

On grounds of the provisions of Article 7(1), (3) and (5) of the Government Emergency Ordinance no.134/2006 on the establishment of the National Regulatory Authority for Communications and Information Technology, of Articles 5(1) and 30(2).b) of the Government Emergency Ordinance no.25/2007 on the establishment of certain measures for the reorganisation of the Government working apparatus, with the subsequent amendments and completions, as well as of Article 15(6) of the Government Emergency Ordinance no.79/2002 on the general regulatory framework for communications, approved, with amendments and completions, by Law no. 591/2002, with the subsequent amendments and completions,

Having regard to the provisions of Article 5 of the Government Decision no.61/2008 on the selection procedure for granting a national licence for the use of radio frequencies in view of providing data and mobile electronic communications networks in the 410–415/420–425 MHz ranges,

Having regard to the Order of the Minister of Communications and Information Technology no. 397/2006 for the approval of the Policy and Strategy Document regarding the use of the 410–415 MHz/420–425 MHz range, for the purpose of providing broadband mobile communications services,

THE PRESIDENT OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY

issues this

DECISION

**on the procedure of granting the licence for the use of radio
frequencies in view of providing mobile communications networks and
services within the 410-415/420-425 MHz ranges**

Art. 1. – The licence for the use of radio frequencies in view of providing mobile electronic communications networks and services within the 410-415/420-425

MHz ranges, hereinafter referred to as *the Licence*, shall be granted by tender organised by the National Regulatory Authority for Communications and Information Technology, hereinafter referred to as *ANRCTI*.

Art. 2. – (1) The radio spectrum for which the right of use is awarded by licence consists of the pair of frequency bands 410–415 MHz/420–425 MHz.

(2) These radio frequencies shall be used as follows:

- a) the 410–415 MHz range – for the base station reception;
- b) the 420–425 MHz range – for the base station emission.

(3) The right of using the radio spectrum granted by licence shall span a limited period, under the provisions of Article 1(2) of the Government Decision no.61/2008 on the selection procedure for granting a national licence for the use of radio frequencies in view of providing data and mobile electronic communications networks in the 410–415/420–425 MHz ranges.

Art. 3. – According to the provisions of Article 3 of the Government Decision no.61/2008 on the selection procedure for granting a national licence for the use of radio frequencies in view of providing data and mobile electronic communications networks in the 410–415/420–425 MHz ranges, the operators that already hold at least one national licence for the use of radio frequencies in view of providing mobile electronic communications services in the 880–915 MHz/925–960 MHz (GSM 900), 1710–1785 MHz/1805–1880 MHz (GSM 1800), 453–457,5/463–467,5 MHz (CDMA 450) or 1920–1980/2110–2170 MHz (IMT 2000/UMTS–FDD) ranges and, respectively, 1900–1920 MHz (IMT 2000/UMTS – TDD) cannot take part in the tender.

Art. 4. – (1) The preliminary stages of the tender are as follows:

- a) prepare the draft Terms of Reference;
- b) publish the draft Terms of Reference in view of consultation;
- c) send comments regarding the content of the Terms of Reference;
- d) lay down the final version of the Terms of Reference and publish the tender notice.

(2) The stages of the tender are the following:

- a) purchase of the Terms of Reference by the interested persons;
- b) submission of the requests for clarification and their settlement;

- c) submission of offers and of the participation bond by the persons who purchased the Terms of Reference;
- d) offer assessment;
- e) sending of notifications on the result of the assessment of all the submitted offers;
- f) reception and settlement of complaints.

(3) The detailed timetable of the tender shall be established in the Terms of Reference.

Art. 5. – (1) In view of organising and conducting the tender procedure, ANRCTI shall designate a tender commission consisting of 7 members that cannot be shareholders, associates, administrators, censors or employees, with an employment book or in any other way, of any legal person who participates in the tender or of any legal person who controls a tenderer. The members of the commission shall submit a statement on their own responsibility in this regard.

(2) One member of the commission shall be designated president in order to manage the tender procedure and one – secretary, in order to lay down the minute of the meeting.

(3) A legal person controls a tenderer, as provided in paragraph (1), if it directly exercises at least 25% of the value/number of shares or of the rights to vote held by the respective tenderer.

Art. 6. – (1) The tender commission has the following functions:

- a) lay down the Terms of Reference;
- b) lay down the final version of the Terms of Reference;
- c) settle the requests for clarifications;
- d) assess the offers;
- e) submit the result of the offer assessment to the President of ANRCTI for approval.

(2) In view of settling the possible complaints, ANRCTI shall designate a commission consisting of other members than those of the tender commission. The minute on the settlement of complaints shall be approved by the President of ANRCTI.

Art. 7. – (1) ANRCTI shall publish on its website, www.anrcti.ro, for public consultation, the draft Terms of Reference and the deadline established for receiving comments.

(2) The final version of the Terms of Reference shall be laid down after gathering and analysing the comments received.

(3) ANRCTI shall publish in at least one national journal, as well as on its website, www.anrcti.ro, a tender notice so as to invite the interested persons to purchase the Terms of Reference, indicating the deadline for purchasing it, and the deadline for submitting the offers.

Art. 8. – (1) The terms of Reference shall necessarily include the technical conditions for the use of the frequency bands launched for tender, the eligibility conditions, the minimum set of obligations the tenderers must undertake as winners of the tender, the scoring grid and any other issues deemed relevant by the tender commission.

(2) ANRCTI shall ensure that any person interested in purchasing the Terms of Reference receives it.

Art. 9. – (1) The tender shall be carried out based on firm, final, irrevocable and unconditional offers, submitted in accordance with the Terms of Reference for the elaboration and presentation of the offer.

(2) The tenderers shall deposit a EUR 50,000 participation bond via a letter of bank guarantee issued by a Romanian bank or by a corresponding foreign bank, which would utterly state their irrevocable commitment to pay immediately, upon ANRCTI's request, without invoking any exception related to the tender procedure, an amount equal to the participation bond, if:

- a) the winner of the tender gives up the licence request;
- b) the winner of the tender fails to pay the licence fee under the terms laid down in Article 2 of the Government Decision no. 61/2008;
- c) the tenderer withdraws its offer after the deadline established for receiving the offers;
- d) the tenderer influences or tries to influence the tender commission in the offer analysis and assessment process.

(3) The letter of bank guarantee must be valid at least 180 days from the deadline established for receiving the offers.

(4) The participation bond shall be wholly refunded, upon request, to all the participants, except for the winner of the tender, who shall receive it, upon request, after the licence is issued.

Art. 10. – The tender commission shall analyse exclusively the offers received within the term specified in the Terms of Reference and accompanied by the participation bond in the amount and form provided by this decision.

Art. 11. – (1) The tender commission shall communicate, on its website, www.anrcti.ro, the results of the offer assessment to all persons that submitted such offers.

(2) ANRCTI shall issue the licence to the winner, upon payment of the licence fee.

Art. 12. – This decision shall be published in the Romanian Official Journal, Part I.

**PRESIDENT,
DAN CRISTIAN GEORGESCU**

Bucharest, March 24, 2008

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