

**Response to the request of clarifications received, between 13.07.2012 and 16.07.2012, in relation to the Terms of Reference for the organisation of the competitive selection procedure in view of awarding the rights to use the radio frequencies in the 800 MHz, 900 MHz, 1800 MHz and 2600 MHz bands.**

**1. Question:**

*Considering the content of the coverage obligations, please specify whether the use of technologies in EDGE family is allowed in order to cover the localities in Annex 6, if these technologies ensure a downlink transfer speed of at least 384 kbps?*

**Answer:**

The Terms of Reference and, implicitly, the licences for the use of radio frequencies to be awarded do not impose nor exclude any of the technologies in the IMT standard, the only requirement being to meet all the mandatory obligations set clearly in the Terms of Reference/licence.

**2. Question:**

*a) Considering that the coverage of the population from a rural locality will be expressed based upon the percentage of covered households, we ask you to specify how is to be done the conversion between the households and the number of inhabitants?*

*b) As well, please specify whether the data of the census in force at the date of obtaining the licence or the data of the census in force at the time when the measurements are made will be used as reference?*

**Answer:**

a) In this hypothesis, the provisions of paragraph 4 under Section 3.6.1 of the Terms of Reference will apply. According to this text, *"The covered population for a locality, other than cities and municipalities, will be calculated as a share of the total population of the locality, the share factor being equal to the ratio between the number of households for which coverage is ensured under the conditions specified in the licence and the total number of households in the respective locality."* For the conversion between the number of households and the number of inhabitants, the data provided for by the National Institute of Statistics will be taken into consideration.

b) At any time, the information and data of the census in force will be taken into consideration as reference.

**3. Question:**

*Section 4.4.5. – Return of the bond*

*Considering that the bidders who gained usage rights under the procedure, for blocks in C category, will pay the counter-value of EUR 26 million for each 5 MHz block won in this category until 30 November 2012, please specify whether they will be able to obtain upon request the reduction to 50% of the amount of the participation bond, according to the provisions of letter d) point ii)?*

**Answer:**

No. The participation bond is meant to ensure the compliance with the obligation to pay the licence fee in its entirety, regardless of whether, due to a prepayment, the guarantee level for the remaining obligation exceeds 50%.

**4. Question:**

*Section 4.7.2. - Additional bid round/rounds*

*Considering the following text "If, following the aggregation of the initial bids or following the primary rounds, there will be unawarded (abstract) frequency blocks, ANCOM may decide to organise an additional bid round [...]", please clarify the circumstances which may determine the Authority to decide not to hold the additional bid round/rounds.*

**Answer:**

The principle governing the holding of the additional bid round/rounds pursues the awarding of all radio frequency usage rights that were not awarded following the initial bid and/or the primary round/rounds. Nevertheless, the results of the initial bid and/or of the primary round/rounds may lead to the conclusion that the holding of the additional round/rounds is not necessary (e.g.: low interest for a certain frequency block within the initial bid and/or within the primary round/rounds).

**5. Question:**

*Section 5.1.1. – Auction location*

*Considering the provisions referring to the access of the bidders' representatives to the auction location, please specify when will the authenticated power of attorney need to be presented for the persons designated to replace the initial representatives authorised to engage the candidate in the course of the selection procedure. More specifically, we ask you to inform us if the respective power of attorney will need to be presented during the application stage (by including it in the application file) or will it have to be drawn up/submitted in order to obtain the right of access at the time of occurrence of a circumstance requiring the replacement of an initial representative.*

**Answer:**

The possible replacement of the representatives authorised to engage the candidate in the course of the selection procedure must be brought to the ANCOM attention by communicating the authenticated power of attorney within a certain time interval prior to the round which the replacing representative intends to attend, a time interval which is to be specified in the Guidelines. This time interval will be thus quantified as to give the Commission the necessary time to verify and make the administrative arrangements required for the replacement.

**6. Question**

*Section 5.1.2.- The electronic support system*

*We believe that it is strictly necessary and therefore we require the following, after the training session on the use of this system:*

*a) the guidelines on the use of the application need to be formalised within the guidelines read in Section 5.1.8. and*

*b) one week before the kick-off of the auction stage, the bidders are to be given the possibility to use the IT application at the bidders' headquarters in view of getting accustomed to it.*

**Answer:**

a) The guidelines provided for in Section 5.1.8 of the Terms of Reference have the main role of setting the carrying out in good conditions of the auction stage and do not concern the usage of the electronic support system. Bidders will get accustomed to the electronic support system during the bidders' training session as provided for in paragraph 2 under Section 5.1.2 of the Terms of Reference.

b) No.

The electronic support system is meant to verify certain conditions such as the correctness of the bids from the viewpoint of observance of the eligibility and activity criteria and of the caps to gaining usage rights, but its use is not mandatory.

As mentioned under letter a), at a date to be announced after the completion of the qualification stage, ANCOM will organise a training session for the bidders on the usage of the electronic support system.

**7. Question**

a) *Considering that the provisions of the set of guidelines on the holding of the selection procedure will be in fact completely new elements for the qualified bidders, we deem that it is absolutely necessary and therefore we ask you to give the bidders the possibility to request clarifications, while ANCOM is to duly provide clarifications on the content of these "guidelines".*

*To support our request, we wish to point up that the possible ambiguity/misunderstanding of certain provisions under the "Guidelines" may seriously affect the carrying out of the auction procedure.*

*Consequently, please consider and approve this request, for the carrying out in good conditions of the auction procedure.*

b) *Relating to the content of the Guidelines, we present a series of aspects whose clarification we deem is imperiously necessary. Therefore we ask you to provide clarifications as to these aspects and then to include the offered answers in the "Guidelines for the carrying out of the selection procedure":*

- *Which is the concrete way in which the rooms will be assigned to the bidders for each day in which the auction will take place?*
- *If the auction lasts more than one day, the rooms will remain the same for each bidder or will they be reassigned?*
- *If the auction lasts more than one day and the assigned rooms remain the same, the bidders are allowed to have a representative supervising the room?*
- *Is it allowed the access of bidders' specialists in the made available room, every day, two hours before the start of the auction (i.e. daily between 07:00 and 09:00) for the purpose of technically verifying the respective room?*
- *Are couriers (e.g.: document courier service, catering) allowed in the locations made available during the recesses between the bid rounds?*
- *The rooms meant for the bidders are also endowed with additional power sources (220 V)?*
- *Which is the minimum guaranteed speed for each bidder's access to the Internet (upload/download)?*

c) *For the carrying out in good condition of the auction, please include in the "Guidelines" the working forms used during the selection procedures.*

*d) Subsequently to the elaboration of the Guidelines for the carrying out of the selection procedure, we deem it is absolutely necessary and therefore we request to schedule two visits to the auction location, to enable the bidders to get acquainted with the location topology and facilities, in accordance with the "Guidelines".*

*Hence, please consider and approve this request, for the carrying out in good condition of the auction procedures.*

**Answer:**

a) No. The main goal of the guidelines provided for in Section 5.1.8 of the Terms of Reference is to set the carrying out in good conditions of the auction stage, these guidelines referring without limitation to:

- rules of conduct for the bidders;
- security measures and cohabitation rules adequate for the premises hosting the procedure;
- rules on the bidders' communication with the Commission and vice versa;
- rules and limitations concerning the exercise of the extension rights;
- rules and guidelines on the filling in and submission of the bid forms;
- other guidelines which will prove necessary.

The guidelines will be made available to the qualified bidders and will be drawn up as clearly as possible, free of ambiguities or misunderstandings.

The allocation of additional time for possible clarifications in relation to a document providing rules of conduct may affect the calendar of the selection procedure.

b) ANCOM will examine all these suggestions for the purpose of elaborating the Guidelines and, to the extent these will be deemed acceptable, they will be embedded in the Guidelines. We will offer responses in principle below, where possible.

*Which is the concrete way in which the rooms will be assigned to the bidders for each day in which the auction will take place?*

Answer: By drawing.

*If the auction lasts more than one day, the rooms will remain the same for each bidder or will they be reassigned?*

Answer: Out of reasons related to the administrative organisation, the rooms will most likely remain the same.

*If the auction lasts more than one day and the assigned rooms remain the same, the bidders are allowed to have a representative supervising the room?*

Answer: No. The access into the auction premises will be allowed only to the representatives and only within a set time interval.

*Is it allowed the access of bidders' specialists in the made available room, every day, two hours before the start of the auction (i.e. daily between 07:00 and 09:00) for the purpose of technically verifying the respective room?*

Answer: No.

Access of the bidders' representatives within the premises of the auction will be allowed:

- i. for the persons mandated according to Section 4.5.2. letter a);
- ii. for two representatives without right of signature, expressly appointed by the bidders.

*Are couriers (e.g.: document courier service, catering) allowed to enter the locations made available during the recesses between the bid rounds?*

Answer: These aspects will be set in the Guidelines.

*The rooms meant for the bidders are also endowed with additional power sources (220 V)?*

Answer: The rooms meant for the bidders will have lengtheners with minimum 3 ports of shucko-220 V 50 Hz alternative power, made available to the bidders for supplying their own equipment.

*Which is the minimum guaranteed speed for each bidder's access to the Internet (upload/download)?*

Answer: ANCOM will ensure a wireless Internet connection by means of 2 802.11b,g wireless routers. The routers will dynamically provide a private IP through DHCP and the access to the connection will be ensured through a password to be communicated to the bidders. The connection will be symmetrical, best-effort type on the link between the client and the router, the maximum capacity depending on the speed ensured in keeping with the used protocol - 802.11b or 802.11g, the distance to the router, as well as the wireless interface and the antenna of the bidder's equipment.

The equipment hosting the electronic support system will not have Internet access and will not be connected in the network. This will work in a stand-alone regime and will only be used for bidding and printing the bids on the printers made available by ANCOM.

In line with the provisions of paragraph 2 under Section 5.1.1 of the Terms of Reference, the bidders will also be able to use their own technical means in view of communication. This means they will be able to connect to the Internet both via the wireless connection ensured by ANCOM and via their own means using various technologies for access to the public electronic communications networks (GSM, CDMA, 3G, GPRS etc.).

## **8. Question**

*Section 5.4.1. - Scheduling the assignment round*

*"In principle, the duration of the assignment round may not be less than one hour."*

*Please specify the meaning of the wording "in principle" under the enounced sentence so as to unequivocally show if there are and, if yes, which are those circumstances which would allow ANCOM to shorten the time allocated to a round to less than one hour.*

### **Answer:**

The wording "in principle" will be understood as the rule governing the organisation of the assignment round, a rule which may also have exceptions.

## **9. Question**

*Section 5.3.5. - Determining the winning bidders*

*Interpreting the provisions of Section 5.3.5, our understanding is that a combination of bids may be declared a winning combination upon the successive fulfilment of the following activities:*

- i) identification of all combinations cumulatively meeting the requirements enlisted at letters a), b) and c);*
- ii) establishment as a winning combination the combination of bids with the highest value from among the combinations selected following the activity mentioned under point i) above.*

*Considering the abovementioned statements, please confirm that a valid submitted combination of bids which meets the criteria provided for in letters a) and b) and which ensures the allocation of the highest number of blocks from among the available ones in all the categories will be declared the winning combination as opposed to a combination with a higher value which also meets the criteria provided for in letters a) and b) but does not ensure the allocation of a smaller number of blocks.*

**Answer:**

Within the additional round, the Commission will establish after each round the winning combination in keeping with the cumulative requirements set in paragraph 2 under Section 5.3.5 of the Terms of Reference, ANCOM mainly aiming at awarding all the usage rights. The requester's judgement is correct.

**10. Question**

*4.7.1. – Primary bid rounds*

*[...] Additionally, for the blocks in B, C, D and E categories, the following rules on establishing the bid increment apply:*

- *if within a primary round the demand exceeds the supply in any of the B or C blocks, in the next round the bid increment will be applied to both blocks;*
- *if within a primary round the demand exceeds the offer in any of the D or E blocks, in the next round the bid increment will be applied to both blocks.*

*Taking into account the provisions above, please specify if, should a candidate submit a bid exclusively for the blocks in C category and excess demand is registered in B category following the previous round, the bid increment applicable to the bidders in B and C categories will also apply to the bidder which bid exclusively for blocks in C category.*

*Similarly, please make the same clarifications for the blocks in D and E categories.*

*We wish to highlight that – if the increment will be similar for both categories of bidders – the bidder bidding exclusively for C, respectively E blocks would be, in our opinion, disadvantaged since the excess demand occurred out of reasons independent from that bidder's will. In conclusion, we believe that the increment resulted from an excess demand must be applied exclusively to the participants who submitted bids cumulatively for blocks in B and C, respectively D and E categories.*

**Answer:**

Yes. The rules referring to the application of the bid increment apply both for blocks in B and C and for blocks in D and E categories.

The proposal to apply a differentiated bid increment is impossible to be implemented in the logics of this auction, which is thus tailored to ensure that each round has a unique value for each category of licences.

ANCOM underlines that the provisions of the Terms of Reference have been submitted to public consultation and also analysed within the Consultative Council's meeting of 22 June 2012.

**11. Question**

*Obligations on national roaming*

*a) Paragraph 4 of Section 3.3.3.1 specifies that the duration of the roaming agreements "is limited to a 3-year period, if the beneficiary requires such conclusion for a period of 3 years".*

*In order to avoid any misinterpretations, please confirm that:*

- *the 3-year period is the maximum period for which the holder of a licence for the use of radio frequencies, regardless of its nature, can benefit from the*

*national roaming service and that such beneficiary may not request from a licence holder new roaming contracts after the expiry of the 3-year period;*

- *if a beneficiary has national roaming agreements with several licence holders, the 3-year period flows from the date when the beneficiary concluded the first national roaming agreement; in this regard, please clarify how can a licence holder objectively verify the date on which a beneficiary concluded the first national roaming agreement;*
- *the restriction on the 3-year period applies irrespective of whether this period is covered by only one national roaming agreement concluded with a licence holder or by several agreements successively concluded for periods shorter than 3 years.*

*b) The obligation to conclude a national roaming agreement is incumbent on all the holders of the licences to be awarded following the selection procedure (A to G categories), including those under which allegedly new technologies (LTE) will be implemented. Corroborated with this obligation, the requirement relating to the content of the national roaming agreement (the provision of all services available on GSM and UMTS technologies, improved technologies in IMT family) can lead to various interpretations. In this context, please confirm that the obligation to provide national roaming is incumbent on the holders of licences for frequencies in the A to G categories, to the extent 2G and/or UMTS services have been deployed in the respective bands.*

**Answer:**

a) The period of time for which ANCOM understands to set the obligation in the Terms of Reference is three years.

Nonetheless, a beneficiary of the roaming agreement may request the conclusion of the agreement for a period longer than three years, but the licence holder is obligated to conclude the agreement only in the limit of the three years. The parties may however agree on longer periods, in accordance with the principle of freedom to conclude agreements.

In accordance with the provisions of the last paragraph of Section 3.3.3.1 of the Terms of Reference, the licence holder has "the obligation to provide ANCOM with a copy of each concluded roaming agreement, within 10 days after their conclusion". In such conditions, any licence holder who receives the request to conclude a roaming agreement will be able to request ANCOM, in writing, information on the existence of a roaming agreement concluded by the beneficiary requesting the conclusion of a new agreement.

The three-year period is applicable irrespective of the number of concluded roaming agreements, while the entire period is to be calculated from the conclusion date of the first roaming agreement.

b) Bearing in mind the purpose of the roaming agreements and their temporary character, the obligation to conclude roaming agreements is limited according to the provisions of paragraph 6 letter b) of Section 3.3.3.1 in the Terms of Reference to the possibility to provide all the services on GSM and UMTS technologies, improved technologies in the IMT family (HSPA, HSPA+) available to the holders' subscribers to the subscribers of the beneficiary of the roaming agreement, depending on the services purchased by the subscribers.

## 12. Question

*Please confirm that separate letters of guarantee/guarantee tools can be issued for the temporary licences vs. licences for 15 years.*

*We bear in mind the provisions of the last but one paragraph of Section 4.4.1 in the Terms of Reference, according to which: "The participation bond may be set up in a number of letters of bank guarantee or guarantee tools which can be issued by different companies, each such letter or tool needing to observe all the form-related requirements stipulated in this Section", as well as the text of Annex 4.*

*Our understanding is that the division up to any value granularity is acceptable, without any restrictions in this regard. More than that, the text of the Terms of Reference does not specify the guaranteed asset. In this context, we wish to reconfirm the possibility to submit sub-divided guarantee tools, while referring to the sub-divisions which will no longer make the object of the guarantee preferably at the time of reducing the guarantee.*

### Answer:

Yes. The letter of bank guarantee, whose value is set according to Section 4.4.2 in the Terms of Reference, may be set up in a number of letters of bank guarantee which will observe all the form-related requirements imposed by the Terms of Reference.

## 13. Question

*As per the Terms of Reference, the execution of the participation bond may be done upon the first written request from ANCOM, without the authenticity of the legal representatives being verified.*

*In order to avoid any risk of an abusive exercise of this right, we ask you to confirm that, when eventually requiring a bond execution, ANCOM will meet the following conditions:*

- *the document requiring the bond execution will bear ANCOM letterhead;*
- *the document requiring the bond execution will clearly state the name of the signatory person/persons;*
- *the document requiring the bond execution will bear the official round seal of ANCOM;*
- *the account where the guaranteed amounts are to be transferred to will be an ANCOM account opened with the Treasury;*
- *the channel used for sending the bond execution request, apart from sending the request by post, will also be a bank specific channel (in case of the letter of bank guarantee) for the content of the payment request, by means of an authenticated SWIFT;*
- *the bond execution will be carried out within 5 days, in order to have ANCOM confirmation to ~~X~~ as regards the execution of the bond.*

### Answer:

The execution of the letter of bank guarantee will observe all the rules and norms by which a Romanian public authority may validly act.

## 14. Question

*The power of attorney granted for the application file.*

- a) *In case none of the persons empowered by the power of attorney submitted through the application file is able to be present during the auction process, please specify the term within which a new power of attorney may be presented to ANCOM, designating other persons to represent the company and to sign on its behalf.*

- b) *Please confirm that the authenticated power of attorney designating the persons who have the right to sign on behalf of the company (to be included in the application file) may be signed by the Director General of the company, providing that he/she has a mandate to act as such (without a power of attorney from the Board of Directors, for example, being necessary).*
- c) *We also ask you to clarify whether a power of attorney from the company is necessary as regards the presence in the auction room of the two representatives who do not have the right to sign on behalf of the company? If yes, please specify whether a document under private signature will prove sufficient.*
- d) *Please clarify the provisions of art. 4.5.2, letter a), namely communicate us whether the wording "the limits of the respective power of attorney" refer to value thresholds and, if yes, whether it is mandatory that the power of attorney specifically establishes what are the value thresholds up to which the empowered persons may engage the company or whether there is any possibility for the power of attorney to not specify any value threshold at all (while the empowered persons would have the power to represent and engage the company in any relevant aspect related to the spectrum auction procedure).*
- e) *Also in relation to the limits of the power of attorney, to the extent the value thresholds are involved, please confirm whether the limits of the power of attorney may be raised during the selection procedure, upon company's choice.*
- f) *Regarding letter a) of Section 4.5.2, we wish to know whether 3 individual powers of attorney may be issued for the 3 empowered representatives, or we must submit a single document, empowering all 3 persons.*

**Answer:**

- a) See the solution presented under point 5 herein;
- b) Since the power of attorney is to be authenticated by the public notary, the mandate of the legal representative and the limits of his/her mandate will be verified by the public notary; in view of clarifying the possible effects of the decisions of the bidder's bodies, the provisions under art. 218 of the Civil Code, corroborated with the provisions under art. 209 paragraph 3, will also be taken into consideration;
- c) The two representatives who do not have the right to sign on behalf of the company, who may enter the room destined to each bidder, will be nominated by means of a document under private signature;
- d) See the solution presented under point 3 of the Response to the request of clarifications received, until 12.07.2012, in relation to the Terms of Reference for the organisation of the competitive selection procedure in view of awarding the rights to use the radio frequencies in the 800 MHz, 900 MHz, 1800 MHz and 2600 MHz bands;
- e) As a result of the details presented under letter d) above, we consider that question a) loses its object in case of choosing a mandate without value thresholds. In the opposite case, mandates may be renewed only in case of replacement of certain representatives, in which case the value thresholds may be higher;
- f) Any of the presented versions will be deemed valid.

## 15. Question

*The electronic format of the application file*

*Section 4.5.5.2 provides for the obligation to also submit the application file in an electronic format, with full rights for the use of files, in Microsoft Word, Microsoft Excel and Adobe Acrobat format. Please confirm the fact that, to the extent that we will include Word or Excel files on the CD, these files will be deemed valid, even though they do not bear a signature (e.g. the financial statements).*

### **Answer:**

The documents in electronic format are deemed valid if they are identical to those submitted on hardcopy. They do not need to be signed.

According to the provisions of paragraph 4.5.5.2 of the Terms of Reference, *"The application file will be submitted in original and in two copies **on hardcopy**, certified by the candidate for conformity with the original, **as well as in electronic format**, on CD with full rights for the use of files, in Microsoft Word and/or Microsoft Excel and/or Adobe Acrobat format. The original copy will be signed by the representative authorised to engage the candidate."*

## 16. Question

*Rules for the primary bid rounds*

*Section 4.7.1 of the Terms of Reference establishes certain rules for the bids related to the blocks in the B, C, D and E categories. The last point specifies the obligation to bid at least two blocks in the E category if two blocks are bid in the D category.*

*Please specify whether the obligation to bid at least two blocks in the E category remains valid if more than two blocks are bid in the D category or if you envisage the application of another rule.*

### **Answer:**

Yes, bidding more than two blocks in the D category triggers the obligation to bid at least two blocks in the E category.

The written rules states that, *"bidding two blocks in D category triggers the obligation to bid at least two blocks in E category"*, which implies that the bidding of three or four blocks in the D category includes in its wording content the bidding of two blocks in the D category, which, at its turn, triggers the obligation to bid at least two blocks in the E category.

## 17. Question

*Guidelines for the carrying out of the selection procedure*

*Under Section 5.1.8, the Terms of Reference refer to a set of guidelines for the carrying out of the selection procedure. Please communicate us when will these guidelines be made available to the bidders and if they will make the object of a consultation process.*

### **Answer:**

The guidelines for the carrying out of the selection procedure will be made available to the bidders on the date when the information session starts.

The role of the guidelines for the carrying out of the selection procedure is to establish certain rules of conduct inside the location where the auction stage is to be held, and the possible suggestions from the qualified bidders are to be received during the training session, in a time interval which will be set through the Guidelines.

Additional information regarding the Guidelines for the carrying out of the selection procedure may also be identified under point 7 herein.

## 18. Question

*The sanction for the failure to pay the fee for the positioning of the allotments within the band*

*Please specify what is the sanction for the failure, by one of the winners, to pay the fee for the positioning of the allotments within the band, considering that the letter of bank guarantee may be executed only for the failure to pay the licence fees. This request for clarification is submitted as a result of the lack of clarity as regards the legal grounds for the positioning fee; thus, Section 3.5 of the Terms of Reference provides that the winning participants must pay (i) the licence fee established by Government Decision no. 605/2012 establishing the minimum amounts of the licence fees for the award of frequency usage rights in the 790-862 MHz, 880-915 MHz/925-960 MHz, 1710-1785 MHz/1805-1880 MHz and 2500-2690 MHz bands and the spectrum usage tariff. On the other hand, G.D. no. 605/2012 does not explicitly refer to the fee for the positioning of the allotments within the band, but only to the minimum fees per blocks, per period.*

*Please confirm to us that the sanction for the failure to pay the fee for the positioning of the allotments within the band is the same as for the payment of the frequency blocks fee.*

### Answer:

The failure to pay the licence fee, a wording that should be understood in the sense provided for by the legislation in force, triggers the execution of the bond under the conditions mentioned at point 4.4.4 of the Terms of Reference.

The provisions of art. 2<sup>1</sup> of Government Decision no. 605/2012 establishing the minimum amounts of the licence fees for the award of frequency usage rights in the 790-862 MHz, 880-915 MHz/925-960 MHz, 1710-1785 MHz/1805-1880 MHz and 2500-2690 MHz bands specify that the licence fee **represents the maximum value offered by the bidders during the selection procedure.**

As well, the provision under point 4.8.1 of the Terms of Reference specify that, by the beginning of the licence awarding stage, the Commission will communicate to each bidder **the final price standing for the licence fee that the winning bidder will have to pay** for obtaining the usage rights for the frequency blocks it acquired during the procedure, which represents **the sum between the basic price determined, as the case may be, following the qualification stage or the primary and/or additional rounds and the additional price determined following the assignment round.**

## 19. Question

*Consequences over the selection procedure of the failure to pay the licence fees*

*Please specify what are the consequences of the failure, by one or several winners, of the licence fees within the due terms established by art. 5 of the G.D. no. 605/2012. Under Section 4.4.4., the Terms of Reference provides for the right of ANCOM to execute the participation bond, and from Section 4.7.4 results the fact that the licences will not be awarded if these fees are not paid.*

*In such circumstances, please communicate us whether the other licence holders may benefit from the blocks for which the licence fees have not been paid according to the Terms of Reference and, implicitly, which will be the applicable procedure for the award of these frequency blocks.*

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<sup>1</sup> **"The licence fee to be paid by each of the winners of the selection procedure is to be distinctly established for each of the bands under art. 1 and represents the maximum value offered by these during the competitive selection procedure organised by the National Authority for Management and Regulation in Communications, hereinafter called ANCOM."**

**Answer:**

The failure to pay the licence fess triggers the execution of the participation bond under the conditions specified at point 4.4.4 of the Terms of Reference.

In case one of the bidders declared a winner during the selection procedure does not pay the licence fee, the other winning bidders will not benefit from the blocks remained unawarded. In such case, the blocks remained unawarded are to be awarded through a selection procedure, at a date to be subsequently set by ANCOM.

**20. Question**

*What is the procedure for authenticating certain documents in the case of a state which is not part of the Hague Convention of 5 October 1961?*

**Answer:**

In those countries which are not signatory parties to the Hague Convention of 1961, the document written in a foreign language will be authenticated by a local notary, will be apostilled by the competent bodies of the respective state, will be translated into Romanian language, and will then be legalized by the embassy or the consulate of Romania in that state.

**21. Question**

*With regard to Section 4.5.2, in case "the national legislation and the institutional system in the bidder's native country do not allow for obtaining certain information from a relevant authority, a statement on own liability concerning the legal impossibility to submit the information requested in the Terms of Reference is required". Is it necessary for this statement to be legalized and signed by the representative of the candidate?*

**Answer:**

If the national legislation and the institutional system in the bidder's native country **do not allow** for obtaining certain information from a relevant authority, **such information will be presented by means of the constitutive act**, if included therein, or **by means of documents equivalent** to the requested documents. Such equivalent documents will be supported by a legal opinion, elaborated by a form of exercise of a lawyer's profession in his native country, to be addressed to ANCOM. At the same time, a copy of the professional liability insurance in amount of EUR 20,000,000 shall be attached thereto.

Moreover, in case the national legislation and the institutional system in the bidder's native country do not allow for obtaining certain information from a relevant authority, a statement on own liability concerning the legal impossibility to submit the information requested in the Terms of Reference is required. The statement on own liability will be signed by the bidder's legal representative.

**22. Question**

*Is it mandatory for a candidate to submit a statement whereby it undertakes to set up a legal person in Romania, in case a licence is awarded to it?*

**Answer:**

According to points 4.5.1 and 4.5.2 of the Terms of Reference, the submission of such a statement is not mandatory. In case a foreign legal person is awarded a licence during the auction, in accordance with the legal framework in force, the licence will be awarded to a Romanian subsidiary of that foreign legal person, with or without legal personality.

**23. Question**

*If a bidder is declared winner, is it allowed to transfer the rights to use the radio frequencies to one of its branches?*

**Answer:**

In case a bidder is declared winner, the answer provided at point 22 above applies. The licence will be awarded to one of the bidder's Romanian branches.

**24. Question**

*Please clarify the date by which the certificate asserting the compliance with the exigible payment obligations to the state budget, the social insurance budgets and special tax funds, contributions and other revenues must be issued. Please also clarify the wording „[...] special funds of the taxes [...]” under point 4.5.2 letter f) of the Terms of Reference.*

**Answer:**

The certificate asserting the compliance with the exigible payment obligations must be valid, according to the data retained therein, by the date when the application is submitted.

The wording “[...] special funds of taxes [...]” means any exigible payment obligation to the state budget that has not been expressly provided for at letter f) of point 4.5.2 of the Terms of Reference.

**25. Question**

*According to point 4.4.3 “The participation bond will be valid at least from the date when the application file is submitted through 31.07.2013”. The participation bond must be irrevocable; as a result, even if ANCOM is to return the bond, in case the candidate does not qualify, it still must pay, within 30 days, the errand for the guarantee to the bank for the entire period. In such case, we suggest ANCOM to shorten the validity period of the participation bond down to 30.11.2012, when the results of the selection procedure will be known and ANCOM may request the winners to submit the execution bond.*

**Answer:**

ANCOM does not agree. The Terms of Reference do not provide for the existence of a performance bond. In this context, the participation bond must cover the entire period up to 31.07.2013.

**25. Question**

*As to Section 4.5.2 letter g), regarding the financial statements for the last 3 years, if a candidate may not submit the approved financial statement, afferent to the last financial year, is it allowed to submit a temporary, not yet audited financial statement for the fiscal years ending by 31.12.2011? If not, please communicate us another possible solution for such a case.*

**Answer:**

The Terms of Reference require the bidders to submit the financial statements for the last 3 years, approved under the law, in view of verifying the qualifying condition related to the average turnover of EUR 10 million. According to the Romanian law, in order to be valid, any obligation must be achievable. If the financial statements for 2011 are not objectively approved, the bidder will present these financial statements together with a manner of certification considered most adequate in order to ensure the Commission that the presented data are real. At the same time, an explanation must be provided as to the impossibility of submitting the financial statements afferent to the last year, in accordance with the requirements.

In the worst case, if not convinced of the validity of these pieces of information, the Commission will calculate the average of the last 3 years by taking into account only the values resulted from the financial statements approved under the law (for 2009 and 2010, respectively).

## **26. Question**

*Section 3.3.1.1 letter a) sub-point (i), regarding the coverage obligations, provides for the priority coverage of the areas inhabited by 95% of the population from the localities specified in Annex 6, amounting to 732 by 05.04.2016. What does priority coverage mean? Must a candidate cover 95% of the population of 732 localities specified in Annex 6, amounting to 732 by 05.04.2016?*

### **Answer:**

The wording "priority" is merely a manner of expression, strengthening the imperative deadline of 05.04.2016, established for the execution of the coverage obligation.

Each A or C type block to be assigned (one block has 2x5 MHz in size) has associated to it the requirement for **56 localities** of those listed in Annex 6 to be covered, while the remaining **4** localities are to be covered by the winners in accordance with a series of rules specifically established under point 4.5.2 letter a) sub-point (i) of the Terms of Reference. Thus, a candidate will have to cover 95% of the population of each locality assigned to it following the abovementioned algorithm. Considering the limitations imposed through the Terms of Reference, one candidate will have to cover between 56/57 localities (if being assigned only one block) and between 224/225 localities (if being assigned four blocks).

## **27. Question**

### *4.5.5.2. Form of the documents*

*The representative authorised to engage the candidate has the obligation to number and sign each page of the application file. How will the pages of the documents be numbered?*

### **Answer:**

The Romanian language version of the Terms of Reference (the official version for the selection procedure) only provides for the obligation to "*[...] sign each page of the application file (original and copies), as well as to attach a contents of the documents submitted*".

Since the Romanian version is the official one, there is no obligation to number the pages.

## **28. Question**

*As regards Section 4.5.4, may the bank guarantee be issued by any international bank?*

### **Answer:**

In this case are to be applied the provisions of art. 10 paragraph (2) of the president of the National Authority for the Management and Regulation in Communications no. 541/2012 on the organisation of the selection procedure for the award of the radio frequencies usage rights, which refers to a "*[...] letter of bank guarantee issued by a Romanian bank or by a foreign bank having a correspondent in a Romanian bank [...]*".

### **29. Question**

*With regard to Section 4.8.2, can the payment of the licence fee be postponed after 30 November 2011?*

**Answer:**

No. The conditions under point 4.8.2 of the Terms of Reference are established by Government Decision no. 605/2012 establishing the minimum amounts of the licence fees for the award of frequency usage rights in the 790-862 MHz, 880-915 MHz/925-960 MHz, 1710-1785 MHz/1805-1880 MHz and 2500-2690 MHz bands, a normative act published in the Romanian Official Journal, Part I, no. 412 as of 20 June 2012.

### **30. Question**

*Our request refers to letter a) of the second paragraph of Section 5.3.3. of the Terms of Reference:*

*“Thus, during the first additional round, the bid price may not be less than the minimum prices for the blocks included in the bid, which represent:*

*a) the prices applicable in the last primary round where the demand for the categories these blocks are part of was in excess, in case of those categories for which an excess demand has been recorded during the primary rounds; [...]”*

*As regards the above paragraph which is the object of our clarification request, our interpretation is that the price of the additional round for the frequency blocks in the B and C and, respectively, in the D and E categories, is the price applicable for the last primary round where excess demand existed for at least one of the B,C, respectively D, E, categories. For example, if there is excess demand only for the blocks in the C category, the price of the blocks in B category during the additional round will be the price of the last primary round where excess demand existed for blocks in C category.*

**Answer:**

The reasoning of the respondent is correct.

Section 5.3.3. letter a) of the Terms of Reference considers as the minimum price for the first additional round in a certain category to be the last but one value incremented during the primary rounds, while this value is expressed in the Terms of Reference by reference to the conditions under which this last increment has been possible, respectively the last round where excess demand existed or the last round where increment existed as a result of the application of Section 4.7.1. The two fees are to be read in corroboration, in the abovementioned sense.

In fact, according to the provisions of Section 5.3.2 letter c) of the Terms of Reference, the Commission will also inform each bidder with regard to the minimum price applicable during the respective round, for each category.