

**EXPLANATORY MEMORANDUM**  
**to the Draft Decision of the President of the National Regulatory Authority**  
**for Communications and Information Technology on the procedure of**  
**granting a licence for the use of radio frequencies in order to provide**  
**mobile electronic communication networks and services within the 410-**  
**415/420-425 MHz frequency bands**

According to the provisions of Article 5(1) of the Government Emergency Ordinance no.25/2007 on the establishment of certain measures for reorganising the Government's working apparatus, with the subsequent amendments and completions, the National Regulatory Authority for Communications and Information Technology (*ANRCTI*) took over the specific attributions of the former General Inspectorate for Communications and Information Technology (*IGCTI*) in the fields of radiocommunications, audio-visual communications, radio equipments and electronic communications terminal equipments, including the electromagnetic compatibility.

In accordance with Article 14 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, the use of the radio frequency spectrum is allowed only after achieving a licence for the use of radio frequencies whereby ANRCTI sets the conditions under which the radio spectrum resources are used.

On grounds of Article 15(6) of the Government Emergency Ordinance no.79/2002, the Government Decision no.61/2008 on the selection procedure for the granting of a national licence for the use of radio frequencies in order to provide data networks and mobile electronic communications services within the 410-415/420-425 MHz frequency bands was adopted, which established the comparative selection as the procedure applicable to the granting of the licence and, concomitantly, according to the provisions of Article 5 under the same normative act, the obligation of detailed regulation *"of the manner in which the comparative selection procedure is carried"* was set. This *"is achieved by means of a normative decision issued by the President of ANRCTI, which is published in the Romanian Official Journal, Part I"*.

Under this legislative context, ANRCTI intends to elaborate the regulation provided in Article 5 of the Government Decision no.61/2008, proposing in this sense the Draft Decision of the President of ANRCTI on the procedure of granting a licence for the use of radio frequencies in order to provide mobile electronic communication networks and services within the 410-415/420-425 MHz frequency bands. The purpose of the decision is to set, under the conditions of openness, transparency and non-discrimination imposed by Article 15(1) of the Government Emergency Ordinance no.79/2002, the procedural rules to be considered during the tender and to clarify the main conditions the tenderers should fulfil.

Thus, in the enforcement of the provisions of Article 3 of the Government Ordinance no.61/2008, ANRCTI detailed the legal incompatibilities with the capacity as tenderer, namely identifying the operators that *“hold at least one national licence for the use of radio frequencies in order to provide mobile electronic communications networks and services, including broadband, and which provide or may provide mobile electronic communications networks and services substitutable with the ones that may be provided by using the 410-415/420-425 MHz frequency bands”* as the operators which hold at least one national licence for the use of radio frequencies in order to provide mobile electronic communications networks and services within 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.

As well, the draft proposes the transparent regulation of the precursory stages, as well as of the stages of tender itself, starting with the elaboration and public consultation of the Terms of Reference and finishing with the granting of the licence to the designated winner. Furthermore, the draft decision draws very clearly the attributions of the tender commission and of the commission designated for settling possible legal contests, establishing also certain mandatory obligations to be included in the Terms of Reference.

In order to avoid any possibilities of altering the objectivity of the assessment carried by the members of the commission, the draft decision reveals a series of incompatibilities with the capacity as a member of the tender commission which include, in the descendent order of the possible level of influence on the members of the commission, the capacity as shareholder of one of the tenderers or the capacity as simple employee of any legal persons that exercises directly at least 25% of the value/number of the shares or of the vote rights held in the general meeting of the tenderers' shareholders.

Alongside the general conditions an offer must fulfil in order to be considered eligible (firm, definitive, irrevocable and unconditional), the draft decision establishes that only the offers that were received within the term mentioned in the Terms of Reference and which were accompanied by the participation bond within the quantum and under the form provided in the present decision shall be analysed.

Within the same purpose of sanctioning any improper behaviour of the tenderers, which could bring prejudices to ANRCTI by delaying it in allotting the frequency bands or in any other way, the draft bonds the participation in the procedure by the setting of a participation bond amounting to Euro 50,000, under the form of a letter of bank guarantee. The amount is returnable, upon request, after the conclusion of the bilateral obligation relations.

Taking into consideration the abovementioned aspects, the Draft Decision of the President of ANRCTI on the procedure of granting a licence for the use of radio frequencies in order to provide mobile electronic communication networks and services within the 410-415/420-425 MHz frequency bands, submitted to public consultation, represents the second stage, according to the Government Decision no.61/2008, which establishes the type of procedure applied and the licence fee, of the mechanism of issuing licences which are granted by the selection procedure regulated by the provisions of Article 15 of the Government Emergency Ordinance no.79/2002.

Considering the necessity of accelerating the process of licence granting, we deem that this regulation must be adopted under emergency regime, on this draft being thus imposed the setting of a 15 day public consultation period.