

Disclaimer: This is a Romanian to English translation meant to facilitate the understanding of these Terms of Reference. Should differences appear between the Romanian and the English version, following translation, the Romanian version shall prevail.

TERMS OF REFERENCE FOR THE ORGANISATION OF THE COMPETITIVE SELECTION PROCEDURE WITH A VIEW TO AWARDING THE RIGHTS TO USE THE RADIO SPECTRUM IN THE 3410-3800 MHz BAND

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Chapter 1 – INTRODUCTION

1.1. LEGAL FRAMEWORK APPLICABLE TO THE SELECTION PROCEDURE

The legislation applicable in awarding the licences for the use of the radio spectrum, hereinafter referred to as *licences*, consists of the following:

- Government Emergency Ordinance no. 111/2011 on electronic communications, approved, with amendments and completions, by Law no. 140/2012, with the subsequent amendments and completions;
- Government Emergency Ordinance no. 18/2008 on the establishment of certain measures for reforming the radio spectrum in the 3600-3800 MHz frequency band, approved with amendments by Law no.259/2008, with the subsequent amendments;
- Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, with the subsequent amendments and completions;
- Government Decision no. 702/2015 on the establishment of the minimum amount of the licence fee for awarding the rights to use the frequency spectrum in the 3410-3800 MHz band, as well as of the payment conditions regarding the licence fee;
- Decision of the President of the National Authority for Management and Regulation in Communications no. 638/2013 on certain measures regarding the management of the 3400-3800 MHz band;
- Decision of the President of the National Authority for Management and Regulation in Communications no. 390/2015 on the approval of the Strategy and of the action plan regarding the implementation and development of broadband wireless access (BWA) systems on a national level in the 3400-3800 MHz band, for the period 2015-2025;
- Decision of the President of the National Authority for Management and Regulation in Communications no. 686/2015 on the organization of selection procedure for awarding the rights to use the radio spectrum in the 3410-3800 MHz band;
- Decision of the President of the National Authority for Management and Regulation in Communications no. 353/2015 on the procedure of awarding the rights to use the radio spectrum.

The grounds for the award of the rights to use the radio spectrum reside in the Government Emergency Ordinance no. 111/2011 on electronic communications¹ (hereinafter referred to as the Framework-Ordinance).

In line with the provisions of Article 26(1) of the Framework-Ordinance, licences are awarded by the National Authority for Management and Regulation in Communications (ANCOM), following an open, objective, transparent, non-discriminatory and proportionate procedure, on grounds of Article 10(2) point 12 of the Government Emergency Ordinance no. 22/2009.

According to Article 25 of the Framework-Ordinance, ANCOM may decide to limit the number of licences to be granted in a radio frequency band, when the efficient use of the radio spectrum needs to be ensured or harmful interferences must be avoided. The above-mentioned limitation may be adopted if three conditions are met: ANCOM takes into consideration the necessity that the measure should bring the users maximum benefits and facilitate the development of competition; all the interested parties – including the users and the consumers – are offered the possibility to express their opinions regarding the respective measure; any decision of limiting the number of licences is published, along the justification therefor.

¹ Published in the Romanian Official Journal Part I, no. 925 of 27 December 2011.

In the case of the licences whose amount has been limited, ANCOM awards the usage right by way of a procedure which must fulfil, on its turn, a series of conditions, established by Article 26 paragraph (2) under the Framework-Ordinance. Thus:

- a) the type of the procedure must be competitive or comparative selection;
- b) the procedure must be objective, transparent, non-discriminatory and proportionate;
- c) the procedure must not lead to restricting, preventing or distorting competition;
- d) the usage rights must be granted, in general, within 8 months from the receipt of a request therefor. If necessary, this term may be changed in order to observe an international agreement, to which Romania is a party, relating to the use of the radio frequency spectrum or of the orbital positions.

According to Article 26(4) of the Framework-Ordinance, during a procedure for awarding the licence for the use of radio frequencies, ANCOM may decide to exclude certain persons from the selection procedure, out of reasons related to the fostering of competition in the electronic communications field, upon the prior consultation of the Competition Council and after undergoing the public consultation procedure referred to in Articles 135 under the Framework-Ordinance.

Paragraphs (2) and (3) of Article 28 in the Framework-Ordinance define the types of selection procedures which may be used, respectively:

- the competitive selection, the procedure by which the radio frequency usage right is awarded to the winner of an auction, due to the bidding of a maximum value for the licence fee, having as a start point a minimal value set by Government Decision, while ensuring the fulfilment of certain pre-qualification criteria of a technical, administrative or financial nature, as the case may be;
- the comparative selection, the procedure by which the radio frequency usage right is awarded to the first ranked, after an assessment of the tenders presented by the participants, based on a set of pre-established criteria of a technical, administrative or financial nature, as the case may be.

According to Article 28(4), the detailed regulations for conducting the competitive or comparative selection procedures are adopted by an ANCOM President's decision².

In accordance with the provisions of Section 1.1 of Chapter VII – “Measure Plan” in the Strategy and action plan regarding the nationwide implementation and development of broadband wireless access (BWA) systems in the 3400-3800 MHz band, for the period 2015-2025 (hereinafter referred to as the *3400-3800 MHz Strategy*), in the first half of 2015, ANCOM organizes a selection procedure for awarding spectrum usage rights in the 3410-3600 MHz (*the 3.5 GHz band*) and in the 3600-3800 MHz band (the part allocated for exclusively non-governmental use, according to the NTFA) (*the 3.7 GHz band*), thus:

- i) 16 paired blocks of 5 MHz bandwidth (i.e. 2x5 MHz/block) in the 3410-3600 MHz band – blocks of the A category;
- ii) 36 unpaired blocks of 5 MHz bandwidth (i.e. 5 MHz/block) in the 3600-3800 MHz band – blocks in the B category.

The 3400-3800 MHz Strategy lays down that the usage rights in the 3.5 GHz and 3.7 GHz frequency bands are to be awarded by means of a competitive selection procedure conducted based on objective, transparent, non-discriminatory and proportionate criteria. According to the 3400-3800 MHz Strategy, as well as on grounds of Article 31(1) of the Framework Ordinance, the radio frequency usage rights are granted for a 10-year period.

² Decision of the president of the National Authority for Management and Regulation in Communications no. 686/2015 on the organisation of the selection procedure in view of awarding the radio frequency usage rights in the 3410-3800 MHz band was published in the Romanian Official Journal no. 678 of 7 September 2015.

The stages and the conditions of awarding the radio spectrum usage licences are laid down both in ANCOM President's Decision no. 686/2015 on the organisation of the selection procedure for awarding the radio spectrum usage rights in the 3410-3800 MHz band and in these Terms of Reference.

The award of the licences for the use of radio spectrum by means of the competitive selection procedure is bound to the payment of a licence fee to the state budget. According to Article 28(1) of the Framework-Ordinance, the minimum amount of the licence fee is fixed by a Government Decision³. The conditions regarding the licence fee are established by the Government Decision no. 702/2015 on establishing the minimum amount of the licence fees for the award of spectrum usage rights in the 3410-3800 MHz band and the licence fee payment conditions.

As regards the procedures concerning the amendment, the transfer and/or the withdrawal of the awarded frequency usage rights, the provisions of the Framework-Ordinance and of ANCOM President's Decision no. 353/2015 on the procedure for awarding radio frequency usage rights shall apply.

³ Government Decision no. 702/2015 establishing the minimum amounts of the licence fees for the award of spectrum usage rights in the 3410-3800 MHz bands and the licence fee payment conditions was published in the Romanian Official Journal, Part One, no. 663 of 1 September 2015.

1.2. MEANING OF CERTAIN TERMS AND TERMINOLOGICAL CLARIFICATIONS

Within the present document:

- the "*Commission*" is the auction commission designated by decision of the ANCOM president;
- "*participant*" is the applicant or the bidder in the selection procedure;
- the syntagms "*to gain/obtain/acquire/win/award frequency blocks/frequencies*" are exclusively used for the easiness of expression, with reference to the gaining of the usage rights for those radio frequency which are part of the frequency blocks submitted to the selection procedure, and represent a simple language convention, without considering other legal operations related to the respective radio frequencies;
- "*the 3.5 GHz band*" means the paired frequency bands 3410-3490 MHz and 3510-3590 MHz;
- "*the 3.7 GHz band*" means the unpaired frequency band 3600-3800 MHz;
- "*allotted frequency sub-band/sub-bands*" means the total amount of radio spectrum awarded in the 3.7 GHz band, respectively in the 3.5 GHz band, to be laid down in the licence to be issued to the winner of the selection procedure;
- "*MFCN network*" means an electronic communications network complying with the sections relevant for the 3400-3800 MHz band of the standard EN 301 908, as published by ETSI;
- "*BWA network*" means an electronic communications network complying with WiMAX standards, as published by ETSI, in particular EN 302 217, EN 302 326, EN 302 623, EN 302 774 and EN 301 753;
- "*PMP*" is the acronym for point-to-multipoint;
- "*MFCN*" is the acronym for Mobile/Fixed Communications Networks (broadband fixed/mobile communications networks);
- "*BWA*" is the acronym for Broadband Wireless Access;
- "*NTFA*" is the National Table of Frequency Allocations.

CHAPTER 2 – OBJECT OF THE SELECTION PROCEDURE

2.1. GENERAL ASPECTS

The licence issued to each winner, the Authority will stipulate the whole amount of spectrum obtained following the selection procedure, representing the awarded sub-band, or – as applicable – the sub-bands assigned to the respective licence holder.

There will be issued separate licences for each of the two frequency bands (3.5 GHz and/or 3.7 GHz, as applicable).

The radio frequency usage licences to be awarded following the selection procedure, both in the 3.5 GHz and in the 3.7 GHz, will contain provisions regarding:

- a) the inclusion of guard bands, as to the networks operating in adjacent sub-bands, within the sub-bands awarded through licences;
- b) the holders' flexibility in managing the awarded sub-bands, i.e. – within these – by way of exception from the licence provisions regarding channel arrangements, the holders may establish different central frequencies for channels of various bandwidth, on the condition that they observe the limits of the sub-bands awarded by licence;
- c) technological neutrality, the only limitation regarding the application type allowed for implementation, i.e. MFCN networks (including PMP networks for BWA communications); no further mentions will be provided regarding the application type, except for the supply of (broadband) electronic communications services;
- d) the possibility to use the sub-bands awarded by licences and to install radio-relay links required for transporting the traffic resulted from the PMP network, the MFCN network or from other networks, as follows:
 - transport, by point-to-point links, of the traffic between the infrastructure elements of the MFCN or PMP access network (base stations in the 3.5 GHz or 3.7 GHz)
 - transport, by point-to-multipoint links, of the traffic between the infrastructure elements of other public networks belonging to the licence holder, operating in the fixed service or in the mobile service, but only where infrastructure elements are collocated with base stations in the 3.5 GHz or in the 3.7 GHz bands.

2.2. THE 3.5 GHz BAND

The detailed history of using the 3.5 GHz band, as well as of the spectrum management measures in this band is presented in Chapter I – “History” of the 3400-3800 MHz Strategy.

The current licensing of the 3.5 GHz band, with a comparative display of the existing allotments, is presented in the table below.

Table 1 – Current licencing of the 3.5 GHz spectrum

HOLDER	APPLICATIONS	SPECTRUM ALLOTTED BY LICENCE	VALIDITY TERM	TOTAL SPECTRUM AMOUNT
2K TELECOM	FWA/NWA	2X7 MHz	31.XII.2015	2 x 14 MHz
	FWA/NWA	2X7 MHz	31.XII.2015	
ORANGE	FWA/NWA	2X7 MHz	31.XII.2015	2 x 14 MHz
	FWA/NWA	2X7 MHz	31.XII.2015	
UPC	FWA/NWA	2X7 MHz	31.XII.2015	2 x 7 MHz
VODAFONE	FWA/NWA	2X7 MHz	31.XII.2015	2 X 14 MHz
	FWA/NWA	2X7 MHz	31.XII.2015	

The actual position of the spectrum amounts that are currently assigned in the 3.5 GHz is presented in the table below.

Table 2 – Actual position of the spectrum amounts allotted by licences in force in the 3.5 GHz band

RADIO CHANNEL LIMITS LOWER HALF-BAND (MHz)	RADIO CHANNEL LIMITS UPPER HALF-BAND (MHz)	LICENCE HOLDER or USAGE
3400-3410	--	other radiocommunications systems
3410-3417	3510-3517	vacant - national level
3417-3424	3517-3524	vacant - national level
3424-3431	3524-3531	VODAFONE
3431-3438	3531-3538	VODAFONE
3438-3445	3538-3545	2K TELECOM
3445-3452	3545-3552	2K TELECOM
3452-3459	3552-3559	vacant - national level
3459-3466	3559-3566	UPC
3466-3473	3566-3573	vacant - national level
3473-3480	3573-3580	vacant - national level
3480-3487	3580-3587	ORANGE
3487-3494	3587-3594	ORANGE
3494-3500	3594-3600	1.75 MHz and 3.5 MHz bandwidth channels vacant – national level
3500-3510		duplex gap 10 MHz

In accordance with the NTFA in force, the 3410-3600 MHz band has a non-governmental usage status.

There is an exclusion geographical area on the national territory, applicable to the 3400-3600 MHz band, as per the provisions of Law no. 73/2013 on establishing special measures for the protection of military objectives within the national system of defence against ballistic rockets.

The limits of the exclusion geographic area are determined in accordance with the provisions of the Order of the Ministry of National Defence no. M.49 of 20.V.2013, whereas the maximum height regime allowed for constructions is determined in accordance with the Order of the Minister of National Defence no. M50 of 20.05.2013 on the administrative-territorial units on the territory of which restrictions are applied for raising constructions, as well as the exact parameters of the maximum height regime allowed for constructions in each of the administrative-territorial units.

The winners of the selection procedure under these Terms of Reference will operate the public electronic communications networks for which they are to be licensed, in compliance with the provisions of Law no. 73/2013.

With a view to ensuring the coexistence of the electronic communications networks envisaged by these Terms of Reference with the special objectives provided by Law 73/2013, for the purpose of protecting the operation of the above-mentioned networks, the following measures are recommended:

- a) the base stations should be installed, if possible, at over 5 km away from the reference point with the geographic coordinates (in WGS84 system): 44°04'35.853"N/24°25'06.1674"E;
- b) the subscriber terminal antennas should not be oriented, if possible, towards the reference point indicated under letter a), if terminals are situated at less than 35 km from the respective reference point;
- c) base station sector antennas should not be oriented, if possible, towards the reference point under letter a), if these base stations are situated at less than 35 km from the respective reference point; the respective base station antennas are recommended to have an elevation below or equal to -5°;
- d) the base stations situated in the special protection area, defined in the above-mentioned law, should be placed, if possible, in areas without direct visibility towards the reference point indicated under letter a);
- e) receiver notch filters should be used for out-of-band emissions, with an attenuation of at least 50 dB, for preventing possible receiver saturation, caused by the emissions performed in the reference point under letter a) on the base stations in the special protection area defined in the above-mentioned law.

Starting from 1 January 2016, the harmonised technical conditions for the use of the 3.5 GHz band are the ones adopted by the European Commission Decision 2014/276/UE of 02.05.2014 on amending the European Commission Decision 2008/411/EC on the harmonisation of the 3400-3800 MHz band for terrestrial systems capable of providing electronic communications services in the Community.

In accordance with the provisions of the 3400-3800 MHz Strategy, starting from 1 January 2016, the channel arrangement to be used in Romania in the 3.5 GHz band will be FDD.

The spectrum amount in the 3.5 GHz band is 2x80 MHz.

The FDD arrangement in the 3400-3600 MHz band, according to the above-mentioned European Commission Decision consists in duplex radio channels of 2x5 MHz. The sub-bands available are 3410-3490 MHz / 3510-3590 MHz. The duplex gap is 100 MHz.

The band capacity is 16 duplex radio channels of 2x5 MHz. Wider radio channels may be used, by joining adjacent 2x5 MHz channels.

The middle guard band is 20 MHz wide (3490-3510 MHz), while the two side-guard bands are 10 MHz wide (3400-3410 MHz and 3590-3600 MHz).

Base station emissions (downlink) are situated in the higher half-band, while the subscriber terminal emissions (uplink) are situated in the lower half-band.

The channel arrangement valid in the 3.5 GHz band, starting from 1 January 2016, is presented in the table below:

Table 3 – Channel arrangement for the 3400-3600 MHz band

RADIO CHANNEL LIMITS (MHz)	DESTINATION
3400-3410	other radiocommunications systems
3410-3415	Uplink (Channel 1) – 5 MHz
3415-3420	Uplink (Channel 2) – 5 MHz
3420-3425	Uplink (Channel 3) – 5 MHz
3425-3430	Uplink (Channel 4) – 5 MHz
3430-3435	Uplink (Channel 5) – 5 MHz
3435-3440	Uplink (Channel 6) – 5 MHz
3440-3445	Uplink (Channel 7) – 5 MHz
3445-3450	Uplink (Channel 8) – 5 MHz
3450-3455	Uplink (Channel 9) – 5 MHz
3455-3460	Uplink (Channel 10) – 5 MHz
3460-3465	Uplink (Channel 11) – 5 MHz
3465-3470	Uplink (Channel 12) – 5 MHz
3470-3475	Uplink (Channel 13) – 5 MHz
3475-3480	Uplink (Channel 14) – 5 MHz
3480-3485	Uplink (Channel 15) – 5 MHz
3485-3490	Uplink (Channel 16) – 5 MHz
3490-3510	Duplex gap – 20 MHz
3510-3515	Downlink (Channel 1) – 5 MHz
3515-3520	Downlink (Channel 2) – 5 MHz
3520-3525	Downlink (Channel 3) – 5 MHz
3525-3530	Downlink (Channel 4) – 5 MHz
3530-3535	Downlink (Channel 5) – 5 MHz
3535-3540	Downlink (Channel 6) – 5 MHz
3540-3545	Downlink (Channel 7) – 5 MHz
3545-3550	Downlink (Channel 8) – 5 MHz
3550-3555	Downlink (Channel 9) – 5 MHz
3555-3560	Downlink (Channel 10) – 5 MHz
3560-3565	Downlink (Channel 11) – 5 MHz
3565-3570	Downlink (Channel 12) – 5 MHz
3570-3575	Downlink (Channel 13) – 5 MHz
3575-3580	Downlink (Channel 14) – 5 MHz
3580-3585	Downlink (Channel 15) – 5 MHz
3585-3590	Downlink (Channel 16) – 5 MHz
3590-3600	Side-guard band – 10 MHz

The channel arrangement scheme in the 3.5 GHz band is the one presented in Annex 2 of Decision ECC/DEC/(11)06 on harmonised frequency arrangements for mobile/fixed communications networks operating in the bands 3400-3600 MHz and 3600-3800 MHz, adopted on 09.12.2011 and amended on 14.03.2014.

In Romania, the frequency spectrum where usage rights are awarded in the 3.5 GHz, based on the provisions of the 3400-3800 MHz Strategy and of these Terms of Reference, consists of the paired

sub-bands 3410-3490 MHz/3510-3590 MHz, taking into account the above-mentioned channel arrangement.

In accordance with the provisions of the 3400-3800 MHz Strategy, in the 3.5 GHz band, there will be awarded usage rights for the nationwide provision of public electronic communications networks. Therefore, the sub-bands won by the participants in the selection procedure will be awarded only on a national level.

Licence holders will take into account, accordingly, the fact that the Authority will assign sub-bands by adjacency, without especially dedicated guard bands, the latter being included in the sub-bands to be awarded by licence. Nevertheless, all the licence holders must ensure radioelectric compatibility with the networks operating in sub-bands adjacent to those they have been awarded by licence.

If they so desire, licence holders will be able to implement, in practice, FDD sub-band allotments in the 3.5 GHz band – awarded through the licences to be issued following the selection procedure – also by TDD assignments, separately for each of the two sub-bands of the respective allotment.

The usage of the FDD allotments through TDD assignments will be possible only upon previously informing the Authority. Additionally, the holders choosing the above-mentioned procedure will have to ensure radio-electric compatibility with the networks operating in sub-bands that are adjacent to those they have been awarded by licence and use FDD allotments only through FDD assignments.

In the above-mentioned context, ANCOM notifies those interested in participating in the selection procedure and in using the FDD sub-band allocations won in the 3400-3600 MHz also through TDD assignments, to take utmost account of the mentions above when deciding on the spectrum amount they wish to buy in the 3.5 GHz band.

Frequency blocks to be auctioned out are sized similarly to a radio channel, i.e. 2x5 MHz, in the 3.5 GHz band. Therefore, in this band, radio frequency blocks will be 2x5 MHz wide.

Thus, in the 3.5 MHz band, 16 paired blocks will be auctioned out, allotted at a national level. By way of convention, block no. 1 corresponds to the radio channel no. 1, block no. 2 corresponds to the radio channel no. 2 etc., block no. 16 corresponding to the radio channel no. 16.

The winners of the selection procedure – if they obtain frequency sub-bands allotted in the 3.5 GHz band – will have the obligation to buy at least 2x10 MHz. Throughout the validity of the licence obtained following the selection procedure, in the 3.5 GHz band, the holders' obligation to have a minimum amount of spectrum of 2x10 MHz will be maintained. This condition remains valid also for new licences to be issued by the Authority following full or partial transfer operations regarding usage rights in the 3.5 GHz.

2.3. THE 3.7 GHz BAND

The detailed history of using the 3.7 GHz band, as well as of the spectrum management measures in this band is presented in Chapter I - "History" of the 3400-3800 MHz Strategy.

The current licensing of the 3.7 GHz band is presented the table below.

Table 4 – Current licencing of the 3.7 GHz spectrum

HOLDER	APPLICATIONS	SPECTRUM ALLOTTED BY LICENCE	VALIDITY TERM	TOTAL SPECTRUM AMOUNT
RADIOCOM	BWA	2 X 28 MHz	31.XII.2015	2 X 28 MHz
Government network	BWA	--	--	15 MHz

The actual position of the spectrum amounts that are currently allotted in the 3.7 GHz band is presented in the table below.

Table 5 – Actual position of the spectrum amounts allotted by licences in force in the 3.7 GHz band

RADIO CHANNEL LIMITS LOWER HALF-BAND (MHz)	RADIO CHANNEL LIMITS UPPER HALF-BAND (MHz)	LICENCE HOLDER or USAGE
3600-3601	--	side-guard band 1 MHz
3601-3608	3701-3708	vacant-national level
3608-3615	3708-3715	vacant-national level
3615-3622	3715-3722	vacant-national level
3622-3629	3722-3729	vacant-national level
3629-3636	3729-3736	vacant-national level
3636-3643	3736-3743	vacant-national level
3643-3650	3743-3750	vacant-national level
3650-3657	3750-3757	vacant-national level
3657-3664	3757-3764	RADIOCOM
3664-3671	3764-3771	RADIOCOM
3671-3678	3771-3778	RADIOCOM
3678-3685	3778-3785	RADIOCOM
3685-3692*	3785-3792	according to the note*
3692-3699*	3792-3799	according to the note*
--	3799-3800	side gap 1 MHz
3699-3700* 3700-3701	--	duplex gap 2 MHz

* Note: A governmental radiocommunications network operates in the 3685-3700 MHz sub-band.

In accordance with the NTFA in force, the 3600-3800 MHz band is currently used as follows:

- 3600-3685 MHz sub-band – non-governmental (NG) use;
- 3685-3700 MHz sub-band – governmental/non-governmental (G/NG) shared use;
- 3700-3800 MHz sub-band – non-governmental use (NG).

Starting from 1 January 2016, the harmonised technical conditions for the use of the 3.7 GHz band are the ones adopted by the European Commission Decision 2014/276/UE of 02.05.2014 on amending the European Commission Decision 2008/411/EC on the harmonisation of the 3400-3800 MHz band for terrestrial systems capable of providing electronic communications services in the Community.

In accordance with the provisions of the 3400-3800 MHz Strategy, starting from 1 January 2016, the channel arrangement to be used in Romania in the 3.7 GHz band will be TDD.

The spectrum amount in the 3.7 GHz band is 200 MHz. In the TDD arrangement, no middle guard gap is needed and side guard gaps as to the adjacent - lower and upper - bands are not provided for this frequency band, according to the provisions of the above-mentioned EC Decision.

The TDD arrangement in the 3600-3800 MHz band, according to the above-mentioned EC Decision consists of unpaired radio channels of 5 MHz.

The band capacity is 40 unpaired radio channels of 5 MHz. Wider radio channels may be used, by joining adjacent 5 MHz channels.

The channel arrangement valid in the 3.7 GHz band, starting from 1 January 2016, is presented in the table below.

Table 6 – Channel arrangement for the 3600-3800 MHz band

RADIO CHANNEL LIMITS (MHz)	DESTINATION
3600-3605	TDD channel (channel 1) – 5 MHz
3605-3610	TDD channel (channel 2) – 5 MHz
3610-3615	TDD channel (channel 3) – 5 MHz
3615-3620	TDD channel (channel 4) – 5 MHz
3620-3625	TDD channel (channel 5) – 5 MHz
3625-3630	TDD channel (channel 6) – 5 MHz
3630-3635	TDD channel (channel 7) – 5 MHz
3635-3640	TDD channel (channel 8) – 5 MHz
3640-3645	TDD channel (channel 9) – 5 MHz
3645-3650	TDD channel (channel 10) – 5 MHz
3650-3655	TDD channel (channel 11) – 5 MHz
3655-3660	TDD channel (channel 12) – 5 MHz
3660-3665	TDD channel (channel 13) – 5 MHz
3665-3670	TDD channel (channel 14) – 5 MHz
3670-3675	TDD channel (channel 15) – 5 MHz
3675-3680	TDD channel (channel 16) – 5 MHz
3680-3685	TDD channel (channel 17) – 5 MHz
3685-3690	TDD channel (channel 18) – 5 MHz
3690-3695	TDD channel (channel 19) – 5 MHz
3695-3700	TDD channel (channel 20) – 5 MHz
3700-3705	TDD channel (channel 21) – 5 MHz
3705-3710	TDD channel (channel 22) – 5 MHz
3710-3715	TDD channel (channel 23) – 5 MHz
3715-3720	TDD channel (channel 24) – 5 MHz
3720-3725	TDD channel (channel 25) – 5 MHz
3725-3730	TDD channel (channel 26) – 5 MHz
3730-3735	TDD channel (channel 27) – 5 MHz
3735-3740	TDD channel (channel 28) – 5 MHz
3740-3745	TDD channel (channel 29) – 5 MHz
3745-3750	TDD channel (channel 30) – 5 MHz

3750-3755	TDD channel (channel 31) – 5 MHz
3755-3760	TDD channel (channel 32) – 5 MHz
3760-3765	TDD channel (channel 33) – 5 MHz
3765-3770	TDD channel (channel 34) – 5 MHz
3770-3775	TDD channel (channel 35) – 5 MHz
3775-3780	TDD channel (channel 36) – 5 MHz
3780-3785	TDD channel (channel 37) – 5 MHz
3785-3790	TDD channel (channel 38) – 5 MHz
3790-3795	TDD channel (channel 39) – 5 MHz
3795-3800	TDD channel (channel 40) – 5 MHz

The channel arrangement scheme in the 3.7 GHz band is the one presented in Annex 3 of Decision ECC/DEC/(11)06 on harmonised frequency arrangements for mobile/fixed communications networks (MFCN) operating in the bands 3400-3600 MHz and 3600-3800 MHz, adopted on 09.12.2011 and amended on 14.03.2014.

In Romania, the radio spectrum for which usage rights are awarded in the 3.7 MHz band, based on the provisions of the 3400-3800 Strategy and of these Terms of Reference consists of the sub-bands 3600-3680 MHz and 3700-3800 MHz (a total of 180 MHz), taking into account the above-mentioned channel arrangement.

In accordance with the provisions of the 3400-3800 MHz Strategy, in the 3.7 GHz band, there will be awarded usage rights for the provision public electronic communications networks, on a national level. Therefore, the sub-bands won by the participants in the selection procedure will be awarded on a national level only.

Licence holders will take into account, accordingly, the fact that the Authority will assign sub-bands by adjacency, without especially dedicated guard bands, the latter being included in the sub-bands to be awarded by licence. Nevertheless, all the licence holders must ensure radioelectric compatibility with the networks operating in sub-bands adjacent to those they have been awarded by licence.

In the above-mentioned context, ANCOM notifies those interested in participating in the selection procedure to take utmost account of the mentions above when deciding on the spectrum amount they wish to buy in the 3.7 GHz band.

The frequency blocks to be auctioned out in the 3.7 GHz band are sized similarly to a radio channel, i.e. 5 MHz. Therefore, unpaired 5 MHz blocks will be auctioned out in this band.

Thus, in the 3.7 MHz band, 36 unpaired blocks will be auctioned out, allotted on a national level. By way of convention, block no. 1 corresponds to the radio channel no. 1, block no. 2 corresponds to the radio channel no. 2 etc., block no. 40 corresponding to the radio channel no. 40. Frequency blocks identified as no. 17, 18, 19 and 20 will not be auctioned out by the selection procedure under these Terms of Reference.

The winners of the selection procedure – if they obtain frequency sub-bands allotted in the 3.7 GHz band – will have the obligation to buy at least 10 MHz. Throughout the validity of the licence obtained following the selection procedure, in the 3.7 GHz band, the holders' obligation to have a minimum amount of spectrum of 10 MHz will be maintained. This condition remains valid also for new licences to be issued by the Authority following full or partial transfer operations regarding usage rights in the 3.7 GHz.

CHAPTER 3 – LEGAL REGIME OF THE LICENCES TO BE AWARDED THROUGH THE SELECTION PROCEDURE

3.1. LICENCE DURATION

In accordance with the provision of Article 31(1) of the Framework-Ordinance, the usage rights granted by means of selection procedures, are awarded for a maximum 10-year period.

According to the provisions of the 3400-3800 MHz Strategy, the radio frequency usage rights will be granted for a 10-year period starting from 01.01.2016, in both frequency bands.

The Authority deems that the 10-year term is adequate, for reasons related to the nature of the electronic communications services to be provided, as well as to the necessity for investment amortization to be considered by each winning bidder following the selection procedure.

Moreover, the proposed term resulted following the public consultations organised during 20 June - 14 July 2011, when the first version of the draft strategy document for the 3400-3800 MHz band was submitted to public consultation, and during 25 February – 16 March 2015, when the draft 3400-3800 Strategy was under public consultation.

3.2. RIGHTS CONFERRED BY THE LICENCES

According to the provisions of Article 24 of the Framework-Ordinance, by licences for the use of radio frequencies, a provider authorised pursuant to Article 6 of the same normative act is granted the right to use the radio frequencies in order to provide electronic communications networks or services, with the observance of certain technical parameters and for a limited period of time. The licences obtained following the selection procedure will enable the winners to use the radio spectrum in the 3410-3800 MHz band, with a view to implementing and developing fixed/mobile broadband communications systems on a national level.

The holders of the licences to be awarded through the selection procedure will have the right to install, operate, control and make available to third parties a public electronic communications network and the associated infrastructure, with a view to providing publicly available mobile electronic communications services in the 3410-3600 MHz band or in the 3600-3800 MHz band, on a national level.

The 3410-3800 MHz frequency band may be used for developing integrated convergent broadband communications networks, by operators holding spectrum usage rights also in lower frequency bands, while ensuring the possibility to deploy MFCN networks (including PMP networks for BWA communications), corroborated with the usage of other technologies and applications that do not use the radio spectrum.

The holders will have the obligation to exercise their rights arising from the licence under such conditions as to ensure the effective, rational and efficient use of the radio frequencies, and the avoidance of harmful interferences. For this purpose, the licence holders will have the right to use any available technology, if such usage does not breach the obligations regarding the observance of certain technical and operational conditions set out under Section 3.3.3 herein.

The adoption of a good engineering system in the installation, operation and control of the electronic communications network is a salient condition meant to ensure better service quality, while minimising the potential of harmful interference with other radiocommunications systems operating in frequency bands under the NTFA.

The transition period for migrating from the existing spectrum usage rights to the newly obtained ones, following the selection procedure, will be ensured in a transparent and non-discriminatory manner, under the legal provisions.

The provisions under Chapter VI – *Implementation Modalities* of the *3400-3800 MHz Strategy* will also apply.

3.3. OBLIGATIONS IMPOSED UNDER THE LICENCES

3.3.1. Coverage obligations

The licences obtained following the selection procedure under these Terms of Reference will not provide coverage obligations, taking into account the number of communications networks operating in various technologies, by means of which broadband communications services can be supplied, and the current development stage of these networks.

Thus, in order to provide electronic communications services in the frequency bands under this selection procedure, licence holders will be able to focus on highly populated urban areas, small cities or rural areas, depending on their development and marketing plans.

3.3.2. Obligations regarding the radio spectrum usage

The holders of the licences awarded following the selection procedure will have the obligation to install a limited number of base stations, as follows:

- a) 25 base operational stations, installed anywhere on the national territory, within one year from the entry into force of the licence;
- b) 50 operational base stations, installed anywhere on the national territory, within two years from the entry into force of the licence;
- c) 100 operational base stations, installed anywhere on the national territory, within four years from the entry into force of the licence.

The obligation to install base stations is imposed with a view to ensuring the effective use of the radio frequencies allotted by licence.

The minimum obligation provided in this section is incumbent on any licence holder throughout the validity period of the usage rights, irrespective of the size of the sub-bands assigned by licence.

The base stations counted in assessing compliance with the obligation to actually use the radio frequencies will be only the ones operating in accordance with the channel arrangements valid starting from 1 January 2016, according to the 3400-3800 MHz Strategy.

A licence holder that has obtained frequency sub-bands allotted in both bands – 3.5 GHz and 3.7 GHz – will be able to comply with the minimum obligation provided in this section by cumulating the base stations installed in the two frequency bands.

3.3.3. Obligations concerning the observance of certain technical and operational conditions for the radio spectrum usage

The provisions of the following EC decisions, CEPT/ECC decisions, recommendations and reports apply regarding the use of the radio spectrum in the 3.5 GHz and 3.7 GHz band:

- Commission Decision 2008/411/EC of 21 May 2008 on the harmonisation of the 3400-3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community;
- Commission Decision 2014/276/EU of 2 May 2014 on amending Decision 2008/411/EC on the harmonisation of the 3400-3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community;
- ECC Decision ECC/DEC/(11)06 on harmonised frequency arrangements for mobile/fixed communications networks (MFCN) operating in the bands 3400-3600 MHz and 3600-3800 MHz, adopted on 09 December 2011 and amended on 14 March 2014;
- CEPT Recommendation ECC/REC/(15)01 of 13 February 2015 on cross-border coordination for mobile / fixed communications networks (MFCN) in the frequency bands: 1452-1492 MHz, 3400-3600 MHz and 3600-3800 MHz;
- CEPT Report 049 on the technical conditions regarding spectrum harmonisation for terrestrial wireless systems in the 3400-3800 MHz frequency band, adopted on 8 November 2013 and rectified on 14 March 2014;

- ECC Report 203 on the least restrictive technical conditions for mobile / fixed communications networks (MFCN), including IMT, in the 3400-3600 MHz and the 3600-3800 MHz bands, adopted on 8 November 2013 and rectified on 14 March 2014;
- Decision ECC/REC/(07)02 on availability of frequency bands between 3400-3800 MHz for the harmonised implementation of Broadband Wireless Access systems (BWA);
- ECC Report 100 on the compatibility studies in the band 3400-3800 MHz between broadband wireless access (BWA) systems and other services.

The aforementioned documents may be subject to amendments or new versions. As well, other similar documents that would influence the technical conditions of use for the 3.5 GHz – 3.7 GHz bands may be adopted.

Within this section, the technical provisions regarding the channel arrangements available in the 3.5 GHz and 3.7 GHz band mentioned in sections 2.2 and 2.3 of the Terms of Reference will apply.

Both within the licensed frequency sub-bands and outside them (i.e. apart from the edges of the frequency blocks situated at the two ends of the allotted sub-bands), a holder must observe, for the transmission of the base station and for the transmission of the subscriber terminal station, in the 3400-3600 MHz or in the 3600-3800 MHz bands, the block edge mask described in sections 3.3.3.1 and 3.3.3.2.

In the 3.5 MHz band, the holders that choose to operate through TDD assignments of the FDD allotments must use more restrictive parameters than those provided in section 3.3.3.1, if the situation so requires, in order to ensure radioelectric compatibility with the networks operating in sub-bands adjacent to those allotted by licence and using the FDD allotments through FDD assignments only.

Licence holders can use less restrictive technical parameters than those provided in section 3.3.3.1, if they conclude bilateral or multilateral agreements on the respective less restrictive parameters, including for adjacent frequency bands allotted to different holders. The Authority must be notified on the existence of these bilateral or multilateral agreements and on the content of the respective agreements.

3.3.3.1. Technical conditions for base stations that will use the 3.5 GHz and 3.7 GHz bands

This section defines the block edge mask (BEM) by establishing the technical parameters of the base stations, which – adequately aggregated – result in the respective mask.

The BEM is an essential component of the conditions required for guaranteeing the coexistence of the networks exploited by different licence holders using adjacent frequency blocks, in the absence of bilateral or multilateral agreements between the operators of such networks.

The BEM is applied to all the base stations with different power levels (generally referred to as macro, micro, pico and femto⁴ base stations).

The BEM for a certain frequency block consists of several elements indicated in Table no. 7, for the 3.5 GHz band as well as for the 3.7 GHz band. The BEM is made up of an in-block element (for which a power limit is defined within the block) and the out-of-block elements (for which corresponding power limits are defined).

For the out-of-block BEM elements, power limits are defined as follows:

- the reference power limit in base ranges, destined to protecting the spectrum allotted to other operators,

⁴ This classification of base stations is not formally and absolutely defined and refers to base stations in the cellular network, with different field strength levels, ranking in descending order as follows: macro, micro, pico and femto. Specifically, femto cells are small-sized base stations with the lowest field strengths, often used indoors.

- the power limits in transition ranges, which allow for a filter glide path from the value of the value of the in-block power limit to the reference power limit,
- the power limits within guard gaps (this situation applies only for the FDD channel arrangement in the 3.5 GHz band),
- the reference power additional limit (this situation applies only for the 3.5 GHz band, for protecting radiocommunications equipment that works in the frequency band below 3.4 GHz).

The MFCN synchronised operation mode is the operation of two different networks, both with TDD sub-bands, where no simultaneous uplink – respectively downlink - transmissions are performed, according to the definitions in the applicable standards.

Table 7 – BEM definitions

BEM ELEMENT	DEFINITION
in-block range	Refers to the frequency block for which the BEM is determined
base range	Includes all the frequency spectrum used in TDD mode or in FDD mode (both the uplink and the downlink), in the 3.4-3.8 GHz band, excepting the concerned block (for which the BEM is determined) and the corresponding transition ranges.
transition range	<p><i>For an FDD block (downlink):</i> transition ranges are the 0 - 10 MHz segment under the lower limit of the concerned block and the 0 - 10 MHz segment above the upper limit of the concerned block.</p> <p><i>For a TDD block:</i> transition ranges are the 0 - 10 MHz segment below the lower limit of the concerned block and the 0 - 10 MHz segment above the upper limit of the concerned block.</p> <p>Transition ranges, speaking of TDD blocks, are applicable for:</p> <ul style="list-style-type: none"> - adjacent TDD blocks (allotted to different operators) if the networks of these operators are synchronised, - the sub-band situated between two adjacent TDD blocks, separated by 5 MHz or 10 MHz. <p>Transition ranges, speaking of TDD blocks, are not applicable to adjacent TDD blocks (allotted to different operators) if the networks of these operators are not synchronised. In such a situation, the base range starts directly at the edge of the concerned block.</p> <p>Transition ranges are not defined below 3400 MHz or above 3800 MHz.</p>
guard bands	For FDD blocks, the following guard bands are defined: <ul style="list-style-type: none"> - side-guard bands (3400-3410 MHz and 3590-3600 MHz), - duplex gap (3490-3510 MHz).
additional base range	Refers to the radio spectrum situated below the 3400 MHz limit.

In order to obtain the BEM for a specific block, the BEM elements defined in Table no. 1 are combined as follows:

1. the in-block power limit will be used for the specific block allotted to an operator, for which the BEM mask is determined;

2. transition ranges are determined and corresponding power limits are used.

Transition ranges may overlap with guard bands; in this case, the power limits for transition ranges are used;

3. for the rest of the spectrum actually designated for use by the MFCN networks, in FDD or in TDD mode, reference power limits corresponding to the base range will be used;

4. for the rest of the spectrum corresponding to guard bands, guard band power limits will be used;

5. for the spectrum situated below the 3400 MHz limit, the additional reference power limit corresponding to the additional base range will be used.

Tables 8-12 contain the power limits corresponding to the various BEM elements.

Parameter P_{Max} is the maximum carrier power for the concerned base station, measured as EIRP (effective isotropic radiated power, e.i.r.p).

Table 8 – In-block power limit

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
in-block range	operator's block limits	68 dBm/5 MHz per antenna

Explanatory note to table no. 8:

The value in the table is a recommended one. The value of the respective parameter will be chosen with due regard to all the provisions in sections 2.1., 2.2. and 3.3.3.1 of the Terms of Reference, to the provisions of the 3400-3800 MHz Strategy and to the obligations regarding the radio frequency usage in border areas.

For femto base stations, the radiated power control will be applied, in order to minimise interference with adjacent channels. The requirement regarding power control for the femto base stations is triggered by the necessity to reduce interference with the equipment the consumers may use and which, therefore, may not be coordinated with the neighbouring networks.

Table 9 – Power limits in base ranges

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
base range	for FDD blocks (downlink), within the 3510-3590 MHz band for synchronised TDD blocks within the 3600-3800 MHz band and, if applicable, within the 3400-3600 MHz band)	EIRP per antenna: min ($P_{Max}-43, 13$) dBm / 5 MHz
base range	for FDD blocks (uplink), within the 3410-3490 MHz band for unsynchronised TDD blocks (within the 3600-3800 MHz band and, as applicable, within the 3400-3600 MHz band)	EIRP per cell: -34 dBm / 5 MHz *
* Where there are no risks of producing harmful interferences on the macro base stations, the operators of the femto base stations operating in adjacent channels may negotiate an exception for this value of the reference power limit. In this case, the value of -25 dBm / 5 MHz (EIRP per cell) may be used.		

Explanatory note to Table no. 9

The reference power limit for synchronised FDD (downlink) and TDD is expressed as fading-out, compared to the maximum carrier power, comparatively combined with a fixed upper limit. The stricter of the two requirements is applied.

The fixed level ensures an upper limit regarding interferences from a base station. When two TDD blocks are synchronised, no interferences will occur between base stations. In this case, the same reference power limit as for the base range of FDD (downlink) blocks is used.

The reference power limit for FDD (uplink) blocks and unsynchronised TDD blocks is expressed as a fixed limit.

Table 10 – Power limits in transition ranges

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
transition range	the 0-5 MHz segment below the lower limit of the concerned block and the 0-5 MHz block above the upper limit of the concerned block	EIRP per antenna: min ($P_{Max}-40$, 21) dBm / 5 MHz
transition range	the 10-5 MHz segment below the lower limit of the concerned block and the 10-5 MHz segment above the upper limit of the concerned block	EIRP per antenna: min ($P_{Max}-43$, 15) dBm / 5 MHz

Explanatory note to Table no. 10

Power limits corresponding to transition ranges are defined to allow lowering the transmission power from the in-block level to the reference level of the base range or to the reference level of the guard band. Power limits corresponding to transition ranges are expressed as fading-out compared to the maximum carrier power, comparatively combined with a fixed upper limit. The stricter of the two requirements is applied.

Table 11 – Power limits within guard bands (in the 3.5 GHz band)

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
guard band	3400-3410 MHz	EIRP per cell: -34 dBm / 5 MHz
guard band	3490-3500 MHz	EIRP per antenna connector: -23 dBm / 5 MHz
guard band	3500-3510 MHz	EIRP per antenna: min ($P_{Max}-43$, 13) dBm / 5 MHz
guard band	3590-3600 MHz	EIRP per antenna: min ($P_{Max}-43$, 13) dBm / 5 MHz

Explanatory note to Table no. 11

For the 3400-3410 MHz guard band, there will be selected a power limit identical to the reference power limit for adjacent FDD (uplink) blocks (3410-3490 MHz).

For the 3500-3510 MHz and 3590-3600 MHz guard bands, there will be selected a power limit identical to the reference power limit for adjacent FDD (downlink) blocks (3510-3590 MHz).

For the 3490-3500 MHz guard band, the power limit is based on the requirement regarding unessential emissions -30 dBm/MHz, at the antenna connector level, converted to the 5 MHz bandwidth.

Table 12 – Reference power limit in the additional base range
(for protecting radiocommunications systems operating below 3.4 GHz)

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
additional base range	below 3400 MHz, for FDD usage and, if applicable, for TDD usage	-59 dBm / MHz

Explanatory note to Table no. 12

The additional reference power limits indicated in table no. 12 will apply only to outdoor cells.

3.3.3.2. Technical conditions for the use of the 3.5 GHz and 3.7 GHz bands by terminal stations

This section defines the in-block power limit for the terminal station.

Table 13 – In-block power limit

BEM ELEMENT	FREQUENCY BAND	POWER LIMIT
in-block range	operator's block limits	maximum 25 dBm *
* This power limit is expressed as EIRP for the terminal stations designed as fixed or installed and as total radiated power (TRP) for terminal stations designed as mobile or nomadic. EIRP and TRP are equivalent for isotropic antennae. This value includes a tolerance (of up to 2 dB), defined in the harmonised standards, to take into account operation under extreme weather conditions and production dispersion.		

Explanatory note to table no. 13:

The value in the table is recommended only. This value will be adjusted accordingly, if harmful interferences appear or in order to ensure compliance with all the provisions of sections 2.1., 2.2. and 3.3.3.2. in the Terms of Reference, of the 3400-3800 MHz Strategy, and with the obligations regarding frequency usage in border areas.

3.3.3.3. Technical conditions for the use of the 3.5 GHz and 3.7 GHz bands in border areas

As specified in the 3400-3800 MHz Strategy, currently, in the 3.5 MHz, there are no technical agreements regarding the preferential channel arrangements the operators in Romania and those in the neighbouring countries may use - in the bilateral and trilateral border areas of the signatory countries - that comply with the provisions of Decision 2014/276/EU.

Moreover, at present, there are no technical agreements in the 3.7 MHz band regarding the preferential channel arrangements the operators in Romania and those in the neighbouring countries may use, in the bilateral and trilateral border areas of the signatory countries.

Two of Romania's neighbouring countries are EU Member States and – therefore – they are the only ones compelled to implement the provisions of Decision no. 2014/276/EU. Furthermore, according to the above-mentioned decision, TDD is the preferred type in the EU. Thus, Bulgaria and Hungary have the freedom to choose the TDD type in the 3400–3600 MHz band, in compliance with the implementation term stipulated in the said decision.

Moldova, Serbia and Ukraine have no obligations to implement the provisions of the Commission Decision, but, as members of the European Conference of Post and Telecom Administrations (CEPT), they must take due account of Decision ECC/DEC/(11)06, as it was modified in March 2014. Nevertheless, within CEPT, the decisions adopted by the committees of this international body have a different status compared to the decisions adopted within the EU.

Therefore, the three countries mentioned above have no constraints as regards the choice of the channel arrangement type or the moment of introducing MFCN systems in the 3400-3800 MHz.

In the above-mentioned conditions, it is obvious that the conclusion of bilateral/multilateral agreements with the neighbouring countries, regarding the use of the concerned frequency bands in border areas is going to be difficult.

ANCOM will start, according to a schedule jointly established with the communications administrations of the neighbouring countries, the negotiation process regarding the preferential channels that may be used in border areas, in the 3.5 GHz and 3.7 GHz bands, while observing the international agreements in which Romania is a party, including the provisions of Decision/2014/276/EU.

ANCOM will take steps with a view to concluding bilateral agreements or, as applicable, multilateral agreements in the 3.5 GHz and 3.7 GHz bands, with the neighbouring countries' administrations.

ANCOM will take due account of the interests of the Romanian operators in the process of elaborating the above-mentioned technical agreements and of negotiating with the countries concerned. As well, prior to concluding the said international agreements, ANCOM will ask for the involved operators' opinion on the matter.

The licence holders will use the allotted frequency sub-bands – in border areas – in compliance with the requirements resulting from the enforcement of the international agreements in which Romania is a party or from the international regulations regarding the coordination of frequency usage, applicable to the allotted frequency sub-bands.

For the bilateral or trilateral border areas on which no bilateral/multilateral technical agreements have been concluded by the involved signatory parties, regarding the usage of the 3.5 GHz and 3.7 GHz bands in the respective border areas, these sub-bands will be used in compliance with the technical conditions for which no international coordination of frequency usage is required, according to the relevant specifications in Recommendation ECC/CEPT/REC/(15)01 of 13.02.2015 on frequency planning and coordination for terrestrial MFCN systems capable of providing electronic communications services in the 1452-1492 MHz, 3400-3600 MHz and 3600-3800 MHz bands.

After the conclusion of the above-mentioned bilateral or multilateral technical agreements, the licence holders' planning and use of the allotted frequency sub-bands - in areas close to the Romanian border under the respective agreements – will be conducted including in compliance with these technical agreements.

Where so-called "arrangements" have been concluded between operators and approved by the Authorities of the neighbouring countries involved, spectrum usage may be allowed under different conditions from those specified in the above-mentioned bilateral or multilateral technical agreements. Under such a so-called "arrangement" concluded between operators in neighbouring countries, the frequency usage may deviate from the provisions stipulated in the technical agreements concluded between the communications administrations with a jurisdiction over the respective operators.

3.4. TRANSFER OF THE USAGE RIGHTS

The usage rights to be granted may be transferred in accordance with Article 35 of the Framework-Ordinance.

On grounds of Article 35(3) of the Framework-Ordinance, ANCOM established - in Article 23 of the ANCOM President's Decision no. 353/2015 on the procedure of granting the rights of use of radio frequencies - among others, the possibility that the usage rights be partially transferred, under the legal provisions.

During a possible transfer of rights, the Authority will watch the observance of the objectives taken into account when initially granting those rights. A series of limitations are to be therefore considered, as follows:

- the usage rights may be transferred to a third party, fully or partially, only upon commitment towards all the accompanying obligations, as well as upon the observance of the conditions and objectives established or considered when the right had been granted, including the conditions established in section 4.3.1 in these Terms of Reference;
- in case of a partial transfer of the rights, the provisions of points 7 and 8 in Annex no. 2 of ANCOM President's Decision no. 353/2015, as well as the provisions regarding the minimum amount of spectrum to be used by each licence holder established in sections 2.2 and 2.3 of these Terms of reference, will apply;
- the transfer of the usage rights must not result in competition constraints, hindering or distortion; especially, the transfer of the usage rights must not be a way for eluding the limitations regarding the gaining of the usage rights or the rules regarding the participants' independence established during the selection procedure;
- in cases where the use of radio frequencies is harmonised at the European level, the transfer of the usage rights must not lead to changing the usage destination of the frequencies that are subject to the licence in such a way as to breach this harmonised usage.

3.5. FEES DUE BY THE LICENCE HOLDERS

The persons participating in the selection procedure organised in view of awarding the usage rights for the radio frequencies will take into consideration the following:

- the payment of the licence fee established during the competitive selection procedure under the conditions stipulated in Article 28 paragraph (2) of the Framework-Ordinance and in Government Decision no. 702/2015 establishing the minimum amounts of the licence fees for the award of frequency usage rights in the 3410-3800 MHz band, as well as the licence fee payment conditions;
- the payment of the spectrum usage tariff, collected annually in accordance with Article 30 of the Framework-Ordinance and with Decision of the president of the National Authority for Management and Regulation in Communications no. 551/2012 establishing the spectrum usage tariff, with the subsequent amendments and completions.

3.6. LICENCE AMENDMENT AND REVOKING

The licences for the use of radio frequencies awarded through the selection procedure may be amended, upon ANCOM initiative, in accordance with the provisions under Article 24(3) of the Framework-Ordinance, in the following situations:

- meeting the conditions regarding the effective, rational and efficient use of the radio frequencies;
- avoiding harmful interferences;
- implementing the European harmonisation and international cooperation objectives regarding the use of radio spectrum;
- observing the international agreements regarding the use of radio spectrum, to which Romania is a party;
- settling the situations of limited availability of the spectrum resources, in certain geographic areas and under specified technical conditions, in the radio frequency bands designated for the type of application destined to the provision of the network subject to the licence;
- implementing the strategy on the development of electronic communications and management of the radio frequency spectrum;
- the NTFA is amended.

In case one of the situations above occurs, ANCOM will notify the holder of the usage rights regarding the amendments to be made and will grant a term for the implementation of these amendments that is proportionate to the qualitative or quantitative nature of the necessary amendments.

Moreover, ANCOM will also amend the licences for the use of the radio frequencies as a result of the occurrence of any of the circumstances below:

- transfer of the rights;
- amendment of the technical and operational conditions in the licences;
- amendment of the licence holder's identification data;
- partial waiver of the rights.

ANCOM may revoke the licences awarded through the selection procedure in the following cases:

- the total withdrawal of the radio frequencies usage rights, in accordance with Article 27, Article 147 letter b), corroborated with Article 141(1) or of Article 148 of the Framework-Ordinance;
- revoking of the right to use radio spectrum, in accordance with Article 6(6) of the Framework-Ordinance.

CHAPTER 4 – SELECTION PROCEDURE

4.1. AVAILABLE BLOCKS AND APPLICABLE RESTRICTIONS

4.1.1. Description of the blocks offered during the procedure

The following amounts of spectrum will be auctioned out:

- a) 16 paired 2x5 MHz blocks in the 3410-3600 MHz band, defined as A category blocks;
- b) 36 unpaired 5 MHz blocks in the 3600-3800 MHz band, defined as B category blocks.

Table 14 - Description of the frequency blocks available in the selection procedure

No.	Category	Block size	Frequency band (MHz)	No. of blocks	Usage
1	A	2x5 MHz	3410 – 3600	16	01.01.2016 - 01.01.2026
2	B	1x5 MHz	3600 – 3800	36	01.01.2016 - 01.01.2026

The winners of the selection procedure will have the obligation to buy a minimum amount of spectrum – depending on the frequency band in which they wish to acquire radio sub-bands - of 2x10 MHz in the 3.4-3.6 MHz and respectively of 10 MHz, in the 3.6-3.8 GHz band.

4.1.2. Reserve price for the blocks (minimum licence fee) and eligibility points

There is a reserve price (minimum licence fee) attached to each block, as well as a number of eligibility points.

The reserve price is equal to the minimum licence fee for each block.

Eligibility points are “quotations” of the frequency blocks subject to the procedure, fulfilling the role of “circulating medium” at the gaining of usage rights for the respective blocks. Once with the submission of the initial bid form and of the participation bond, the bidders “acquire” a certain budget of eligibility points, which corresponds to a maximum amount of frequency blocks for which a bidder may submit a bid during the auction.

Eligibility is therefore a vocation for gaining usage rights over an amount of frequencies and may be amended during the auction, according to the activity rules (Section 5.3.5). A bidder’s eligibility in a certain round means the number of eligibility points the bidder holds in that round, defining that bidder’s vocation for gaining the amount of abstract frequencies corresponding to that number of points, should the auction end in the respective round.

Table 15 - Reserve prices and eligibility points for the frequency blocks available in the selection procedure

Category	Frequency band (MHz)	Reserve price (minimum licence fee)	Eligibility points
A	3410-3600	EUR 370,000	2
B	3600-3800	EUR 185,000	1

Explanatory note to Table no. 15

The reserve price (minimum licence fee) is expressed for the size of a frequency block as presented in Table 14.

4.1.3. Limitations as to the gaining of usage rights

The usage rights a bidder will be able to gain following the selection procedure are not limited as regards the spectrum amounts that can be acquired separately or together, in the 3.5 GHz and 3.7 GHz frequency bands, excepting the mentions in the final paragraphs of sections 2.2. and 2.3.

4.2. PROCEDURE OVERVIEW

4.2.1. Procedure launch

The selection procedure will be launched upon the publication of an auction notice on the ANCOM website (www.ancom.org.ro). The form and content of the notice are established by ANCOM.

4.2.2. Procedure stages

The competitive selection procedure is structured by the following stages:

- Application stage;
- Qualification stage;
- Auction stage;
- Licence awarding stage.

4.2.3. Procedure calendar

A guiding calendar of the selection procedure is provided in Table 16 below.

Table 16 - Guiding calendar of the selection procedure

The terms provided for in this table may be extended by ANCOM depending on the needs or may be outrun in case the term reserved for one of the ANCOM activities may be reduced. The time intervals corresponding to bidders' actions may not be reduced.

No.	Activity	Term	Date
1	Publication of the auction notice (procedure initiation) and of the Terms of Reference (final version)	X	7 September 2015
2	Deadline for the submission of clarification requests	X+1 week	14 September 2015
3	Publication of the answers to the clarification requests	7 days from each request	Maximum 21 September 2015
4	Deadline for receiving the applications (including the participation bond)	X+4 weeks	5 October 2015
5	Presentation of the qualified/not-qualified applications	X+5 weeks	12 October 2015
6	Lodging of complaints	2 days from the qualification notice	14 October 2015
7	Settlement of complaints	4 days from the lodging of complaints	Maximum 19 October 2015
8	Announcing the need to organize the auction stage and the date of starting the primary rounds or Announcing the fact that the organisation of the primary rounds of the auction stage is not required and informing the winning bidders on the abstract blocks won and on the starting date of the additional rounds or Announcing the fact that no additional primary and/or additional rounds of the auction stage are required, and announcing the winning bidders on the abstract blocks won and on the date of the assignment round.	X+44 days	21 October 2015
10	Organising the rounds (auction stage)	X + 7 weeks	26 October 2015
11	Closing the auction rounds	Y ($\geq X+8$ weeks)	-
12	Presentation of the outcomes of the procedure	Y + 1 week	-
13	Payment of the licence fee following the procedure	-	2 December 2015

14	Licence awarding	After licence fee payment	-
15	Licence entry into force	-	1 January 2016

"≥" – "higher or equal"

4.3. RULES CONCERNING PARTICIPATION IN THE SELECTION PROCEDURE

Only the persons who purchased the present Terms of Reference may participate in the selection procedure. The price of the Terms of Reference is 4000 lei. The Terms of Reference may be obtained from the ANCOM headquarters at 2 Delea Noua Street, Sector 3 Bucharest or, upon buyer's request, may be sent to that buyer in physical or electronic format, upon presentation by the interested person of:

- the document certifying the payment of a non-reimbursable amount of 4000 lei, representing the counter-value for the Terms of Reference, either at the ANCOM pay desk at 2 Delea Noua Street, Sector 3, Bucharest or in the ANCOM account no. RO60TREZ70020F365000xxxx opened with the Activity of Treasury and Public Accountancy of Bucharest, fiscal registration code 14751237, whereas the payment order must specify ANCOM as the Beneficiary and that the payment represents the counter-value for the Terms of Reference;
- the mandate, in original, of the person delegated to take the Terms of Reference.

If the price for the Terms of Reference is paid outside Romania, the interested person can pay the amount specified in the previous paragraph, in Euro, at the exchange rate communicated by the National Bank of Romania, valid on the day of the payment, into the account no. RO86RNCB0082044181470003 opened with the Romanian Commercial Bank - Unirea Branch.

By submitting the application, a participant unconditionally and irrevocably accepts the rules concerning the participation in the selection procedure described in Sections 4.3.1-4.3.5, as well as the applicable sanctions in the event of breaching these rules, specified in Section 4.3.6.

4.3.1. Rules concerning the participant's independence

The following entities cannot participate in the selection procedure:

- i) with independent bids, a candidate/bidder who is a member of the group of another candidate/bidder;
- ii) both with independent bids and as part of a consortium set up for the purpose of participating in the selection procedure, a candidate/bidder who is a member of the group of another candidate/bidder;
- iii) a candidate/bidder who is a member of the group of another candidate/bidder in two or more consortiums set up for the purpose of participating in the selection procedure.

With a view to enforcing this rule, the notion "group of the candidate/bidder" has the meaning set, for purposes of verifying economic concentrations, in the Instructions on the concepts of economic concentration, involved company, full operation and turnover issued by the Competition Council, implemented by Order of the Competition Council's president no. 386/2010.

In this respect, the notion "group of the candidate/bidder" is defined to include the following entities:

- a) the candidate/bidder;
- b) the companies in which the candidate/bidder, directly or indirectly:
 - (i) holds more than half of the social capital or of the operating capital; or
 - (ii) has the competence to exercise more than half of the voting rights; or
 - (iii) has the competence to name more than half of the members of the supervision board or of the management board; or
 - (iv) has the competence to name more than half of the members of the bodies which legally act on behalf of the respective companies or has the right to lead the activities of the respective companies;
- c) the companies which hold within the candidate/bidder the rights or competences specified under letter b);
- d) the companies in which a person holds within the candidate/bidder the rights or competences specified at letter b);

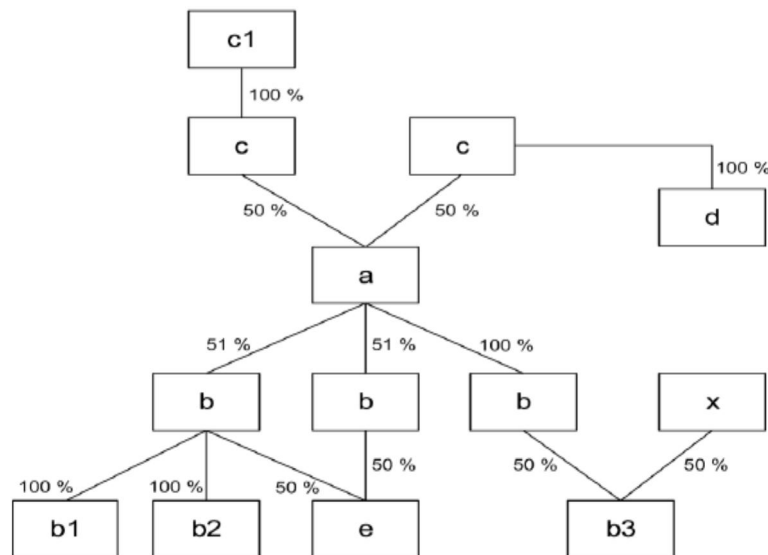
- e) the companies within which two or more of the persons provided for under letters a)-d) hold together the rights or competences specified at letter b).

The competences concerning the exercise of the voting or members' appointment rights specified under letter b) may derive from a *de jure* situation (constitutive act, contractual agreements etc.) or a *de facto* situation (the competences are exercised de facto, in the absence of certain provisions). The exercise of competences deriving from a de facto situation is determined pursuant to the specifications of the Instructions of 5 August 2010 on economic concentrations, involved company, full operation and turnover, approved by Order of the Competition Council's president no. 386/2010 for the enforcement of the Instructions on the concepts of economic concentration, involved company, full operation and turnover.

The right to lead the activity of the company may result, among others, from holding the voting rights (standalone or in combination with contractual agreements, such as the shareholders' agreement) which allows for establishing the strategy of a company, based on certain rightful stable elements. The right to lead also includes the situations where the candidate/bidder holds, alongside third parties, the right to manage the activity of a joint stock company.

The figure below provides a graphical exemplification of the notion "group of the candidate/bidder".

Figure 1 - Example of structure of the group of a candidate/bidder



Legend of the represented categories:

a = candidate/bidder;

b = subsidiaries of the candidate/bidder;

b1, b2 = subsidiaries of the companies in category "b";

b3 = companies jointly held by the "b" category companies with third parties;

c = parent companies of the candidate/bidder;

c1 = parent companies of the companies in category "c";

d = other subsidiaries of the companies in category "c";

e = companies jointly held by two or more companies in a group;

x = third party.

4.3.2. Rules concerning agreements between participants

The conclusion of, or the attempt to conclude, any agreements between the participants in relation to the selection procedure, during the procedure or previously to the procedure being held, is forbidden.

The scope of this interdiction covers the agreements between the candidates/bidders themselves and the agreements involving members of the groups of different candidates/bidders.

4.3.3. Rules concerning information confidentiality

The participants are forbidden to disclose confidential information to other participants or third parties, during the procedure or previously to the procedure being held.

The scope of this interdiction covers:

- a) not only the deed of the candidate/bidder itself, but of the other companies in its group as well;
- b) the disclosure of information to the candidate/bidder itself and to other companies of that candidate's/bidder's group.

The scope of this interdiction does not cover the disclosure of information to the companies of the same group, to the candidate's/bidder's employees or to its lawyers or other consultants.

For the purpose of enforcing this rule, "confidential information" means the information of any kind which concerns, directly or indirectly, the strategy of a participant within the selection procedure or any bid which a participant submitted or intends to submit within the procedure, regardless of the support of such information.

4.3.4. Rules concerning the participant's conduct

During the selection procedure, the participants will refrain from any actions that might affect the procedure holding or its outcomes, including, for instance:

- a) the attempt to influence the members of the Commission, to hinder in any way the decisions of the Commission, or to influence or hinder the actions of other participants in the procedure;
- b) the attempt to contact the members of the Commission in other way or on other issues than those specified in Sections 5.1.3, 5.1.4 and 5.1.5, from the moment when the envelopes containing the application files are opened and up to the moment of awarding the licences;
- c) any conduct which constitutes a threat for or an intimidation to the other participants or the members of the Commission, irrespective of the pursued goal;
- d) the attempt to – directly or indirectly - contact the other bidders, in any of the areas made available to them or situated at the auction venue;
- e) the perturbation of the holding in good conditions of the bidding rounds during the auction stage etc.

4.3.5. Rules concerning submission of information to the Commission

At any time during the selection procedure, the Commission may request from the participants any clarifications, documents or information, indicating as well the deadline by which these must be submitted, in view of establishing or clarifying the actual situation which:

- a) grounds or grounded the qualification of a candidate; or
- b) might lead to the finding of certain breaches by one or more participants of the rules provided for in Sections 4.3.1-4.3.4 above.

The participants have the obligation to comply with the information requests addressed by the Commission, within the term established by the latter.

Considering the importance of ensuring the integrity of the selection process, the terms granted by the Commission may sometimes be very short, in order to allow maintaining or rapidly re-establishing the normal course of the procedure and/or to prevent the destruction of certain evidence, especially where there are indications on the breach of the rules established in sections 4.3.1 to 4.3.5.

Furthermore, the participants have the obligation to provide truthful, accurate and complete information in the application file as well as any time during the procedure. In the event of changes in the information grounding the qualification, occurred subsequently to a candidate's qualification, the candidate/bidder concerned, as well as any other participant to the procedure aware of the respective changes has the obligation to notify at once the Commission on the respective changes. The Commission has the obligation to analyse the respective changes and to reconsider the decision on the participant's admission, if the respective changes involve an alteration of the actual situation which grounded the qualification decision to such extent that the qualification criteria are no longer fulfilled.

4.3.6. Applicable sanctions

If, during the selection procedure, the Commission discovers breaches of the rules specified in Sections 4.3.1-4.3.5 above, the Commission will disqualify from the procedure all the participants involved and will execute the participation bond submitted by these participants. If the breach of the rules under Section 4.3.1 is discovered during the qualification stage, the rules mentioned in Section 4.6.2 will then apply.

If the breach of the aforementioned rules is discovered after the issuance of the licences for the use of radio frequencies, ANCOM may revoke the licences awarded to the participants involved and/or may execute the participation bonds they submitted, as applicable.

4.4. PARTICIPATION BOND

4.4.1. Form of the bond

The participation bond is set up as a letter of bank guarantee issued by a banking company and is submitted in original within the application file, in the amount provided for in Section 4.4.2 and for the period specified in Section 4.4.3.

The bond must be irrevocable and unconditional.

The letter of bank guarantee or the guarantee tool must provide that the payment of the bond will be executed unconditionally, respectively upon the first request of ANCOM, based on the latter's declaration with regard to the bidder's classification in one of the bond execution cases presented in Section 4.4.4.

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.

The participation bond will be set up in the format available under Annex no.4.

4.4.2. Value of the bond

The value of the bond is 50% of the price of the initial bid, established according to Section 4.5.3. The participation bond will be included in the application form and will be submitted as part of the application file.

4.4.3. Validity of the bond

The participation bond will be valid at least from the date when the application file is submitted through 31 December 2015⁵.

4.4.4. Instances of bond execution

The purpose of the participation bond is to protect ANCOM in the event of an improper conduct of the participants during the procedure and to ensure in particular that:

- a) the licence fee (the fee resulted from the selection procedure) owed by the winning bidders is paid for all the frequency blocks awarded following the selection procedure, and the corresponding licences are issued;
- b) the candidates/bidders observe the rules concerning the participation in the selection procedure.

The participation bond is executed - upon ANCOM's first and plain request - in the following cases:

- a) if a candidate/bidder breaches the rules concerning the participation in the selection procedure, set out in Sections 4.3.1-4.3.5 herein;
- b) if the winning bidder does not pay in due time the owed price representing the licence fee, according to the law;
- c) if the winning bidder waives the right to be awarded the licence for the use of radio frequencies, under the provisions of section 4.9.3. of these Terms of Reference.

4.4.5. Return of the bond

⁵ ANCOM may request the bidders to extend the validity of the letter of bank guarantee in case the period for completing the auction stage exceeds the date of 30 November 2015.

The deadline for submitting the letters of bank guarantee the validity of which has been extended according to the previous paragraph cannot exceed 10 calendar days from the date of ANCOM's request.

The participation bond is returned to the participants in the selection procedure, to the extent no amounts were withheld pursuant to Section 4.4.4, as follows:

- a) to the candidates that failed to qualify to the superior stages of the selection procedure, within 30 days from the communication on the candidature rejection;
- b) to the bidders that did not gain radio frequency usage rights following the procedure, within 30 days from the date when the Commission communicates the closing of the auction stage;
- c) the bidders that gained radio frequency usage rights following the procedure, within 30 days from the date of awarding the licences;
- d) if the selection procedure is cancelled in accordance with the provisions of Section 6.3, the participation bond will be returned to all candidates/bidders within 30 days from the communication on the selection procedure cancellation.

The return of the participation bond is made by returning the letter of bank guarantee, in original, together with ANCOM's letter to the bank that issued the letter of bank guarantee, stating the cancellation consent.

4.5. APPLICATION SUBMISSION STAGE

4.5.1. Application file

During this stage, the interested persons must submit to ANCOM an application file. Once the file submitted, the applicant becomes a *candidate*, a quality which the respective person keeps until the decision on the admission to the superior stages of the selection procedure (when the candidate becomes a *bidder*) is communicated, or until the decision on the rejection of the candidature (when the respective person is eliminated from the procedure) is communicated.

The application file must contain the following documents:

- a) documents presenting the candidate's standing;
- b) the frequency allocation application (the initial bid);
- c) the participation bond.

These documents will be presented in detail in Sections 4.5.2-4.5.5 below.

4.5.2. Documents presenting the candidate's standing

The application file will contain the following documents presenting the candidate's standing:

- a) the authenticated power of attorney granted to at most three natural persons acting on behalf of the candidate, which is to certify that these persons are authorised to engage the candidate during the selection procedure and is to show the limits of the respective power of attorney granted to each of these persons, without a limitation as to the joint signature of the mandated persons; the authenticated power of attorney is not necessary for the person mandated to legally represent the candidate;
- b) the acknowledging certificate (in original) issued by the National Trade Register Office (or other similar body from abroad) at most 30 days before the date of submitting the application file, which shows at least:
 - (i) the legal identification attributes;
 - (ii) the company life duration;
 - (iii) the main and secondary (if applicable) object of activity;
 - (iv) subscribed and paid-in share capital;
 - (v) the administrators/members of the Board and managers/members of the Supervisory Board and of the managing board (in dualist systems), identification data and duration of the mandate of the company's representative, as well as the proxy powers;
 - (vi) the indicators in the annual financial statements;
 - (vii) the inexistence of a procedure of voluntary, judicial or insolvency-induced dissolution;
 - (viii) the company standing.
- c) the financial statements for the past year, approved under the legal conditions, according to the accounting criteria and principles applied;
- d) the candidate's constitutive act (company contract and/or articles of association), in a consolidated updated form (including all changes to date);
- e) the structure of the candidate's group, valid at the date of submitting the application file, which must include the names and addresses of all the companies enlisted at letters a)-e) in Section 4.3.1, as well as the connections between them;
- f) the certificate of fiscal acknowledgement of the compliance with the exigible payment obligations to the state budget, the social insurance budgets and special tax funds, contributions and other revenues, issued according to the legal regulations in force (in original);
- g) the statement of the candidate's legal representative regarding the capacity as a participant in the selection procedure, in original (Annex 1).

For foreign legal persons, the above documents will be legalised and authenticated according to the provisions of the Hague Convention of 5 October 1961 abolishing the requirement of

superlegalisation for foreign public documents for the signatory states, or according to the international law rules applicable to the other states, in a legalised translation into Romanian.

Special conditions for foreign legal persons:

- if the national legislation and the institutional system in the bidder's native country allow the precise fulfilment of the requirement, the bidder will provide the requested information in the imposed form;
- if the national legislation and the institutional system in the bidder's native country allow for obtaining this information from one or several relevant authorities, without the possibility to present it in a single document, the requirement will be deemed fulfilled upon the submission of several documents;
- 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, this information will be presented in the constitutive act, where such information is comprised within this act, or by means of equivalent documents to those requested, upheld by a legal opinion elaborated by a form of exertion of the lawyer profession in the native country, which would have a professional liability insurance worth more than 20,000,000 euro, addressed to ANCOM, to certify that the submitted document is equivalent to the one requested in the present Section. In this situation, 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, a statement on own liability concerning the legal impossibility to submit the information requested in the Terms of Reference is required.

As for associations, each of the members of the association must submit the documents listed at letters b)-g) above. The document under letter a) will be submitted by the representative of the association.

The associations must present an association agreement concluded between all the members of the association. This agreement will be presented, in original, in an authentic form and will contain at least the following elements:

- a) the names of the members of the association and the share of each of the members within the association;
- b) the legal person, member of the association, which represents the association within the present procedure;
- c) the firm engagement of all the association's members in view of submitting a joint bid during the selection procedure and in view of granting unconditional financial and/or technical support to the legal person that will be issued the licence and that represents the association;
- d) the validity period of the association agreement; this is not to cease before 01 January 2016.

In the cases where the original documents are not requested, the candidate will present a legalised copy or a copy of the documents certified by the candidate for the conformity with the original. The person making the certification for the conformity with the original and acting on behalf of the candidate must be one of the persons mandated to represent the candidate according to letter a) under the first paragraph of this Section.

4.5.3. Application form (initial bid)

The frequency allocation application will be completed necessarily by one of the persons mandated to act on behalf of the candidate according to Section 4.5.2 letter a) or by the candidate's legal representative, in the form provided for in Annex 2 hereto, without deletions and/or additions, and represents the initial bid of the candidate, should the latter be admitted to the subsequent stages of the selection procedure, following the qualification stage.

With a view to completing the frequency allocation application, the candidate will fill in the number of blocks it wishes to acquire in each of the A and/or B categories, ticking the boxes available in the table included in the frequency allocation application.

The price of the initial bid is established as follows:

- a) for each category, the number of blocks in that category included in the bid will be multiplied by the reserve price for that category (minimum licence fee), specified under Section 4.1.2; and
- b) the values determined according to letter a) will be summed up for all the block categories.

The initial bid must be firm, definitive, irrevocable, unconditional and valid at least until 31 December 2015.

Alternative bids are not accepted.

4.5.4. Letter of bank guarantee

The application file will contain the letter of bank guarantee, in original, in the form and amount provided for in Section 4.4, according to the model in Annex 4.

4.5.5. Preparation and submission of the application file

4.5.5.1. Language of the documents

All the application documents will be elaborated and presented in Romanian, including the annexes.

4.5.5.2. Format of the documents

The representative authorised to engage the candidate has the obligation to number and sign each page of the application file (original and copies), as well as to attach a contents of the documents submitted.

As for the documents issued by official institutions/bodies authorised therefor, the respective documents must be signed and sealed according to the legal provisions. Any deletion, addition, interlining/underlining or overwriting are valid only if endorsed by the person authorised to sign the documents. These documents will not be signed by the candidate's authorised representative.

The application file will be submitted in original and in one copy on paper support, certified by the candidate for conformity with the original, as well as in electronic format, on a 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.

If the application file contains confidential information, the contents will be provided in a separate annex, the candidate explicitly signalling that the respective information is confidential. ANCOM will keep confidential this information to the extent the information is not considered public under the law.

4.5.5.3. Envelope sealing and marking

The candidate must seal the original and the copies in separate envelopes, marking the envelopes correspondingly by "ORIGINAL" and, respectively, "COPY". The envelopes will be introduced in a non-transparent and adequately closed outer envelope. The exterior envelope must be marked with the inscription "Application file 3410-3800 MHz", the ANCOM address and the name and address of the candidate. If the exterior envelope is not marked according to the aforementioned provisions, ANCOM is not liable for the mislaid documents or for the delayed reception of the documents.

The candidate will cover all the costs incurred by the elaboration and submission of its application file, and ANCOM will not be in any way liable for the payment of these costs, irrespective of the development or outcome of the selection procedure.

4.5.5.4. Sending and receiving the application file

The application file will be sent by the advice of delivery postal service or will be personally submitted to the ANCOM headquarters in 2 Delea Noua Street, Sector 3, Bucharest, and must be received by ANCOM until 5 October 2015, 17.00 hours ("deadline for receiving the applications"), Romania's time. The files received by ANCOM after the deadline set for receiving the applications will not be taken into consideration and are to be returned unopened to the address mentioned on the envelope. The candidate must take all measures in order to make sure that its file is received by ANCOM no later than the deadline set for receiving the applications, and will assume all the risks related to the transmission of the file, including force majeure.

ANCOM reserves the right to extend the deadline set for receiving the applications and, correspondingly, the date set for opening the envelopes containing the application files, case in which it will communicate the new deadline set for receiving the applications and, respectively, the new date set for opening the envelopes containing the application files, on its website (www.ancom.org.ro), at least 10 days before the initial deadline.

4.5.5.5. Modification of the application file

Any bidder has the right to modify or withdraw its application file only prior to the deadline set for receiving the applications and only by written request therefor, signed by one of the persons mentioned in section 4.5.2 letter a) or by the legal representative thereof, received by ANCOM before the deadline set for receiving the applications. While elaborating and submitting the modified documents, the candidate will need to observe the instructions provided for in Sections 4.5.5.1-4.5.5.4, with the amendment that the exterior envelope will necessarily be marked with the wording "MODIFICATIONS". If the candidate withdraws its application file after the deadline set for reception, the participation bond will not be returned.

4.5.5.6. Opening of the envelopes containing the application file

The envelopes containing the application files will be opened by the Commission on the day immediately following the deadline set for their submission.

4.5.5.7. Clarification requests

Only the persons that purchased the Terms of Reference may address to ANCOM requests clarifications. Clarification requests may be addressed in writing, at the ANCOM headquarters in 2 Delea Noua Street, Sector 3, Bucharest, for the attention of the for the attention of the Auction Commission, or in electronic format, having included, attached or logically associated, an extended electronic signature based upon a qualified certificate that has not been invalidated or revoked at the respective moment and generated using a secured device for creating electronic signature, to the e-mail address licitatieBWA@ancom.org.ro until 14 September 2015 ANCOM is to answer the clarification requests until 21 September 2015 at the latest.

The applicants will mention, in their application file, a fax number and an e-mail address where ANCOM's messages may be sent.

The ANCOM fax messages will be deemed transmitted when ANCOM receives the transmission confirmation generated by the fax upon sending the message.

The questions received and the answers to these questions will be communicated to all the persons who bought the Terms of Reference and will be published on the ANCOM website, without revealing the identity of the person who requested the respective clarifications.

4.6. QUALIFICATION STAGE

Within the qualification stage, the Commission evaluates the compliance of the candidates who submitted files during the application submission stage with a set of qualification criteria (Section 4.6.1) and, following evaluation, decides either the admission of the candidate to the subsequent stages of the selection procedure or the rejection of the application.

4.6.1. *Qualification criteria*

In order to be admitted to the subsequent stages of the selection procedure, the candidate must cumulatively fulfil the following qualification criteria:

- a) the candidate must be a Romanian or foreign legal person (commercial company);
- b) the candidate has submitted all the documents provided in Sections 4.5.2-4.5.5, completely and correctly prepared;
- c) the life duration of the candidate company provided in its constitutive act must run until 01 January 2016, at least;
- d) the average turnover of the candidate for the past year or, as applicable, the subscribed and paid-in capital, must be of minimum 2,000,000 Euro;
- e) the candidate must not be in a state of insolvency or liquidation, its business must not be managed by a syndic judge, its entire commercial activities must not be suspended or the candidate must not be in a situation similar to those previously mentioned, regulated by the law;
- f) the candidate must not be subject to a legal procedure began upon its own initiative aimed at declaring it in one of the situations provided for at letter e);
- g) the candidate has submitted the participation bond (in original) in the form and amount specified under Section 4.4;
- h) the bidder has fulfilled the exigible payment obligations to the state budget, the social insurance budgets and special tax funds, contributions and other revenues; the taxes, contributions and other revenues which benefited from payment facilitation (postponements, phasing etc.) granted by the competent bodies are not deemed exigible payment obligations, to the extent the conditions imposed at the facilitation granting were observed;
- i) the candidate must not be a member of another candidate's group;
- j) the candidate has purchased the Terms of Reference.

As for consortia, each of the members must fulfil all the criteria mentioned above, with the following exceptions:

- the criterion specified at letter c), which is to be fulfilled by at least one member of the consortium and by the person to whom the licence will be issued; and
- the criteria specified at letters d), g) and j), which are to be fulfilled by the designated representative of the consortium.

In respect of the criterion provided at letter h), the obligation is deemed fulfilled only by reference to the budgets administrated by the Romanian authorities.

4.6.2. *Evaluation of the application files*

After the deadline set for receiving the applications, the Commission will evaluate all the submitted application files, based on the qualification criteria (Section 4.6.1), and will decide on the admission of the candidate to the subsequent stages of the selection procedure or on the rejection of the application.

The Commission may request, at any time during the evaluation of the application files, any specifications, documents and/or additional information and/or clarifying documents, in view of establishing or clarifying the actual situation based on which a candidate's qualification is determined, to this end, the rules under Section 4.3.5 will apply.

Where the documents/additional information requested by the Commission are not submitted within the deadline and under the conditions required by the latter, the candidate may be rejected from the selection procedure.

As regards the criterion under Section 4.6.1 letter i), if the Commission finds that there is a connection of the type envisaged by this criterion between two or more candidates, the Commission informs all the involved candidates on the situation found, requesting them to express in writing, within a certain term, the option for only one of these applications, to be maintained within the procedure. The non-expression of an option or the expression of several different options triggers the rejection of all envisaged applications. To avoid all doubt, in accordance with the provisions under Section 4.3.1, corroborated with Section 4.3.6, in case the above mentioned situation is assessed subsequent to the qualification stage, all the involved bidders will be excluded from the procedure.

4.6.3. Determining and presenting the candidates qualified for participation in the subsequent stages of the selection procedure

Following the evaluation of each application file, the Commission may take one of the following decisions:

- a) accept the application, if all the qualification criteria are met; or
- b) reject the application, if at least one of the qualification criteria is not met.

After completing the evaluation of the application files, the Commission will communicate to each candidate the admission or the rejection of its application within the procedure.

In the communication on the application admission, the candidate will be informed on the change of its status within the selection procedure into *bidder*.

In the communication on the candidature rejection, the candidate will be informed that it is eliminated from the procedure, specifying at the same time the reasons which grounded this decision, and that the term within which the participation bond will be returned is to be communicated in accordance with the provisions of Section 4.4.5, letter a).

The Commission will not communicate to the qualified candidates the initial eligibility of the other qualified candidates or the identity of the candidates that did not qualify for participation in the superior stages of the selection procedure.

The participation bond will be returned to the candidates who did not qualify to the superior stages of the selection procedure within 30 working days from the candidature rejection date. These candidates are further subject to the rules on information confidentiality provided for in Section 4.3.3, for the entire duration of the selection procedure.

4.6.4. Establishing and announcing the procedure continuation manner

During the qualification stage, the Commission evaluates the level of the aggregated (initial) demand for frequency blocks in categories A and B, based on the application forms submitted by the qualified applicants (bidders), and can take one of the following decisions:

- a) organize the auction stage, starting with the primary rounds, where the aggregated demand exceeds the number of frequency blocks available within the selection procedure, at least in one category; in this situation, the Commission will communicate each bidder the identity of all the other bidders, the fact that the auction stage is required, as well as the date of starting the primary rounds;
- b) organize the auction stage starting with the additional primary round, where the aggregated demand does not exceed the number of frequency blocks available within the selection procedure in any categories and there is no demand for some blocks; in this situation, the Commission:
 - (i) will communicate each bidder the identity of the other bidders, as well as the fact that primary rounds of the auction stage are not required;

- (ii) will declare as winning all the bidder's initial bids, thus designating them as winners, and will communicate to each bidder the number of abstract blocks won by the respective bidder in each of the categories from A to B; and
 - (iii) will communicate to each bidder: (i) the basic price for its winning bid, the total price for the group of abstract frequencies in the initial bid and (ii) the specific basic prices for each of the blocks included in its winning bid, for the purpose of applying the provisions of section 4.8.2 in these Terms of Reference, that are equal to the reserve prices for the categories to which these blocks belong;
 - (iv) will communicate to each bidder the date of starting the additional primary round/rounds.
- c) organize only the assignment round of the auction stage, where the aggregated demand does not exceed the number of frequency blocks available within the selection procedure in any categories and there are no more blocks for which there is no demand; in this situation, the Commission:
- (i) will communicate to each bidder the identity of the other bidders, as well as the fact that no primary and/or additional rounds of the auction stage are required;
 - (ii) will declare as winning all the bidder's initial bids, thus designating them as winners, and will communicate to each bidder the number of abstract blocks won by the respective bidder in each of the categories from A to B; and
 - (iii) will communicate to each bidder: (i) the basic price for its winning bid, the total price for the group of abstract frequencies in the initial bid and (ii) the specific basic prices for each of the blocks included in its winning bid, for the purpose of applying the provisions of section 4.8.2 in these Terms of Reference, that are equal to the reserve prices for the categories to which these blocks belong;
 - (iv) will communicate to each bidder the date of starting the assignment round.

The auction stage will be organised in all cases, despite the fact that there may be only an assignment round.

4.6.5. Complaints

A participant in the procedure may challenge the rejection of its application within 2 days from receiving the communication sent by the Commission in this regard in accordance with the provisions under Section 4.6.3.

The complaint must be made in writing and submitted to the ANCOM headquarters in 2 Delea Noua Street, Sector 3, Bucharest, by the mandated representative of the candidate, or sent by the advice of delivery postal service.

Within maximum 4 days from the lodging of the complaints, a commission designated by decision of the ANCOM president (the "Commission for settling the complaints"), comprising other persons than those which were members of the Commission, will examine the lodged complaints. The Commission for settling the complaints may extend the 4-day term, if the examination of the complaints involves the processing of a large volume of information. The complaints lodged within the due term will be settled in the sense of admission or rejection, while the complaints lodged after the due term will be rejected. The Commission for settling the complaints will conclude a minute, approved by the president of ANCOM, and will communicate each complainant the outcome of the lodged complaint, as comprised in the minute.

The Commission will establish and announce the continuation of the procedure in line with Section 4.6.3 only after the expiry of the period for lodging the complaints set in this section, and if complaints are lodged within the aforementioned period, only after the approval of the minute on the settlement of complaints, in accordance with the provisions of this section.

4.7. THE AUCTION STAGE

The auction stage consists of one or several primary rounds, the additional primary round/rounds, followed - if required - by one assignment round.

All bids submitted during the auction stage are bids for frequency blocks packages or categories. This means that a bid submitted in a round may only be a winner in its entirety and bidders cannot win a frequency block for which they did not bid.

The maximum amount of radio spectrum which a bidder may obtain by auction is limited to the total number of eligibility points (Section 4.1.2).

4.7.1. Primary bid rounds

At the beginning of each primary round, the Commission communicates the bidders that are to submit bids within the respective round the price for a block of frequencies in each of the A and B categories. In the first primary round, the price for each of the A and B categories will be set equal to the reserve price (minimum licence fee) for that category.

Each bidder is invited to submit a bid stating the number of blocks and the category it wishes to bid at the given price, subject to the activity rules described below.

When a primary round is closed, demand is aggregated across all bidders. If, in the respective primary round, demand (represented by the total number of blocks requested according to the bids) exceeds the number of frequency blocks available in at least one of the A or B categories, another primary round is organised.

In the subsequent primary round, the Commission will increase the price only for the blocks in the category/categories for which the demand exceeded the number of frequency blocks available. The price will be increased by adding a bid increment to the price of the previous round, expressed as a percentage between 10% and 5%, thus:

- 10% of the reserve price, until the round where the price equals or exceeds 150% of the reserve price;
- 5% of the reserve price, starting with the round immediately following the one within which the value specified at the bullet above was reached or exceeded.

The primary rounds end after a round in which the demand no longer exceeds the amount of available blocks in any of the categories.

During the primary rounds, the bidders must observe certain activity rules aimed at preventing the pointless extension of the procedure. Each frequency block has attached a number of eligibility points (Section 4.1.2). A bidder's activity in a certain round is measured as the sum of eligibility points over all the blocks included in its bid in that round. In any round, a bidder's eligibility is equal to that bidder's activity in the previous round.

Prior to beginning the auction, upon the setup of the participation bond, each bidder holds a budget of eligibility points (initial eligibility), which defines its vocation (maximum) for acquiring the radio frequency usage rights. A bidder's initial eligibility is determined by the sum of the eligibility points in all the blocks included in its frequency allocation application. A bidder's activity in the first primary round cannot exceed its initial eligibility, and its activity in each subsequent primary round may not exceed its eligibility in the previous round. This means that a bidder's eligibility may remain constant or decrease throughout the primary rounds; it cannot increase. Therefore, the bidders are stimulated to bid in every round at a level that would enable them to gain the desired usage rights while avoiding the loss of vocation for their acquiring.

The winning bids, respectively the winning bidders (see Section 5.3.6) and the basic prices they must pay (see Section 5.3.7) are determined following the primary rounds.

4.7.2. Additional primary round/rounds

Where, following the consolidation of the initial bids or following the primary rounds there are unawarded (abstract) frequency blocks, the Commission will decide to organize an additional primary round, and if following this round there are still unawarded blocks, a second such round may be organised, while observing the additional conditions to be provided hereafter.

In each of these rounds, each bidder may submit a bid indicating the package consisting of one or several blocks, as well as the amount it is willing to pay for this package. There are no maximum limits as regards the amount of the bid, but minimum limits shall apply, according to the specific rules provided in section 5.4.3.

All the bidders have access in the additional primary round/rounds, irrespective of their eligibility available at the completion of the primary rounds and irrespective whether they have obtained frequency blocks in the primary rounds or not.

Following the additional primary round, the winning bids for the unawarded blocks in the primary rounds are determined, respectively the winning bidders (see section 5.4.5), as well as the base prices they have to pay (see section 5.4.6).

4.7.3. Assignment round

The initial bids, the primary rounds and the additional primary rounds allow determining the number of generic blocks the winning bidders will obtain in each category, as well as the starting price of the respective frequency blocks, not of the specific frequencies to be assigned to the winning bidders.

The purpose of the assignment round is to define how the available frequency blocks in the A and B categories are to be distributed amongst the winners following the initial bids, of the primary and of the additional primary rounds – as applicable -, and to determine the additional prices to be paid by each winning bidder for obtaining a specific assignment.

To this end, each winning bidder has the opportunity to bid the amount that it would be willing to pay for the assignment of a specific block/blocks, in addition to the overall reserve price it has to pay, determined in the initial bid and/or primary rounds.

The winners having no preferences as regards a specific assignment do not have to make any assignment bids. The combination of bids with the highest total value calculated according to section 5.5.5 is the winning combination, and the bids within it are declared winning bids for the frequency blocks in the A and B categories.

4.7.4. Determining the winners and the amount of the licence fees

The bidders that won frequency blocks during the initial bids, in the last primary round or in the additional primary rounds, as applicable, and in the assignment round, are designated as winning bidders. These bidders will obtain the usage rights for the radio frequencies corresponding to the winning bids, provided that they pay a licence fee the amount of which is established by applying the final price determined according to Section 5.6.

4.8. LICENCE AWARDING STAGE

4.8.1. *Announcing the procedure results*

After the round completion, prior to the licence awarding stage, the Commission will communicate each winning bidder:

- a) 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 of the basic price determined following the qualification stage and/or the primary and/or additional primary rounds and of the additional price determined following the assignment round, as the case may be;
- b) the price payment conditions and the conditions relating to the issuance of the licences.

4.8.2. *Payment of the licence fee*

The licence fees owed by each of the winning bidders following the bids submitted within the selection procedure will be paid in accordance with the provisions of Government Decision no. 702/2015 on establishing the minimum amount of the licence fees for the award of frequency usage rights in the 3410-3800 MHz band and of the licence fee payment conditions⁶.

The bond is returned under the terms specified in Section 4.4.5.

4.8.3. *Licence award*

The licences are awarded to the winning bidders upon the payment of the licence fee.

The provision of electronic communications networks and services is bound by the operators' compliance with the provisions of Article 6 of the Framework-Ordinance.

In order to observe the validity term and the conditions established in the 3400-3800 MHz Strategy, the licences are to enter into force on 1 January 2016.

4.8.4. *Transitory provisions*

According to the conditions established in Chapter VI – *Implementation means* – in the 3400-3800 MHz Strategy, ANCOM will establish, if necessary, upon agreement with the parties involved, transitory technical measures for the purpose of ensuring a transparent and non-discriminatory transition from the existing radio spectrum usage rights to the new spectrum usage rights, to be awarded based on this strategy document.

⁶ The payment terms and deadline are determined by Government Decision no. 702/2015 establishing the minimum amounts of the licence fees for the award of frequency usage rights in the 3410-3800 MHz bands and the licence fee payment conditions.

CHAPTER 5 – AUCTION RULES

5.1. GENERAL RULES OF THE AUCTION STAGE

5.1.1. Auction venue

The auction will take place at the headquarters of ANCOM - Bucharest Regional Division in 4 Lucian Blaga Street, block M110, Sector 3, Bucharest, where each bidder will be provided a room endowed with telephone and wireless Internet access connection. Moreover, the bidders will have access, in accordance with the rules under Sections 5.1.3, 5.1.4 and 5.1.5, in the room where the Commission is to activate, located in the proximity of the rooms made available to the bidders.

During the auction, the bidders' representatives will be able to use their own technical means in view of communication.

The bid rounds and the assignment round may take place during one or several working days, as deemed necessary, between 9.00 hours and 16.00 hours.

Access of the bidders' representatives within the premises of the auction will only be allowed for the persons mandated according to Section 4.5.2. letter a); the maximum number of three representatives includes the legal representative, if the latter participates.

5.1.2. Informing the bidders

The Commission will provide the bidders with several pieces of information prior to each bid round, at the end of each type of round, as well as at any time the auction process requires it. The general rules on the provision of such information are depicted under this section, while specific rules are mainly provided under Sections 4.3.5, 5.1.2, 5.3.2, 5.3.8, 5.4.2, 5.4.5 and 5.4.7.

Information is to be made by a representative of the Commission. The information forms will be drawn up in two originals, signed by the representatives of both parties, and each of these parties is to keep their copy. The form must be signed by only one representative of a bidder. Where no representative of the bidder can be reached until the next round begins or where the representatives of the bidder refuse to sign the information form, the respective bidder will be considered to have waived its participation in the auction and the rules under Section 4.4.4 will be applied.

5.1.3. Bid submission

With a view to submitting the bid during a certain round, a representative of each bidder will fill in and sign a specific bid form within the timeframe established for the respective round, except if the bidder makes use of one of its extension rights (Section 5.1.4). The chairman of the Commission (or the member of the Commission member replacing the chairman) will note the receipt of the bid in the synoptic table of the respective round and will endorse the form submitted by the bidder for proof of non-alteration.

The form is to be filled in by hand. In order to be valid, the form must bear the handwritten signature of a representative of the bidder.

After each round, the chairman of the Commission (or the member of the Commission replacing the chairman) will sign the form submitted by the bidder for proof of non-alteration, will send the bidder the proof of receipt of the form and will note the receipt of the bid in the synoptic table of the respective round.

The bid forms for each type of round (primary, additional, assignment) are to be elaborated by ANCOM and made available to the bidders prior to the launch of each type of round.

With a view to ensuring the possibility to fill in the bid form, the Commission will provide, for each bidder, sufficient bid forms to allow the submittal of offers within the ongoing round – these forms will be filled in by hand, in blue pen.

The bid will not be submitted earlier than the expiry of the term for exercising the extension right – under the terms of section 5.4.1.

After the bid has been submitted or prior to submitting it, where the Commission is to receive another bid, the bidder's representative may assist at the other bidder's submitting their bids, in the space especially reserved therefor (Commission's room).

The bid reception will be laid down in the respective round consolidated report. After receiving the bid, the Commission President (of the Commission members replacing the President) will sign for proof of non-alteration the bid form submitted by the bidder and will hand over a document copy to the latter.

After all the bidders have submitted their bids, the bidder's representatives are invited to leave the Commission's room, if they had chosen to witness this process.

5.1.4. Extension rights

During the auction stage, each bidder may exert two extension rights, in two distinct rounds, irrespective of their type (primary or assignment round).

An extension right confers the bidder additional time for submitting a bid during a certain round. The extension rights are granted to the bidders in order to protect them in the event of certain circumstances which might prevent them from submitting a bid during a certain round.

The extension right may be exerted within 10 minutes before the round completion, at the latest. Non-observance of the term for exerting the extension right implies a denial of exerting this right for the respective round.

The extension right may be exerted only actively and only if it has not been exerted previously by one of the bidders.

In case of exerting its extension right, a bidder will announce the Commission, during a certain round, on the occurrence of a situation that prevents it from submitting a bid during the respective round, and will require the granting of an extension period in order to submit the bid. The extension period is of 30 minutes from the scheduled closing time of the round. The extension may be required only during a certain round, and not during the recess between rounds or at another time.

The extension period has effects towards all bidders, regardless of whether they hold or not extension rights at the time when the extension is granted.

On the first day of the auction stage, prior to the first primary round, the Commission will hand in to each bidder two personalised cards to be used as trading means for requesting and granting an extension right.

The extension right is exerted by a bidder's representative going to the Commission's room and handing it in one of the cards at his/her disposal.

After receiving a request for exerting the extension right, a Commission member or an ANCOM representative – in charge of the logistic support on the auction site – will go to each of the rooms reserved for the bidders and will inform them on exerting their extension right.

During one round, only one extension right may be exerted, irrespective of the bidder that chooses to exert this right.

5.1.5. Exceptional circumstances

In case exceptional circumstances occur during the auction, the Commission may take one of the following decisions:

- a) postpone a certain round, conclude a certain ongoing round, or announce the results of a certain round;
- b) cancel a certain ongoing round or the results of which have not yet been announced and reschedule the respective round;

- c) cancel one or several rounds and the bids submitted during these rounds and restart the auction stage from a previous round;
- d) suspend the auction stage, cancel the auction stage and/or restart the auction stage.

The occurrence of an exceptional circumstance is to be assessed by the Commission. Such circumstances may include, for example, the occurrence of natural catastrophes, demonstrations, strikes, violent conflicts or incidents of any kind, technical faults or any other exceptional events that may disturb or hinder the activities carried out at ANCOM headquarters, the occurrence of indications or acknowledgements of breaches of the rules regarding the participation in the selection procedure by one or several bidders, as well as any other exceptional circumstances that may in any way jeopardize the carrying out of the auction.

The bidders must inform the Commission as soon as an exceptional circumstance has occurred or is about to occur, by means of a representative of the bidder that has noticed the occurrence or the imminence of such a circumstance who will go to the Commission's room.

5.2. OTHER RULES OF THE AUCTION STAGE

5.2.1. Security measures

Only the mandated representatives of the bidders according to Section 4.5.2 letter a) of the Terms of Reference will have access in the location where the auction is held.

The access of the bidders' representatives inside the auction premises is allowed only during the rounds and only after the representatives are identified pursuant to the provisions of the first paragraph. They will be identified based on their identity act.

Where a bidder is legally represented by two or several persons (as resulting from the information available in the certificate referred to in Section 4.5.2 letter b), sub-section (v) of these Terms of Reference), the access inside the premises where the selection procedure is carried out will be permitted to only one of these persons, and the respective person will be expressly nominated by the bidder. The provisions of this paragraph apply in view of reasonably limiting the number of persons who can enter the auction site and the location to be allocated to each bidder.

After verifying the identity of the bidders' mandated representatives, ANCOM will provide each of these persons with a badge. The badges will be worn at sight at the auction site throughout the auction stage.

In the space allocated to each bidder, only the representatives of that bidder will have access.

Any intervention on the auxiliary means (e.g. cables, extensions etc.) placed and made available in the space allocated for each bidder is forbidden. If needed, only the ANCOM personnel can intervene, upon previously informing the Commission.

The connection of electrical accessories (extension, connector, socket adaptor etc.) to the electricity network serving the premises of the selection procedure is forbidden. In the event the bidders intend to use their equipment, this will be connected directly to the electricity network or to the electrical accessories made available by ANCOM. The rooms intended for bidders will have extensions with minimum 3 ports of shucko-220 V 50 Hz alternative power.

5.2.2. Rules regarding the bidder's communication with the Commission

In order to ensure the bidders' communication with the Commission, each bidder will designate a person to facilitate this connection.

The bidders will communicate with the Commission by means of the person designated therefor, who will go to the room reserved for the Commission.

The designated person will go to the room reserved for the Commission only for the following purposes:

- a) submit the bid during a certain round;
- b) announce the Commission on the exertion of an extension right;
- c) communicate the explanations, the documents or the information requested by the Commission in accordance with Section 4.3.5 of these Terms of Reference;
- d) inform the Commission on the occurrence of unforeseen circumstances leading to the impossibility of submitting the bid during a certain round.

5.2.3. Rules regarding the Commission's communication with the bidders

The Commission will communicate with the bidders by means of one of its members, in the space allotted to each bidder.

The Commission member will go to the space allotted to each bidder for the following purposes:

- a) announce them on the exertion of an extension right by one of the bidders;
- b) inform them on the occurrence of exceptional circumstances, in accordance with the provisions of Section 5.1.7 of these Terms of Reference;

- c) inform each bidder in accordance with the provisions of Sections 4.3.5, 5.1.2, 5.3.2, 5.3.8, 5.4.2, 5.4.5 and 5.4.7 of these Terms of Reference.

The Commission will inform the bidders in accordance with Section 5.1.2 of these Terms of Reference.

5.2.4. Language used

The language used throughout the selection procedure is Romanian.

5.3. RULES FOR THE PRIMARY BID ROUNDS

5.3.1. Scheduling the primary rounds

The primary rounds are scheduled by the Commission.

Rounds are exclusively scheduled one by one, and not several rounds simultaneously, considering that, depending on the result, the scheduled round may be the last one during the auction. The Commission sets the beginning date and time of the round as well as its duration (closing date and time). In principle, the duration of a round may not be less than 30 minutes and may not exceed two hours.

All the primary rounds will be scheduled to take place between 9.00 and 16.00 hours, on working days. Each bidder must ensure on a daily basis the permanent presence of its representatives at the location chosen for the holding of the auction procedure, starting 9.00 hours and until 16.00 hours or until the receipt of the Commission notification regarding the completion of the rounds for that respective day. The Commission will inform the bidders on the round starting time at least 15 minutes and at most 30 minutes in advance.

Several rounds may be scheduled during the same day, and the duration of the recess between rounds is to be established by the Commission (but it cannot be less than 30 minutes). The rounds must begin and be completed during the same day, and round interruption by the end of the day and resumption during the next morning are not accepted. By the end of the last round of the day, the Commission will announce the bidders that no other rounds are to be organised during that respective day. Also, in case exceptional circumstances occur and justify the interruption of the auction for the rest of the day or for a longer period of time, the Commission will immediately announce the bidders thereon.

5.3.2. Informing the bidders prior to the primary rounds

Once the beginning time of a primary round is announced, the Commission will inform each bidder with respect to:

- a) the duration of the respective round (hours, minutes), specifying its closing time;
- b) the prices for each category, applicable to the respective round;
- c) the A and/or B type of the category for which the demand exceeded the offer;
- d) its eligibility for submitting bids during the respective round (expressed as number of eligibility points); and
- e) the number of remaining extension rights.

5.3.3. Bid prices

In the first primary round, the price for each of the A and B categories will be equal to the reserve price (minimum licence fee) for the respective category.

Starting with the next primary round, the price for each of the A and B categories will equal the reserve price, excepting the categories for which an excess demand has been recorded in the first primary round. For the categories in which an excess demand has been recorded, the Commission will set prices applicable in this round, that are higher than the reserve prices by a percentage (bid increment) set pursuant to Section 4.7.1.

The same rules for setting the prices will apply to the subsequent rounds. Thus, in case the demand exceeds the supply in a category during a certain round, the price for the respective category will be increased during the next round.

The price will remain unchanged during the next round in case of those categories for which no excess demand is recorded.

There is excess demand during a certain round, where the total number of blocks in that category indicated in the valid bids submitted during the respective round exceeds the number of blocks available in that category.

5.3.4. Bid rules

All the frequency blocks are available for the submission of bids during the primary rounds.

In each round, a bidder may submit only one bid.

Each bid will specify the number of blocks in each category the bidder wishes to acquire at the price communicated by the beginning of the round. A bid may include any combination of blocks in any category.

In order to submit a bid, the bidders fill in, by hand, the number of frequency blocks they wish to acquire in each of the categories, using the dedicated bid form.

The bidders may choose to submit a "zero" bid that does not include any blocks within the A and B categories. In such a case, the current amount of the eligibility points for the respective bidder will be considered "zero". In case a bidder does not submit a bid during the round or during the extension period granted to that bidder (see Section 5.1.4), the Commission will record *ex officio* a "zero" bid for that bidder.

Where a bidder submits a "zero" bid or does not submit an offer in a certain round, the amount of eligibility points will be zero. In this case, the respective bidder can no longer participate in the next primary rounds.

The price of the bid is determined as follows:

- a) for each category, the number of blocks in that category that have been included in the bid will be multiplied by the price communicated by the Commission; and
- b) the values determined according to letter a) will be summed up for all block categories.

The bid will be submitted according to the rules set out under Section 5.1.3.

Each submitted bid will be considered valid and represents a firm, final, irrevocable and unconditional commitment to acquire the package of blocks specified in the respective bid, at the bid price determined in accordance with the rules set out in this Section.

A bid remains valid until:

- a) it is replaced by a higher bid for the same package of frequency blocks, submitted by the same bidder during one of the subsequent rounds or during the additional round/rounds; or
- b) it is cancelled as a result of the Commission cancelling one or several rounds and the bids submitted during those rounds; or
- a) the winning bidders are granted licences for the rights of use gained as a result of the selection procedure.

5.3.5. Activity rules

The activity associated with a bid submission represents the total amount of eligibility points for all the blocks included in the bid and it is calculated as follows:

- a) for each category from A to B, the number of blocks in that category, included in the bid, will be multiplied by the eligibility points per block for that category; and
- b) the values determined according to letter a) will be summed up for all block categories.

In each primary round, a bidder may submit a bid with an activity level lower than or equal to its current eligibility (corresponding to the respective round) for the A and B categories.

A bidder's eligibility for the first primary round represents its initial eligibility. The initial eligibility represents the sum of the eligibility points for all the blocks in the A and B categories included in the

application form, submitted by the respective bidder as part of its application file, and it is calculated as follows:

- a) for each of the A and B categories, by multiplying the number of blocks specified in the bid form by the eligibility points associated to each block; and
- b) by summing up the values determined according to letter a) for all the frequency block categories.

For each of the following rounds, the eligibility of each bidder is equal to the activity of that bidder during the previous round. Thus, after a certain number of successive primary rounds, a bidder's eligibility may remain constant or may decrease, but it can never increase. However, during the primary rounds, a bidder's eligibility may fluctuate between the different block categories, considering that, from one round to another, the bidder may change the package of blocks included in its bid, including by renouncing certain blocks in certain categories and selecting blocks from other categories.

5.3.6. Determining the winning bids

The valid bids submitted during the last primary round will be declared as winning bids, and their holders will be designated as winning bidders. The winning bidders will be granted the rights to use the radio frequencies after the payment of the corresponding licence fees.

5.3.7. Determining the basic price

Each winning bid has an associated basic price. This basic price is the total price for the set of radio frequency blocks in the winning bid.

5.3.8. Completion of the primary rounds

The primary rounds end after a round where no excess demand exists for blocks in any category. From this moment on, the Commission establishes the winning bids, the winning bidders and the basic prices, announces that the primary rounds have ended and, as applicable, that the auction will continue by the additional primary round or directly by the assignment round.

Moreover, the Commission communicates to each bidder a series of pieces of information on the results of the primary rounds, as follows:

- a) each bidder will be informed on the number of abstract blocks won by the respective bidder in each of the categories A and/or B;
- b) each winning bidder will be informed on:
 - i) the basic price corresponding to its bid declared as a winning bid;
 - ii) the specific basic prices for each of the blocks included in the bidder's winning bid, which are equal to the prices against which the bidder gained the respective frequencies/blocks.
- c) where no additional primary rounds are organised, each bidder will be communicated the identity of the winning bidders after the closing of all the primary rounds, as well as the number of lots won by each of them in the categories A and B.

Information mentioned under letters a) and b) above will not be communicated to other bidders.

5.4. RULES FOR THE ADDITIONAL PRIMARY ROUNDS

5.4.1. *Scheduling the additional primary round/rounds*

The rules described in section 5.3.1 shall apply.

5.4.2. *Informing the bidders prior to the additional primary round/rounds*

Once with announcing the time of starting the/an additional primary round, the Commission will inform each bidder on:

- a) the number of frequency blocks still available in each category;
- b) duration of the respective round (hours, minutes), specifying the round closing time;
- c) the minimum price applicable for each category in the respective round; and
- d) the number of remaining extension rights.

5.4.3. *Bid prices*

In the additional primary round/rounds, each bidder will have the option to bid for a package consisting of one or several frequency blocks available in these rounds, submitting a bid in which it will indicate the price it is willing to pay for the purchase of the respective package, with the limitations provided below.

Thus, in the first primary round, the bid price cannot be lower than the prices representing:

- a) the prices obtained in the last primary round, in the categories where a higher demand was registered in the primary rounds; and
- b) the reserve prices (minimum licence fee), for the categories in which demand was not expressed for all the available blocks, in any of the primary rounds.

Where, following the first additional primary round, there are still unawarded frequency blocks in categories A and B, the Commission may decide to organize a second additional primary round. During this round, the bid price cannot be lower than the prices determined according to letters a) and b).

The bid price in the additional round/rounds must be expressed in euro.

5.4.4. *Bid rules*

The rules presented in section 5.3.4 shall apply, with the exceptions below.

During this round, there will be available only the blocks in categories A and/or B that have not been awarded following the initial bid or the primary rounds. In the second additional primary round, there will be available only the blocks in the categories that have not been awarded following the first additional round.

Each bid can be placed for a package of one or several frequency blocks. Each package is a bid *per se*. For each package, a bid must specify the number of blocks in each category that the bidder wishes to purchase, as well as the total price of the package.

Moreover, for each package, the bidder will indicate an individual price for each of the blocks within the respective package, which - if the respective package is part of the winning combination – will represent the specific basic price for the respective blocks, exclusively for the purpose of applying section 4.9.2.

A package may include any combination of blocks, in compliance with the limitations regarding the usage rights (section 4.1.3), also taking into account the usage rights acquired following the initial bids and/or the primary rounds.

During the additional primary round/rounds, the bidders may bid irrespectively of the eligibility they had at the moment of completing the primary rounds.

5.4.5. Determining the winning bidders

Upon the completion of an additional primary round, the Commission will establish the winning combination.

A winning combination is a combination of packages that are included in the valid bids submitted in the additional primary round and that, considered together, have the highest value of all the possible combinations, provided that the following conditions be fulfilled:

- a) in each category, no more blocks than the ones available within the respective category should be awarded;
- b) the combination should contain at most one package on behalf of a bidder;
- c) the combination should ensure the assignment of the highest number of blocks from the ones available in all categories.

If two or several combinations of packages that fulfil the above-mentioned conditions have the same value, the combination including packages on behalf of the most bidders will be declared as a winning combination. Should neither the previous rule, nor the above-mentioned one drive to identifying one combination, the Commission will find the winning combination by drawing lots.

The bids for the packages within a winning combination will be declared as winning bids, and the holders of these bids will be designated as winners.

Upon the completion of the auction stage, in the licence awarding stage, the winning bidders following the additional primary round will be granted the rights to use the radio frequencies in the blocks belonging to the packages within the winning combination.

5.4.6. Determining the basic price

Each winning bid has an associated basic price. This basic price is the total price for the group of abstract frequency blocks belonging to the package within the winning combination.

5.4.7. Completion of the additional primary round/rounds

Upon completion of the additional round/rounds, the Commission will communicate to each bidder in these round/s information regarding the results of the additional round/rounds, as follows:

- a) each bidder will be communicated the number of abstract blocks won by the respective bidder in each category;
- b) each winning bidder will be communicated:
 - (i) the basic price for its winning bid in the respective additional primary round;
 - (ii) the specific basic prices for each of the blocks included in its winning bid, for the purpose of applying the provisions of section 4.9.2 in these Terms of Reference, prices that are equal to the individual prices indicated by the bidder for the respective blocks in the package within the winning combination, in accordance with the provisions of section 5.4.4.

The information mentioned under letters a) and b) above will not be communicated to other bidders.

Moreover, when closing the additional primary round/rounds, the Commission will communicate to each bidder the identity of the winning bidders following the completion of all the primary and/or additional primary rounds, as well as the number of lots won by each of them in each of the categories A and B.

5.5. RULES FOR THE ASSIGNMENT ROUND

5.5.1. Scheduling the assignment round

The assignment round for each category is scheduled by the Commission, which establishes the date and time for starting the round, as well as its duration (closing date and time). In principle, the duration of an assignment round cannot be less than 30 minutes.

The assignment round for categories A and B will be scheduled to take place successively, between 9.00 and 16.00 hours, on a working day. The bidders will be announced on the round date and time with at least one working day in advance.

The assignment round for one category must begin and be completed during the same day, while round interruption by the end of the day and resumption during the next morning are not accepted. If exceptional circumstances occur and justify the interruption of the auction for the rest of the day or for a longer period of time, the Commission will immediately announce the bidders thereon.

5.5.2. Informing the bidders prior to the assignment round

At the same time when the assignment round date and time are announced, the Commission will inform each bidder with respect to:

- a) the duration of the respective round (hours, minutes), specifying its closing time; and
- b) whether the bidder still has or no longer has an extension right available after the primary rounds.

5.5.3. Bid prices

There is no minimum or maximum price limitation as regards assignment bids. These bids must be expressed in Euro.

5.5.4. Bid rules

The gaining of a certain number of blocks in one of the A and B categories following the initial bids, the primary rounds and/or the additional primary round implies the right as well as the obligation of the winning bidder to acquire one of the frequency assignment options presented to that bidder by the Commission for each of the categories during the assignment round.

In the assignment round, the bidders are invited to submit bid forms, according to the rules described in section 5.1.3. The bid form will be made available to the bidder by a member of the Commission at the beginning of the assignment round.

Each bidder may submit one assignment bid for each option listed in its bid form, indicating the amount it is willing to pay in order to acquire the respective assignment option.

Zero bids will be automatically recorded for those frequency assignment options for which no bid is submitted. In case a bidder does not submit a bid form during the allocated timeframe, it shall be considered as submitting a zero bid for each of the frequency assignment options available to the respective bidder.

Each bid submitted during the assignment round represents a firm, final, irrevocable and unconditional commitment to pay the specified price for each assignment option, in view of obtaining the respective specific frequency assignments, as an additional price to the basic price a bidder must pay as a result of the primary rounds.

A bid remains valid until:

- a) it is cancelled as a result of the cancellation by the Commission of the respective round and of the bids submitted during that round;

- b) the winning bidders are awarded licences for the usage rights gained as a result of the selection procedure.

5.5.5. Determining the winning bids

After the completion of each assignment round, the Commission will assess the bids and will establish the winning combination, representing the combination of submitted valid assignment bids that has the highest total value among all possible combinations, calculated according to the formula below, if the following conditions are met:

- a) the combination should include only one bid from each bidder;
- b) each bidder should be assigned the number of rights won following the initial bids, the primary rounds and/or the additional primary round;
- c) each bidder should be assigned consecutive radio channels as part of the awarded frequency sub-bands;
- d) a frequency block should not be assigned to two different bidders.

Upon the submission of the bids within this round, the winning bids will be the ones included in the bid combination that maximizes the value calculated by the following formula:

$$\sum_{i=1}^n \text{bidamount}_i \times a_i$$

where

for the operators currently holding assignments in the respective band: $a_i = \frac{|x_i - y_i|}{\max(|x_i - z_i|, 2.5)}$

while for the operators currently holding no assignments in the respective band: $a_i = 1$

The parameters of the above formula have the following meaning:

- for the 3.5 GHz band:
 - n = number of winners within the frequency band for which the assignment round is organised;
 - x_i = value (as MHz) of the middle point of the upper half-band (as a geometrical segment) within the awarded frequency sub-bands currently held by the winning operator "i";
 - y_i = value (as MHz) of the middle point of the upper half-band (as a geometrical segment) within the frequency sub-bands that would correspond to the farthest assignment option in relation to x_i ;
 - z_i = value (as MHz) of the middle point of the upper half-band (as a geometrical segment) within the frequency sub-bands that corresponds to the assignment option for operator "i" in the analysed combination (assignment possibility).
- for the 3.7 GHz band:
 - n = number of winners within the frequency band for which the assignment round is organised;
 - x_i = value (as MHz) of the middle point of the upper half-band (as a geometrical segment) within the awarded frequency sub-bands currently held by the winning operator "i";
 - y_i = value (as MHz) of the middle point of the band (as a geometrical segment) that would correspond to the farthest assignment option in relation to x_i ;
 - z_i = value (as MHz) of the middle point of the band (as a geometrical segment) that corresponds to the assignment option for operator "i" in the analysed combination (assignment possibility).

After the assignment round, the Commission will provide the bidder information on:

- (i) the price of its winning bid;
- (ii) the concrete frequency blocks resulted following the round.

Each bidder will have a winning assignment bid in any of the A and/or B categories where it has won usage rights. The winning assignment bid may be a zero bid, automatically recorded on behalf of the bidder for an assignment option for which the respective bidder has not submitted an assignment bid.

In case several combinations of assignment bids meeting the above conditions have equal and the highest value, the Commission will select a combination by means of draw.

5.5.6. Determining the additional price

Each winning bid, in each band, has an associated additional price. This price corresponds to the assignment option afferent to the winning bid of each bidder in the respective band and represents the sum to be paid by the holder of the respective bid, in addition to the basic price determined as a result of the initial bids, of the primary rounds and/or of the additional primary round in order to obtain the said assignment.

5.5.7. Completion of the assignment round

After the completion of the assignment round for each category, the Commission will communicate to each participating bidder a series of pieces of information on the results of the round, as follows:

- a) each bidder will be informed on the assignment obtained within the category;
- b) each winning bidder will be informed on the additional price for the assignment obtained within the category.

Information under letters a) and b) above will not be communicated to other bidders.

5.6. COMPLETION OF THE AUCTION STAGE

After the completion of the auction stage, the Commission:

- a) will determine the final price each winning bidder must pay as a licence fee for gaining the rights to use the radio frequencies, representing the sum of the basic price - determined as a result of that part of the initial bid and/or the price of the bid designated a winner following the primary rounds (and which cannot be less than the reserve price for each category) - and the additional price determined after the additional primary round/rounds, if applicable, and the assignment round; this final price will be announced at the same time with the results of the procedure;
- b) will inform the bidders not gaining usage rights during the procedure on the term within which the participation bond is to be returned to them.

CHAPTER 6 – MISCELLANEOUS

6.1. PUBLICITY OF THE SELECTION PROCEDURE

ANCOM may issue any public communication related to the selection procedure, as it deems necessary, without prior notification to the participants in the procedure. ANCOM may use any communications means, as it considers necessary, including written and online mass-media, its webpage (www.ancom.org.ro) etc.

Information publicly communicated by ANCOM may relate, *inter alia*, to:

- a) the identity of the participants and of the winning bidders;
- b) the actual frequency blocks the usage rights of which have been gained by the winning bidders as a result of the procedure;
- c) the licence fees owed by the winning bidders;
- d) licences that will be awarded as a result of the selection procedure.

Throughout the selection procedure, the bidders must refrain from any communication releases regarding the selection procedure.

6.2. SUSPENDAREA PROCEDURII DE SELECȚIE

In the event of occurrence of exceptional circumstances that may affect the procedure, ANCOM has the right to suspend the selection procedure at any time during its progress. The occurrence of an exceptional circumstance is assessed by the Commission. Such circumstances may include, for example, the occurrence of natural catastrophes, demonstrations, strikes, violent conflicts or incidents of any kind, technical faults or any other exceptional events that may disturb or hinder the holding of the selection procedure, the occurrence of indications or acknowledgements of breaches of the rules regarding the participation in the selection procedure by one or several bidders, as well as any other exceptional circumstances that may in any way endanger the carrying out of the auction.

In case of suspending the procedure, ANCOM has the obligation to request the candidates/bidders to extend the validity of their bids, as well as of their participation bond, if necessary.

6.3. CANCELLATION OF THE SELECTION PROCEDURE

According to the provisions under Article 26(6) of the Framework-Ordinance, ANCOM may cancel the started selection procedure, prior to the deadline for the submission of the last bid during the main stage. The decision to cancel the selection procedure must be objectively justified or must represent a consequence of certain conditions that could not have been known at the time when the selection procedure was initiated. ANCOM will communicate publicly the reasons for cancelling the selection procedure, within a 30 days' timeframe.

Annexes

Annex 1 – Statement on the capacity as a participant in the selection procedure

Annex 2 – Application form

Annex 3 – Model of a licence for the use of radio frequencies in the 3410-3800 MHz band

Annex 4 – Model of a letter of bank guarantee

[*heading of the individual applicant/associate applicant*]

STATEMENT ON THE CAPACITY AS A PARTICIPANT
IN THE SELECTION PROCEDURE

To:

National Authority for Management and Regulation in Communications, 2 Delea
Noua Street, Sector 3, Bucharest

With reference to:

Participation in the competitive selection procedure in view of awarding the
rights to use the radio spectrum in the 3410-3800 MHz band

After examining the provisions of the *Terms of Reference for the competitive selection procedure for awarding the licences for the use of the radio spectrum in the 3410-3800 MHz band*, as well as of the ANCOM President's Decision no. 686/2015 on the organisation of the selection procedure in view of awarding the rights to use radio frequencies in the 3410-3800 MHz band, I, the undersigned [*name and first name*], legal representative of [*name and headquarters of the individual applicant/associate applicant*], under the sanction of being disqualified from the selection procedure and being aware of the sanctions applicable in case of false statements, declare on my own responsibility the following:

1. In the selection procedure, I participate and submit a bid in my capacity as (tick the corresponding option):

- individual applicant;
- associate applicant in the consortium led by [*name and address of the consortium leader*].

2. I do not submit more than one application, individually and/or in association with other legal person, being aware that breaching this rule triggers the rejection of all applications thus submitted.

3. The applicant on whose behalf I act [tick the corresponding option]:

- is not a member of a group of undertakings;
- is a member of a group of undertakings whose names, addresses and links are presented in the document [*name of the document comprising the structure of the applicant's group*], which I submit as part of the application file.

4. All the documents and information presented and provided as part of the application file are complete, accurate in every detail and concordant with the reality and the auction commission appointed by decision of the president of ANCOM has the right to require any other justifying documents for the purpose of verifying and confirming my statement.

5. I will immediately inform the auction commission appointed by decision of the president of ANCOM if any changes will occur to the present declaration at any time during the selection procedure.

I, the undersigned, hereby authorise any institution, commercial company, bank, and other legal persons to provide information to the authorised representatives of ANCOM on any commercial, technical and financial aspect related to the activity of the applicant I represent.

I also declare that I acknowledged the provisions of Article 326 "False statements" of the Penal Code of Romania, stating that, "*A statement which does not correspond to the truth, delivered to one of*

the persons provided under Article 175 or to an entity within which they conduct their activity, for the purpose of producing legal effects, on own behalf or on somebody else's behalf, in such a case when, in accordance with the law or the circumstances, the delivered statement serves for generating the respective consequence, shall be sanctioned by 3 months to 2 years imprisonment or by fine".

The present statement is valid until 31.12.2015.

Filled in on _____

[name of the individual applicant/associate applicant]

(authorised signature)

[*candidate heading*]

FREQUENCY ALLOCATION APPLICATION

To:

National Authority for Management and Regulation in Communications, 2 Delea Noua Street, Sector 3, Bucharest

With reference to:

Participation in the competitive selection procedure in view of awarding the rights to use the radio spectrum in the 3410-3800 MHz band

After examining the provisions of 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 3410-3800 MHz band* (the "Terms of Reference"), as well as of the ANCOM President's Decision no. 686/2015 on the organisation of the selection procedure in view of awarding the rights to use radio frequencies in the 3410-3800 /MHz band (the "ANCOM Decision"), I, the undersigned [*name and first name*], legal/mandated representative of [*applicant's name and headquarters*], hereby firmly, irrevocably and unconditionally undertake:

1. To participate in the selection procedure and observe its rules (including the sanctions applicable in case of breaching the said rules), so as they have been established by the Terms of Reference and the ANCOM Decision, during the entire duration of the procedure, until the licences are awarded, without causing any prejudice to the right of ANCOM to also enforce certain sanctions after the licence award (e.g. licence revoking);
2. To maintain valid the bid for the usage rights over the amounts of radio frequencies in the categories indicated in the table below, at the basic price specified therein (to which the possible additional price communicated by ANCOM following the primary round/rounds or the assignment round/rounds may be added) until 31 December 2015 or until the date of the bid validity advance termination⁷; I thereby acknowledge that the submission of the present bid does not prejudice my right to subsequently submit a bid for any other category of frequencies during the primary and/or assignment rounds, provided that the activity and eligibility rules, as well as the rules referring to the limitations as to the gaining of frequency usage rights established in the Terms of Reference and in the ANCOM Decision are observed;
3. In case the candidate I represent is designated a winner as the result of the selection procedure, I will pay within the term and under the conditions established by ANCOM the basic price and, as the case may be, the additional price resulted from the procedure, for the usage rights gained, and I will observe the provisions under Chapter 3 of the Terms of Reference and the ANCOM Decision.

(Note: The candidate will fill in the following table and will indicate the number of frequency blocks for which it submits the initial bid. In case the candidate does not submit a bid for any of the blocks within a certain category, he will cross the respective sections. Warning! The candidate must select

⁷ The date of the bid validity advance termination is the date when:

- a) the bid is replaced by a higher bid for the same package/frequency block, submitted by the same bidder during the primary or assignment rounds; or
- b) the bid is cancelled as the effect of the Commission cancelling one round or several rounds, as well as the bids submitted therein; or
- c) the winning bidders are awarded licences for the usage rights gained as a result of the selection procedure.

at least one frequency block in at least one of the categories A or B; its application will otherwise be rejected).

Category	Frequency band (MHz)	No. of available frequency blocks	Usage	Reserved price/frequency block (euro)	Initial bid (number of frequency blocks)	Total (euro)
A	3410 - 3600	16	01.01.2016 - 01.01.2026	370,000		
B	3600-3800	36	01.01.2016 - 01.01.2026	185,000		
Total price of the initial bid						

5. I hereby expressly and unequivocally, irrevocably and unconditionally declare that, in case of any dispute/issue arising in relation with the present selection procedure and the granting of the radio frequency usage rights as a result of the said procedure, I understand to accept that the substantive and procedural rules under the Romanian law and the Romanian Court of Law jurisdiction be applied and I waive the applicability of any foreign jurisdiction that may be competent in solving the respective dispute/issue.

Filled in on

[*applicant's name*]

.....

(authorised signature)



2 Delea Noua Street, Bucharest 3, 030925, Romania
Phone: +40 372 845 400 / +40 372 845 454. Fax: +40 372 845 402
E-mail: ancom@ancom.org.ro. Website: www.ancom.org.ro

On grounds of the Decree of the President of Romania no. 509/2009 on the appointment of the president of the National Authority for Management and Regulation in Communications,

On grounds of the provisions of Article 10(2) points 12 and 13, Article 11(1), Article 12(1) of the Government Emergency Ordinance no. 22/2009 the setting up of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, with the subsequent amendments and completions, as well as of Article 23(1), Article 24(1), (2) and (3), Article 31(1) of the Government Emergency Ordinance no. 111/2011 on electronic communications, approved, with amendments and completions, by Law no.140/2012, with the subsequent amendments and completions;

Having regard to the provisions of the Decision of the President of the National Authority for Management and Regulation in Communications no. 390/2015 on the approval of the Strategy and of the action plan regarding the implementation and development of broadband wireless access (BWA) systems on a national level in the 3400-3800 MHz band, for the period 2015-2025;

Having regard to the provisions of the Decision of the President of the National Authority for Management and Regulation in Communications no. 686/2015 on the organization of selection procedure for awarding the rights to use the radio spectrum in the 3410-3800 MHz band;

Having regard to the provisions of the Decision of the President of the National Authority for Management and Regulation in Communications no. 353/2015 on the procedure of awarding the radio frequency usage rights,

the President of the National Authority for Management and Regulation in Communications

issues this

LICENCE FOR THE USE OF RADIO FREQUENCIES⁸
FOR THE PROVISION OF PUBLIC ELECTRONIC COMMUNICATIONS
NETWORKS AND ELECTRONIC COMMUNICATIONS SERVICES

no. _____

Holder: _____

with headquarters in: _____

registered with the Trade Registry Office under no. _____,

unique registration code: _____,

⁸ The Licence for the use of radio frequencies to be awarded to the winners of the usage rights will be drawn up by taking into consideration the requirements set under the Terms of Reference. The document "Licence" has a guiding character and is only drawn up for its presentation within the selection procedure, whereas the authorisation act is to contain specific conditions for each radio frequency band.

is authorised to exercise the right to use the radio frequencies specified in this licence in order to provide public electronic communications networks and mobile electronic communications services, as follows:

I. Assigned sub-bands and associated provisions:

1. The holder has exclusive usage rights for the following radio frequencies in the frequency band⁹MHz: sub-bands¹⁰, allocated at a national level, with a size ofMHz.
2. The exclusive usage right is exercised only in compliance with the associated provisions for frequency sub-bands assigned by licence, with the technical and operational conditions provided in the licence, of the technical and operational parameters specified in the frequency assignment authorisations, which are annexes to this licence, and fully observing the applicable regulations and the rules in force regarding the radio spectrum usage.
3. The application for which the frequency usage right has been granted: two-way digital wireless communications using fixed-mobile communications networks (MFCN), including point-to-multipoint networks, with broadband wireless access to the end-user (BWA).
4. The specific technical and operational conditions for the usage of the assigned radio frequency sub-bands are provided in the Annex, which is part of this licence.
5. The exclusivity for the usage of the frequency sub-bands under this licence refers strictly to the application for which the usage right has been granted.

II. Technical and operational conditions for the usage of the assigned sub-bands

1. Network coverage: national.
2. Types of communications: voice, data, multimedia.
3. Network structure: base stations connected amongst them by various technological solutions, serving subscriber terminals under various access modalities: fixed, nomadic, mobile.
4. Operation mode: frequency division duplex (FDD), time division duplex (TDD)¹¹.
5. Equipment:
 - 5.1 The holder has the obligation to use, within the electronic communications network, only the radio equipment that complies with the essential requirements provided in the relevant regulations in force in Romania.
 - 5.2 The introduction on the market, installation and putting in operation of the radiocommunications equipment within the electronic communications network will be performed only in compliance with the relevant regulations in force in the radiocommunications field.
6. Specific conditions
 - 6.1. The holder will exercise its rights deriving from the present Licence under conditions that would ensure the effective, rational and efficient use of the radio frequencies and the prevention of harmful interference on other radiocommunications networks that use the radio spectrum under the legal provisions.

⁹ The final document will include the frequency band in which the usage rights have been granted

¹⁰ The final document will include the frequency bands won following the selection procedure

¹¹ The final document will include the adequate variant.

6.2. The guard band – if applicable – required as to the networks operating in adjacent bands is included in the sub-bands assigned by this licence, a condition which the holder will take into utmost account in designing and exploiting the network.

7. Effective spectrum usage and quality requirements

7.1. Effective spectrum usage requirements¹²:

7.2. With a view to the verification under point 7.1., the holder has the obligation to notify to the base stations installed and put into operation, along their technical and operational parameters, according to the procedures in force.

7.3. The holder will ensure service continuity by providing it 24/24, 7/7.

III. Holder's obligations

1. The holder has the obligation to observe the effective spectrum usage and quality conditions in accordance with the provisions of sub-chapter 7 of Chapter II in the licence.

2. The putting in operation, reconfiguration or extension of the network, as well as the amendment of the network's authorised technical and operational parameters can be performed only upon completing all the steps provided in the legislation in force.

3. The holder has the obligation to notify to ANCOM the location of the base stations, at least 30 days before beginning the execution works. ANCOM may change some of the locations, with a view to ensuring electromagnetic compatibility with other existing radiocommunications systems.

4. The holder will use the radiocommunications equipment and the radio spectrum only in the interval and under the technical and operational conditions specified in this licence, while observing the technical and operational parameters stipulated in the frequency assignment authorisations.

5. The licence holder must observe:

- a) the provisions of the specific national legislation and of the international regulations in the field of radiocommunications, issued based on the agreements Romania is a party in;
- b) the provisions of the legislation in force applicable to the objective of this licence;
- c) the relevant standards and the technical regulations in force.

6. The licence holder has the obligation to observe the technical and operational conditions for the usage of the radio frequencies imposed by this licence, as well as the technical and operational parameters imposed under the frequency assignment authorisations, for the purpose of avoiding harmful interference, as well as of ensuring the rational and efficient usage of the radio spectrum.

7. With a view to ensuring radioelectric compatibility and removing harmful interference, ANCOM may impose the holder to amend the technical and/or operational parameters mentioned in the frequency assignment authorisations, except for the locations, the holder having the obligation to observe these requirements.

8. The holder will take the necessary actions, on its own expense, to remove the harmful interferences that are caused by or may be imputable to the holder, including but not limited to repairs, insertion of certain additional filters, the correction of errors owed to the improper or faulty installation of the network or to the improper operation of the equipment.

9. The licence holder has the obligation to comply with ANCOM's requirements deriving from:

¹² The final document will detail these requirements based on the provisions of the Terms of Reference adopted following the public consultation procedure.

- a) observance of the provisions of international agreements on the usage of radio frequencies, in general, and the usage of the radio frequencies in border areas, in particular, in which Romania is a party;
- b) accomplishment of the objectives of harmonising the radio spectrum usage at a European level and of international cooperation in the electronic communications field;
- c) carrying out the strategies and policies in the electronic communications field,
- d) and which may consist of: amending the assigned frequencies and/or amending the technical and operational conditions established by licence and/or amending the technical and operational parameters under the authorisations, within a reasonable term established by ANCOM, upon consultation with the holder.

10. In border areas, the licence holder will use the allocated frequency sub-bands based on the international coordination with the communications administrations of the involved countries. To this end, the holder will provide ANCOM – on its own expense – with the necessary support with a view to the smooth performance of the international coordination of the frequency usage.

11. The licence holder has the obligation to provide ANCOM all the information and materials requested, for the latter to fulfil the legal attributions within its scope of competence.

12. The licence holder has the obligation to provide ANCOM all the information and materials the latter deems relevant in order to fulfil its legal attributions regarding the surveillance and control of compliance with:

- a) the conditions and obligations under the licence or in the special legislation in the electronic communications field,
- b) the technical and operational parameters in the frequency assignment authorisations.

13. The holder has the obligation to allow the access of the ANCOM control personnel in any location where equipment, apparatus and electronic communications installations belonging to the network are situated, with a view to their inspection for the purpose of verifying compliance with:

- a) the conditions and obligations set under the Licence or in the legislation in the electronic communications field;
- b) the technical and operational parameters in the frequency assignment authorisations.

14. The licence holder has the obligation to pay to ANCOM, for the whole validity period of the licence, the spectrum usage tariff, in the amount and within the deadlines established according to the regulations in force.

IV. Terms

1. The usage right, under this licence, is granted until 31.12.2025, excepting the situation when the National Table of Frequency Allocations is amended.

2. The validity of the frequency usage right may be extended under the legal provisions, upon the holder's written request, submitted at least 18 months – but not earlier than 24 months – prior to the expiration of the licence validity.

3. The deadline for putting in operation the base stations is established in accordance with the provisions of subchapter 7 of Chapter II in the licence.

V. Final Provisions

1. The provisions of this licence are completed de jure by the legal provisions in force in the electronic communications field.

2. Licence amendment, transfer, suspension or revoking is performed in compliance with the legislation in force and with the conditions envisaged in licence issuance.

3. In the case of full or partial transfer of the usage rights under this licence, the usage destination of the frequencies for which this licence has been issued cannot be changed.

4. The non-compliance with the technical and/or operational conditions, as well as with the obligations provided in this Licence, including in its annexes, or the non-observance of any other legal provisions and/or technical regulations applicable to this Licence lead to the enforcement of the sanctions provided for in the legislation in force, which consist of the application of contravention fines, suspension of the right to use the radio frequency spectrum, for a specified term or the revoking of the usage right, as the case may be.

5. The failure to pay in due term the spectrum usage tariff, according to the law, entails the enforcement of delay penalties, and, for exceeding the legal payment term determined under the terms of the normative acts in force, ANCOM may dispose the suspension and/or revoking of the Licence.

6. The frequency assignment authorisations issued under the licence are part of this licence.

7. The present Licence does not replace other agreements or approvals that are necessary, according to the national legislation in force from other fields than electronic communications, for the carrying out of the holder's activity in Romania during the validity period of the usage rights.

President,

Technical and operational conditions for the radio frequency usage¹³

¹³ The specific technical and operational conditions for the usage of the radio frequency sub-bands assigned by licence will be extracted from the Terms of Reference, taking into account the frequency band where the usage rights won following the selection procedure are situated.

[*heading of the issuer*]

LETTER OF GUARANTEE

for the participation with a bid in the competitive selection procedure for awarding the rights to use the radio frequencies in the 3410-3800 MHz band

To:

National Authority for Management and Regulation in Communications, 2 Delea Noua Street, Sector 3, Bucharest

Regarding the competitive selection procedure for awarding the rights to use the radio frequencies in the 3410-3800 MHz bands, we [*name and headquarters of the bank/insurance company*], unconditionally and irrevocably commit hereby toward the National Authority for Management and Regulation in Communications (ANCOM) to pay, within maximum 10 working days, the amount of

[*amount in letters*] ([*amount in figures*]) euro,

executable in RON, at the exchange rate established for the payment day by the National Bank of Romania, upon the first and plain written request of ANCOM, which does not have the obligation to justify the respective request provided that it specifies therein that the amount owed to, and requested by, ANCOM is thereby requested because of the existence of one of the situations described below:

- (1) [*name of the candidate*], being declared winner of the selection procedure, does not pay in due time one the owed final price representing the licence fee;
- (2) [*name of the candidate*], being declared winner of the selection procedure, waives the right to be awarded the licence for the use of radio frequencies;
- (3) [*name of the candidate*] breaches the rules concerning the participation in the selection procedure, set out by ANCOM.

This guarantee is valid until 31 December 2015.

This guarantee letter is governed by the Romanian law.

The Romanian Courts of Law are competent to settle any disputes arising in relation to the present guarantee letter. Endorsed by the Issuer _____ on [*day/month/year*].
(*authorised signature*)