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On grounds 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 article 5 (1) and article 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, subsequently amended and completed, 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, subsequently amended and completed,

On grounds 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 networks and mobile electronic communications services in the 410-415/420-425 MHz frequency bands,

Having regard to the Order of the Minister of Communications and Information Technology no. 397/2006 for the approval of the Policy and Strategy Paper on the use of the 410-415 MHz/420-425 MHz frequency band, in view of providing broadband mobile electronic communications,

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

issues this

### DECISION

#### **on the procedure for granting a licence for the use of radio frequencies in view of providing mobile electronic communications services in the 410-415/420-425 MHz frequency bands**

**Art. 1.** – The licence for the use of radio frequencies in view of providing mobile electronic communications services in the 410-415/420-425 MHz frequency bands, 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 frequency spectrum for which the right of use is granted by licence is represented by the two frequency bands: 410 – 415 MHz/420 – 425 MHz.

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

- a) the 410 – 415 MHz frequency band for base station reception;
- b) the 420 – 425 MHz frequency band for base station transmission.

(3) The right of use of the radio frequency spectrum granted by licence shall be temporarily limited, under the conditions provided in 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 networks and mobile electronic communications services in the 410-415/420-425 MHz frequency bands.

**Art. 3.** – In accordance with the provisions of article 3 of the Government Decision no.61/2008, the operators that hold at least one national licence for the use of radio frequencies in view of providing mobile electronic communications networks and 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) and, respectively, 1900 – 1920 MHz (IMT 2000/UMTS – TDD) frequency bands shall not be allowed in the tender.

**Art. 4.** – (1) The stages prior to the tender are the following:

- a) elaborate the Terms of Reference;
- b) publish the Terms of Reference for consultation;
- c) send comments on the content of the Terms of Reference;
- d) elaborate the final version of the Terms of Reference and publish the tender notice.

(2) The tender stages are the following:

- a) the interested persons obtain the Terms of Reference;
- b) send requests for clarifications and answers to these requests;
- c) the persons who obtained the Terms of Reference submit offers and a performance bond;
- d) offer assessment;
- e) transmit communications on the result of evaluating all the offers submitted;
- f) receive and solve complaints.

(3) A detailed tender schedule shall be set out in the Terms of Reference.

**Art. 5.** – (1) In view of organising and managing the tender procedure, ANRCTI shall designate a tender commission consisting of 7 members, who cannot be shareholders, associates, administrators, auditors or employees, by labour book or by other means, of any of the legal entities in the tender or of any legal entity that controls a tendered; in this respect, the commission members shall submit a statement of one's own responsibility.

(2) A president designated from the tender commission shall chair the tender procedure and a secretary of this commission shall draw up session minutes.

(3) Within the meaning of paragraph (1), a legal entity has control over a tendered if it holds, directly, at least 25% of the value/number of the shares or votes of the latter.

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

- a) elaborate the draft Terms of Reference;
- b) elaborate the final version of the Terms of Reference;
- c) draw up answers to the requests for clarifications;
- d) assess offers;
- e) present the result of the offer assessment to the ANRCTI President for approval.

(2) In view of solving the occurring complaints, ANRCTI shall establish a commission consisting of other persons than those who were in the tender commission. The complaint-settling minute shall be approved by the ANRCTI President.

**Art. 7.** – (1) ANRCTI shall publish for public consultation, on its website, [www.anrcti.ro](http://www.anrcti.ro), the draft Terms of Reference and the deadline by which comments are invited.

(2) The final version of the Terms of Reference shall be elaborated upon aggregating and analysing the comments.

(3) ANRCTI shall publish, at least in one national daily newspaper, as well as on its website, [www.anrcti.ro](http://www.anrcti.ro), a tender notice, inviting the interested persons to obtain the Terms of Reference, specifying the relevant timeframe, as well as the timeframe for submitting offers.

**Art. 8.** – (1) The Terms of Reference shall include the technical specifications for the use of the radio frequencies envisaged by the tender, the minimum requirements to be fulfilled by a tendered in order to be eligible, the minimum commitments the latter shall have to undertake in case of winning the tender, the score grid, as well as any other issues deemed relevant by the tender commission.

(2) ANRCTI shall provide for making available a copy of the Terms of Reference for any interested person.

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

(2) The tenderers shall submit a participation bond amounting to EUR50,000 issued by a Romanian Bank or to a foreign bank working with a Romanian correspondent bank, this bond shall clearly stipulating the bank's irrevocable commitment to immediately pay, upon ANRCTI's request, without appeal to any exception related to the tender procedure, an amount equal to the performance bond, if:

- a) the tender winner gives up the right to be granted the licence;
- b) the tender winner does not pay the licence fee under the terms provided in article 2 of the Government Decision no. 61/2008;
- c) the tenderer withdraws its offer after the established offer submitting deadline;
- d) the tenderer influences or endeavours to influence the tender commission during the offer assessment and analysis.

(3) The participation bond shall have a validity of at least 180 days from the deadline by which offers are invited.

(4) The whole amount stipulated in the participation bond shall be paid back, upon request, to all the tenderers, except for the winner, which shall receive it, upon request, after the licence has been issued.

**Art. 10.** – The tender commission shall analyse only the offers received under the terms in the Terms of Reference and accompanied by a performance bond in the amount and form provided in this decision.

**Art. 11.** – (1) The tender commission shall communicate to the tenderers the results of the offer assessment, posting them on the website [www.anrcti.ro](http://www.anrcti.ro).

(2) The person with the winning offer shall be invited to the ANRCTI headquarters in view of receiving the licence, 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 2008  
No.