.

#### **Article 19** **First round**

- 1 - The first round begins with the simultaneous provision of all the lots of all the categories, at the respective reserve prices.
- 2 - In the first round, the bid amount for each lot must equal or exceed the reserve price established for each lot.
- 3 - In the first round a bidder may choose from 7 lot prices, which correspond to the reserve price increased by the following percentages: 0%, 1%, 3%, 5%, 10%, 15% and 20%.
- 4 - The lot prices are rounded up to the next multiple of 1000 euros.
- 5 - Bidders may not exercise waivers in the first round.

- 6 - In the event that a technical problem occurs with the electronic platform which prevents the bidding process from continuing, the Board may opt to restart the bidding stage.

#### **Article 20 Next rounds**

- 1 - In the following rounds, with regards to the lots which have received bids, bidders may choose one of a maximum of six prices, which correspond to the amount of the best offer from the previous round, or to the value established by the Board under the terms of paragraph 4 of article 24, increased by the following percentages: 1%, 3%, 5%, 10%, 15% and 20%, without prejudice to articles 23 and 24.
- 2 - The lot prices are rounded up to the next multiple of 1000 euros.
- 3 - The provisions of paragraph 3 of article 19 shall apply to lots for which no bids are submitted in any round.

#### **Article 21 Tiebreak rule**

In the event of a tie occurring between bids with the highest amount, the best offer will be determined using a random selection procedure carried out by the electronic platform, whereby the bidders involved are notified, also through the electronic platform, of the result, together with the information provided pursuant to paragraph 6 of article 18.

#### **Article 22 Final round**

- 1 - The final round is the round where simultaneously:
- a) No bid is made for any lot;
  - b) No best offers are withdrawn;
  - c) No waivers are exercised.

- 2 - Without prejudice to the previous paragraph, the final round cannot take place before attaining the percentage of 100% as mentioned in point b) of paragraph 8 of article 17.
- 3 - The Board informs all bidders of the conclusion of the last round.
- 4 - In addition to the situations referred to in paragraph 1, the Board may determine that a round is the last round where there is a single bidder with eligibility exceeding zero, whereby an activity level of 100% is imposed.
- 5 - The decision referred to in the previous paragraph is to be notified to all bidders upon conclusion of the previous round.

### **Article 23** **Exercise of waivers**

- 1 - Each bidder may exercise waivers in a maximum of 4 rounds, without prejudice to the terms of paragraph 5 of article 19.
- 2 - Waivers may be exercised in two ways:
  - a) On an active basis, in which case the bidder signals his decision to use this option;
  - b) On a passive basis, where the bidder fails to enter a bid within the deadline for the submission of bids in a given round and does not withdraw best offers, and under these circumstances would lose eligibility
- 3 - Bidders covered by the circumstances described in point b) of the preceding paragraph may decide to lose eligibility rather than to use waivers on a passive basis.
- 4 - The use of active waivers by bidders in a given round does not involve the loss of eligibility, in the event that:
  - a) They do not intend to submit any bid in that round; or
  - b) They submit bids but the required level of activity for that round is not reached, as defined in paragraphs 7 and 8 of article 17.

**Article 24**  
**Withdrawals of best offers**

- 1 - From the second round bidders may opt to withdraw their best offers.
- 2 - Each bidder may only withdraw all or part of his best offers in a maximum of 5 rounds.
- 3 - In the event that a best offer on a lot is withdrawn, the Board will make that same lot available in the round that immediately follows, with the price of the lot corresponding to the best offer withdrawn.
- 4 - In the event that no new bid is submitted for that lot, the Board may reduce the lot price in a later round, but never below the reserve price.
- 5 - Withdrawals of best offers will be made subject to penalties corresponding to the difference, where positive, between the amount of the best offer withdrawn and the highest amount which emerges in that round or later for that lot.
- 6 - In the event that the difference referred to in the preceding paragraph is zero or is negative, no penalty shall be payable.
- 7 - Where no new bid is submitted for the withdrawn lot, the bidder which opted to withdraw the best offer for that lot shall be bound to pay the total amount of his bid;
- 8 - Where various bidders withdraw bids for the same lot, each bidder will be subject to a penalty in accordance with the provisions of the preceding paragraphs.
- 9 - A bidder which withdraws a best offer may use the eligibility points from that lot to bid for other lots in the same round.

**Article 25**  
**Determination of winning bidders**

- 1 - Bidders which hold the best offer on a given lot in the final round shall be determined winning bidders.
- 2 - The final amount payable by each winning bidder corresponds to the sum of the final prices of the lots which the bidder has won, without prejudice to the following paragraph.

- 3 - In order to calculate the final amount, the final prices of the lots of category C which have been won by bidders which do not hold rights of use of frequencies in the 890 - 915 MHz / 935 - 960 MHz band are reduced by 25%, without prejudice to the following paragraph.
- 4 - The reduction referred to in the previous paragraph does not apply to bidders having direct or indirect relations of dominance or significant influence over undertakings holding rights of use of frequencies in the 890 - 915 MHz / 935 - 960 MHz band.

#### **Article 26 Disclosure of the results**

Upon conclusion of the bidding stage, all bidders will be notified through the electronic platform as to:

- a) The identity of the winning bidders and the number of lots won in each category;
- b) The final lot price;
- c) The final amount, calculated in accordance with paragraphs 2 and 3 of article 25;
- d) Any penalties payable in accordance with article 24.

#### **Section IV Assignment Stage**

##### **Article 27 Assignment Stage**

- 1 - In this stage all the bidders which have been allocated lots in the bidding stage may choose the exact location of those lots within each frequency band, with the exception of lots won in the 1800 MHz band, which will be assigned according to the procedure set out in article 31.
- 2 - Upon conclusion of the bidding stage, the Board will produce a list of winning bidders in each category, except for categories D and E, in accordance with the following successive criteria:

- a) The highest average final price per lot in that category;
  - b) The highest number of categories where the bidder has won lots.
- 3 - Where there is a tie, bids will be ranked at random through a procedure supported on the electronic platform, which is to be performed, within 24 hours following conclusion of the bidding stage, at a time to be determined by the Board and notified to the winning bidders by protocol or by electronic means.
- 4 - Within a maximum of 48 hours, during the working hours stipulated in paragraph 1 of article 18, after the winning bidders have been ranked, a live session will take place enabling selection by the bidders of the lots allocated during the bidding stage, whereby the bidder ranked in first position under the terms of paragraph 2 or of paragraph 3 is given priority in the choice of lots for this category, followed by the other bidders according to the established ranking.
- 5 - The selections referred to in this article will be validated, lot by lot, by the Board, in order to guarantee compatibility with the allocation of contiguous spectrum in each category and to ensure that the contiguity of any non-allocated spectrum is maintained.
- 6 - Upon conclusion of the bidding stage, bidders are to be notified, by protocol or via electronic means, as to the date and hour of the holding of the live session referred in paragraph 4.

## **Section V Allocation Stage**

### **Article 28 Hearing of interested parties**

With the exception of the allocation of lots in the 1800 MHz band, which is subject to the provisions of article 31, upon conclusion of the assignment stage, the Board approves the final auction report, which will be submitted to the prior hearing of interested parties pursuant to articles 100 et seq. of the *Código do Procedimento Administrativo* (Administrative Proceeding Code) for a period of 10 business days.

## **Article 29 Final Decision**

- 1 - The Board is charged with approving and deciding on, within 5 business days following conclusion of the period established in the previous article, the allocation of the rights of use to the winning bidders.
- 2 - The decision on the allocation of the rights of use to the winning bidders will be notified to all bidders immediately, via electronic means or by protocol, and the results of the auction will be published on ICP-ANACOM's website.
- 3 - The notification referred to in the previous paragraph will contain:
  - a) The identification of the winning bidders;
  - b) The number of lots allocated to each winning bidder;
  - c) The frequencies assigned to each winning bidder, without prejudice to the terms of article 31 with respect to the 1800 MHz band;
  - d) The final amount payable by each winning bidder;
  - e) Any penalties payable pursuant to paragraph 5 of article 24;
  - f) The deadline for making the deposit which corresponds to the final amount, established under the terms of article 30;
  - g) Copies of the final report of the auction and of the report on the hearing of interested parties referred to in the previous article.
- 4 - The act of allocating the rights of use of frequencies will be revoked in the event that the undertakings to which said rights were granted fail to comply with the provisions of paragraph 1 of article 30, except on grounds of force majeure, where duly reasoned and so recognized by ICP-ANACOM.
- 5 - In the situation referred to in the preceding paragraph, the provisional deposit provided under article 10 will be forfeit in favour of ICP-ANACOM.
- 6 - Non-winning bidders which are subject to payment of a penalty under the terms of paragraph 5 of article 24 are bound to deposit the corresponding amount in a bank

account to be indicated by ICP-ANACOM, within the deadline specified in article 30.

### **Article 30 Deposit**

- 1 - Undertakings which are allocated rights of use of frequencies are required, within a period of 5 business days following receipt of the notice referred to in paragraph 3 of the previous article, to deposit the final amount, in addition to the amount of any penalties, in a bank account to be indicated by ICP-ANACOM, without prejudice to the provisions of paragraph 4.
- 2 - Bidders which are subject to payment of a penalty under the terms of paragraph 5 of article 24 shall deposit the respective amount within a period of 5 business days following the notifications referred to in paragraph 3 of the previous article.
- 3 - Once the deposit has been made, ICP-ANACOM shall proceed, in the subsequent 5 business days, with the steps necessary for the release of the provisional deposit provided under article 10.
- 4 - Undertakings which have been allocated rights of use of frequencies in the 800 MHz and 900 MHz bands may opt to make a deposit of the equivalent of two thirds of the price payable for the spectrum acquired in these bands, while deferring the payment of one third of the price payable in accordance with the following paragraph.
- 5 - The amount corresponding to the final third of the payment is to be distributed over a period not exceeding 5 years from the date of the allocating act, whereas the holders of rights of use shall make annual instalments, each of which corresponding to one fifth of the outstanding amount, until payment is made in full.
- 6 - Payment of the first of the instalments referred to in the preceding paragraph is to be made one year following the date of the allocating act and subsequent instalments are to be paid annually following this date.
- 7 - In the event that any one of the instalments is not paid, the remaining instalments will become due immediately.
- 8 - In the event that the undertakings referred to in paragraph 4 do not exercise the option referred to therein, they will have the option of paying the annual

instalments representing one third of the price paid for spectrum in the 800 MHz and 900MHz bands, discounted at the annual rate of 6.08%.

- 9 - Undertakings which exercise the option set out in paragraph 4 may, during the period referred to in paragraph 5, on the date of any one of the annual payments referred to in paragraph 6, make full payment of the outstanding instalments, discounted at the annual rate of 6.08%.
- 10 - Without prejudice to the release of the provisional deposit provided for in paragraph 3 and within the period established in paragraph 4 of article 10, undertakings that have been allocated rights of use of frequencies in the 800 MHz and 900 MHz bands are to provide a new deposit by bank guarantee or deposit insurance, made payable to ICP-ANACOM, in both cases on a first demand basis, in order to guarantee payment of the total value of the amount referred to in paragraph 5.
- 11 - The deposit referred to in the previous paragraph is to be valid for a period of 5 years and will be released annually by ICP-ANACOM according to the payments made under the terms of paragraphs 5, 6 and 9, upon presentation of proof of deposit.

### **Article 31** **Assignment process for the 1800 MHz band**

- 1 - During the allocation stage, after the deposit referred to in article 30 has been made, and before the respective authorisation titles are issued, the Board will define the exact location of the spectrum to be assigned in the 1800 MHz band taking into account the number of lots allocated in categories D and E, and also the spectrum which has already been assigned in this band pursuant to rights of use of frequencies already allocated on the date on which the present regulation comes into force.
- 2 - The exact location of the spectrum referred to in the previous paragraph will be defined in accordance with the following principles:
  - a) Pursuing the public interest in the context of radio spectrum management, in accordance with the criteria of proportionality, and respecting the acquired rights;

- b) Optimising efficient spectrum use in the 1800 MHz band;
  - c) Maximising the contiguity of spectrum allocated to each undertaking as well as the contiguity of the non-allocated spectrum.
- 3 - For the purpose of paragraph 1, undertakings which, upon conclusion of the auction, have won lots in the 1800 MHz band, as well as undertakings which hold rights of use of frequencies in the 1800 MHz band but which did not participate in the auction or, entering the auction failed to win lots in this band, are given a period of 30 business days following the date of the allocating act referred to in paragraph 2 of article 29 of the present regulation, so that they may reach agreement among themselves as to the exact location of the spectrum in this frequency band.
- 4 - ICP-ANACOM is charged with approving the results of the agreement reached under the terms of the previous clause or, in absence of such agreement, with deciding on the re-shuffling of spectrum in the 1800 MHz frequency band.
- 5 - The decision taken by ICP-ANACOM in the absence of any agreement is to be preceded by a prior hearing of interested parties under the terms of articles 100 et seq. of the *Código do Procedimento Administrativo* (Administrative Proceeding Code).
- 6 - In case the decision referred to in paragraph 1 determines a change in the frequency assignments existing on the date that the regulation enters into force, compensations may be provided to cover, in whole or in part, the costs associated with such changes, in accordance with the terms of article 4 of Decree Law no. 151-A/2000 of 20 July.
- 7 - The provisions of the previous paragraph do not release the beneficiaries of the allocation of the rights of use of frequencies in the 1800 MHz band from the obligation, in the context of this auction, to make the deposit in accordance with the terms and deadlines established in article 30 of the present regulation, failing which the act allocating the rights of use may be revoked under the terms of paragraph 4 of article 29.
- 8 - The holders of rights of use of frequencies in the 1800 MHz band shall, within a period of 90 business days following the issue of the authorisation titles referred to

in article 32, conclude the re-shuffling of frequencies determined under the terms of paragraph 4.

- 9 - Without prejudice to other applicable sanctioning mechanisms, in the event that a holder of rights of use fails to perform the reshuffling of frequencies on the precise terms determined in accordance with paragraph 4, ICP-ANACOM may, under the terms of the law:
  - a) Make said holder subject to a mandatory pecuniary sanction;
  - b) Suspend the respective right of use for a maximum of 2 years, or revoke it, partially or in full.

### **Article 32 Issue of titles**

- 1 - The titles for the allocation of the rights of use of frequencies are issued by ICP-ANACOM within a period of 20 business days following compliance with the provisions of paragraph 1 of article 30 or of paragraph 4 of article 30 as applicable.
- 2 - In the case of undertakings that end up holding rights of use of frequencies in the 1800 MHz band, the respective authorising titles are to be issued by ICP-ANACOM, within a period not exceeding 20 business days following approval of the agreement provided for under paragraph 4 of article 31, or following the decision referred to in paragraph 5 of the same article.
- 3 - The title which substantiates the rights of use are to set out the conditions associated with the respective exercise referred to in the previous articles.
- 4 - For the purposes of the previous paragraphs, ICP-ANACOM shall conduct the prior hearing of holders of rights of use of frequencies under the terms of articles 100 et seq. of the *Código do Procedimento Administrativo* (Administrative Proceeding Code).

### **Article 33 Conditions associated with the rights of use of frequencies**

- 1 - The holders of the rights of use of frequencies are bound to comply with the following conditions as established under paragraph 1 of article 27 and under

points a), b), c), d), e), f) and h) of paragraph 1 of article 32 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September.

2 - For the purposes of the preceding paragraph, and specifically for the purposes of the conditions set out under point b) of paragraph 1 of article 27 and under points a), b), c), d), e), f) and h) of paragraph 1 of article 32 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, the holders of rights of use of frequencies are, under the terms of the present regulation, bound to:

- a) Comply with the obligations to provide access to the network in accordance with article 35;
- b) The coverage requirements established for the 800 MHz band under the terms of article 34;
- c) Make use of the assigned frequencies in an effective and efficient manner, in accordance with article 15 of Law no. 5/2004 of 10 February, including time limits for effective operation under the terms established in article 36.
- d) The technical and operational conditions set out in annex 1 to the present regulation;
- e) The maximum duration of the rights of use, in accordance with article 38.
- f) Give ICP-ANACOM prior notice of any intention to transfer or lease out the right of use, of frequencies and of the conditions of said transfer, under the terms of article 34 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, and under the terms established identified in the NTFA;
- g) Make payment to ICP-ANACOM of the following fees:
  - (i) Fees due in respect of the exercise of the activity of electronic communications networks and services provider under the terms of point b), paragraph 1 of article 105 of Law no. 5/2004 of 10 February and as stipulated under Administrative Rule no. 1473-B/2008 of 17 December;

- (ii) Fees due in respect of the allocation of the rights of use of frequencies, of an amount to be established by order of the member of the Government responsible for the area of electronic communications, under the terms of point c) of paragraph 1 of article 105 of Law no. 5/2004 of 10 February, and of the amount established by Administrative Rule no. 1473-B/2008 of 17 December;
  - (iii) Fees due in respect of use of the radio spectrum under the terms of point f) of paragraph 1 of article 105 of Law no. 5/2004 of 10 February and of article 19 of Decree-Law no. 151-A/2000 of 20 July, republished in annex to Decree-Law no. 264/2009 of 28 September and of the amounts established in Administrative Rule no. 1473-B/2008 of 17 December.
- h) Comply with the obligations arising from international agreements applicable to the use of frequencies.
- 3 - Without prejudice to other applicable sanctioning mechanisms, failure to comply with the conditions associated with the rights of use of frequencies may determine the revocation by ICP-ANACOM of the respective right of use of frequencies, partially or in full, under the terms of article 110 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September.

#### **Article 34 Coverage obligations**

- 1 - For the purpose of the terms of point b) of paragraph 1 of article 33, each lot of the 800 MHz band has an associated obligation to provide coverage, at a maximum, of 80 parishes, which generally have no broadband mobile coverage.
- 2 - Within a period of 5 months following the issue of the titles related to the 800 MHz frequencies band, ICP-ANACOM is to publish a list with a maximum of 480 parishes that have the characteristics stipulated in the preceding paragraph.
- 3 - The holders of the rights of use of frequencies in the 800 MHz band may, within a period of 30 business days following publication of the list referred to in the preceding paragraph, select from the parishes included therein, in accordance with the number of lots allocated to each holder and in accordance with the criteria set out in paragraphs 2 and 3 of article 27, applicable to category B.

- 4 - Once this selection has been made by the holders, ICP-ANACOM will enter the coverage obligations into the titles which, thereafter, will be an integral part of the titles which substantiate the respective rights of use of frequencies.
- 5 - In order to fulfil the coverage obligations, a parish will be considered as having coverage where a mobile broadband service is provided which covers, as a minimum, the seat of the respective parish council.
- 6 - The mobile broadband service to be made available must enable data transmission speeds which are equal to the highest speed provided by the commercial offers subscribed to, at any given time, by customers in the lowest quartile of such offers when ranked according to maximum transmission speed of the offer subscribed to.
- 7 - For the purpose of the coverage obligations referred to in the present article, ICP-ANACOM will perform a revision of the maximum transmission speed associated with the lowest quartile referred to in the preceding paragraph at intervals of two years.
- 8 - The coverage obligations referred to in the present article must be fulfilled in at least 50% and 100% of the parishes within maximum periods of 6 months and 1 year, respectively, following ICP-ANACOM's notification as to the end of the existing restrictions on the operation of the 800 MHz band, as identified in annex 1 to the present regulation.
- 9 - The coverage obligations set out in the present article may be fulfilled using the 900 MHz band, whether such frequencies have been granted as a result of this auction or previously.

### **Article 35 Network access obligations**

- 1 - For the purposes of point a) paragraph 2 of article 33 of the present regulation, the holders of rights of use of frequencies which, upon conclusion of the auction, become holders of 2 x 10 MHz in the 800 MHz frequency band or holders of at least 2 x 10 MHz in the 900 MHz frequency band, shall be subject to an obligation to allow access to their networks according to non-discriminatory conditions in each one of the bands, in accordance with paragraphs 3 and 4.

- 2 - For the purposes of the obligation of access to the network in the 900 MHz band under the terms of the preceding paragraph, the spectrum already held by the respective holders in this band of frequencies is also to be considered
- 3 - For the purpose of the paragraph 1, holders of rights of use shall, upon request and in good faith, negotiate agreements with third parties, respecting the commercial autonomy of the parties involved, in particular with regards to the distribution networks and also with regards to targeted market segments, allowing conditions of effective competitiveness, namely regarding the supply of services according to suitable technical conditions and also regarding reasonable conditions of remuneration.
- 4 - In the context of the network access obligations to which they are subject, holders of rights of use referred to in paragraph 1 must agree to negotiate:
  - a) Agreements which allow their networks to be used for the mobile virtual operations of third parties, in the different modes that range from full MVNO to light MVNO, for the provision to end-users of electronic communication services which are equivalent to the services which they offer to their own customers using the frequencies bands referred to in paragraphs 1 and 2;
  - b) National roaming agreements with third parties which hold rights of use of frequencies in the bands above 1 GHz and which do not hold rights of use of frequencies over more than a total of 2 x 5 MHz cumulatively in the 800 MHz and 900 MHz bands;
  - c) National roaming agreements with third parties which hold rights of use of frequencies in the bands above 1 GHz, which at the time of allocation of the rights of use pursuant to the present auction do not hold frequencies in the 800 MHz and 900 MHz bands and which, in the present auction, acquire rights of use of frequencies of more than a total of 2 x 5 MHz cumulatively in said bands;
  - d) Infra-structure access and sharing agreements, in accordance with the terms set out in Decree Law no. 123/2009 of 21 May, as amended by Decree Law no. 258/2009 of 25 September.
- 5 - The obligation of access set out in points b) and c) of the preceding paragraph apply to third parties which undertake, within a period of 3 years, to use their

frequencies in the 800 MHz or 900 MHz frequency bands in such a way as to achieve a coverage level which corresponds to making the service available to no less than 50% of the national population.

- 6 - ICP-ANACOM is charged with verifying the fulfilment of the conditions referred to in the preceding paragraph by the beneficiaries of the obligation of access, whereas failure to comply shall render termination of the agreed roaming agreement, except where the parties agree otherwise.
- 7 - The obligation of access to the network referred to in points a) to c) of paragraph 4 will have the following duration:
  - a) 10 years for the obligation set out in points a) and b);
  - b) 5 years for the obligation set out in point c);
- 8 - The periods referred to in paragraphs 5 and 7 are calculated on the following terms:
  - a) In the 800 MHz frequency band, the period is counted from the moment that ICP-ANACOM gives notification of the end of the existing operational restrictions in this band, as set out in paragraph 8 of article 34
  - b) In the 900 MHz frequency band, the period is counted from issue of the titles of allocation of the rights of use of frequencies.
- 9 - Without prejudice to the terms of the preceding paragraph, and unless agreed otherwise between the parties, the deadline for the effective provision of access cannot exceed 6 months counted from date on which the contracts are made or from the provision, by the operator subject to obligations of access, of the relevant retail services to its own customers, should the latter occur at a later date.
- 10 - In the event that, during the period referred to in paragraph 7, the quantity of spectrum held by the holders or by the beneficiaries of access obligations is altered and, as a consequence, the underlying basis for the imposition or benefits of any obligation are no longer applicable, ICP-ANACOM may, upon its own initiative or upon request of the holders of rights of use of frequencies referred to in paragraph 1, rule, on a reasoned basis, the withdrawal of said obligations.
- 11 - The holders of rights of use of frequencies referred to in paragraph 1 shall notify ICP-ANACOM of all requests to make agreements which they receive pursuant to

the present article, within 10 business days of their receipt, and will keep ICP-ANACOM informed, on a weekly basis and in a detailed manner, as to the progress of the negotiations on the agreement referred to in paragraph 4, without prejudice to the additional provision of full information on such negotiations as requested by ICP-ANACOM.

- 12 - In no case may any of the holders of rights of use of frequencies which are subject to the access obligations under the terms of the present article invoke the confidentiality of the agreements or of the respective negotiation process as being grounds for refusing to provide ICP-ANACOM with information in accordance with the preceding paragraph.
- 13- In the event that, within a maximum period of 45 business days following receipt of a request for an agreement by a holder of rights of use of frequencies which are subject to access obligations under the terms of paragraph 4, no agreement is reached, and where ICP-ANACOM's intervention is requested by one of the parties, the dispute shall be made subject to the administrative dispute resolution mechanism referred to in article 10 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, in respect of which ICP-ANACOM will issue a decision within a period of not more than 4 months.
- 14- Without prejudice to other applicable sanctioning mechanisms, in the event of failure by any holder of rights of use to comply with any of the obligations to which it is subject under the terms of paragraph 4, ICP-ANACOM may apply a mandatory pecuniary sanction, under the terms of the law, after the decision in which it is ordered to comply with the obligation.
- 15- The terms of this article do not diminish the power of ICP-ANACOM to impose, maintain, amend or withdraw obligations related to access or interconnection.

### **Article 36** **Obligation of effective and efficient use of frequencies**

- 1 - For the purpose of point c) of paragraph 2 of Article 33 of the present regulation, the holders of rights of use are bound to commence commercial operation of the services no later than 3 years following the date of issue of the respective titles, making use of the frequencies assigned to them, without prejudice to the conditions applying to the 800 MHz band established in annex 1 to this regulation.

- 2 - The holders of the rights of use of frequencies in the 900 MHz band which already hold rights of use in this band, are bound to commence commercial operation of electronic communications services no later than 1 year following the date of issue of the respective titles, making use of the frequencies assigned to them.

### **Article 37** **Transfer and lease**

- 1 - For the purposes of point f) of paragraph 2 of Article 33 of the present regulation, the allocated rights of use of frequencies may only be transferred or leased out by the respective holders, under the terms of article 34 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, after a period of 2 years has elapsed following the date on which commercial operation of the services commenced making use of the frequencies assigned to them, except where there is justification which is duly reasoned and so recognized by ICP-ANACOM.
- 2 - The exercise by ICP-ANACOM of the powers referred in article 34 of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, is in no way affected by the establishment of spectrum caps under the terms of the present regulation.

### **Article 38** **Period of the right of use of frequencies**

For the purposes of point e) of paragraph 2 of Article 33, the rights of use are granted for a period of 15 years, and may be renewed pursuant to Law no. 5/2004 of 10 February.

### **Article 39** **Reassessment of the rights of use of frequencies**

- 1 - In compliance with the provisions of Directive no. 87/372/EEC of the Council of 25 June, as amended by Directive no. 2009/114/EC of the Council and of the European Parliament of 16 September and also with the provisions of Law no. 5/2004 of 10 February, as amended by Law no. 51/2011 of 13 September, ICP-ANACOM shall conduct an assessment of the mobile electronic communications market in order to ascertain the existence of any distortions of competition and of the need to adopt appropriate measure for their elimination, in accordance with its

spectrum management powers and responsibilities, namely those set out in articles 20 and 35 of Law no. 5/2004 of 10 February.

- 2 - The assessment referred to in the preceding paragraph shall take place no more than two years following conclusion of the auction.

## **CHAPTER III**

### **Final provisions**

#### **Article 40 Calculation of periods**

The calculation of the periods referred to in the present regulation is governed by the rules set forth by article 72 of the Código do Procedimento Administrativo (Administrative Proceeding Code).

#### **Article 41 Entry into force**

The present regulation enters into force on the next business day following its publication.

Lisbon, 17 October 2011

## **ANNEX 1**

### **Technical conditions associated with the frequencies**

Notwithstanding the obligations ensuing from Decree-Law no. 192/2000 of 18 August, - which establishes the rules governing the free circulation and placing on the market and in service of radio and terminal equipment within the national territory, as well as the rules for the assessment of conformity and for marking – and the obligations of the National Table of Frequency Allocations (NTFA), the rights of use of frequencies which are being auctioned entail a number of conditions and /or technical restrictions.

#### **1- Conditions applying to the 450 MHz frequency band**

1.1 Compatibility with the radio communication systems / services operating in adjacent frequency bands must be ensured, in particular with regards to:

- Private networks;
- Mobile Trunking Service
- Local Paging
- Broadcasting Service (BS): analogue (PAL/G) – until April 2012 – and other networks which may be deployed in the future in the context of this radio communication service – e.g. DVD – H

#### **2- Conditions applying to the 800 MHz frequency band**

2.1 The conditions stipulated in Decision 2010/267/EU<sup>1</sup> must be complied with, in particular:

- The EIRP power limits for base stations will be set at +56dBm/5MHz, in order to limit the probability of interference with systems operating in adjacent bands and with the Spanish stations;

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<sup>1</sup> EC Decision 2010/267/EU of 6 May 2010, on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union.

- Adoption of the out-of block power limits over frequencies below 790 MHz for base stations in accordance with the limits indicated in table 4 of Decision 2010/267/EU<sup>2</sup> regarding Case A.

2.2 The 800 MHz frequency band may only be used subsequent to the switch-off the analogue television network, concluding (3<sup>rd</sup> phase) on 26 April 2012, in accordance with ICP-ANACOM's decision of 24.06.2010 approving the "*Plano para o Switch-Off* (Switch-off Plan) pursuant to Resolution of Council Ministers no. 26/2009 of 17 March.

2.3 The technical characteristics of stations operating in Spain and Morocco fall within the scope of the Geneva Agreement (ITU GE06)<sup>3</sup>. It is thereby determined that it is not possible to ensure protection from interference originating from stations installed in the influence area of those emissions. In Spain, emissions from the broadcasting service will continue until 31 December 2014, at a maximum. In addition, stations installed in Portugal may not cause interference to stations of the television broadcasting service operating in Spain and Morocco.

2.4 For the purposes of protection of broadcasting stations operating in Spain and Morocco, the maximum field strength permitted at the border is 25 dBuV/m<sup>4</sup>.

### 3. Conditions applying to 900 MHz and 1800 MHz frequency bands

3.1 Compliance with Decision 2011/251/EU<sup>5</sup> which amends 2009/766/EC<sup>6</sup> with respect to the deployment of other terrestrial systems capable of providing electronic communications services and which can coexist with GSM systems, in particular those identified in the respective annex<sup>7</sup>.

<sup>2</sup> Commission Decision of 6 May 2010 on harmonised technical conditions of use in the 790-862 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union

<sup>3</sup> <http://www.itu.int/ITU-R/terrestrial/broadcast/plans/ge06/index.htm>

<sup>4</sup> Value established in accordance with Geneva 06 Agreement (ITU RRc-06). The field strength has a reference antenna high of 10 meters, from the earth, 1% of the time and 50 % of the locations.

<sup>5</sup> Commission Implementing Decision of 18 April 2011 amending Decision 2009/766/EC on the harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community.

<sup>6</sup> EC Decision 2009/766/EC, 16 October 2009, on harmonised technical conditions of use in the 900 MHz and 1800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the European Union.

<sup>7</sup> See CEPT studies: including ECC Reports 82, 96 and 162, and CEPT reports 40, 41 and 42.

#### **4. Conditions applying to the 2.1 GHz frequency band**

4.1 The relevant technical conditions applying to this band are contained in CEPT Decision ECC(06)01<sup>8</sup>.

#### **5. Conditions applying to the 2.6 GHz frequency band**

5.1 The conditions identified in EC Decision 2008/477/EC<sup>9</sup> must be implemented, in particular:

- The technical parameters, indicated by the “block edge mask” (BEM) are to be applied as an essential component of the conditions required to ensure coexistence in the absence of bilateral or multilateral agreements between neighbouring networks, without prejudice to the application of less restrictive technical parameters in case of agreement between the operators of these networks.

5.2 With regards to the definition of the lots covered by the regulation, the following blocks are considered as restricted blocks:

- The first 5 MHz block of the first lot of 25 MHz;
- The first 5 MHz block of the second lot of 25 MHz (where the TDD lots belong to different operators or in the case of non- synchronized adjacent TDD networks)
- The last 5 MHz block of the second lot of 25 MHz.

5.3 The blocks specified in the preceding paragraph are subject to EIRP levels of +25 dBm/5MHz.

5.4 The EIRP power limits for TDD and FDD base stations are limited to +61 dBm/5MHz.

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<sup>8</sup> Without prejudice to other technical conditions that may be harmonised as a result of further CEPT studies in accordance with CEPT Report 39 (<http://www.cept.org/ecc/deliverables>).

<sup>9</sup> EC Decision 2008/477/EC of 13 June 2008, on the harmonisation of the 2 500-2 690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community.