



Český telekomunikační úřad
Czech Telecommunication Office

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**Invitation to Tender for the award of rights
to use radio frequencies to provide
an electronic communications network
in the 3600–3800 MHz band**

The English translation of this document is for information only and is not legally binding. Please note that in the event of any discrepancy between the English and the Czech version, the latter will take precedence.

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1 TENDER BACKGROUND

In determining the terms and conditions of the Tender¹, the Office drew on the process of European harmonization of spectrum management coordinated through CEPT (European Conference of Postal & Telecommunications Administrations) and Commission bodies the RSPG (Radio Spectrum Policy Group) and the RSC (Radio Spectrum Committee). The fundamental harmonization document is Commission 2008/411/EC on the harmonization of the 3400–3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community², as amended by Commission Implementing Decision 2014/276/EU of 2 May 2014 on amending Decision 2008/411/EC on the harmonization of the 3400–3800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community³.

The Office, as the competent body of state administration under Section 108(1)(o) and (p) of the Act and under Section 146 of the Rules of Administrative Procedure, hereby announces this Tender in accordance with Section 21 of the Act with regard for the requirement of ensuring that the radio frequencies are used purposefully according to Section 15(1) and (2) of the Act and in accordance with **RSUP 7**, through which the number of rights to use radio frequencies in the above-mentioned parts of the radio spectrum is limited.

The proposal of “Invitation to Tender for the award of rights to use radio frequencies to provide an electronic communications network in the 3600–3800 MHz band” was subject of three public consultations according to Section 130 of the Act. These proposals were published on the Office’s web page for public consultations on March 5, 2015, March 2, 2016 and November 11, 2016. All comments were settled and published on the Office’s web page. The Office took all relevant comments into consideration in preparation of the final conditions of this Tender.

In accordance with the Act, the Office presented the consultation version of the proposed conditions of the Tender to the Office of Fair Trading (hereinafter referred to as “the OOFT”). After the settlement of the third public consultation, the Office presented the modified conditions of the Tender to the OOFT on February 10, 2017. The chairman of the OOFT did not have any comments to the proposed conditions as he expressed in his letter from March 13, 2017.

¹ Terms beginning with a capital letter are defined in Chapter 14 of the ITT.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0411&rid=1>

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0276&rid=1>

2 OBJECTIVES OF THE TENDER

The purpose of the Tender is, with consideration for the documents referred to in Chapter 1 of the ITT, to facilitate the use of a coherent set of radio frequencies from the 3600–3800 MHz band and thereby to create conditions under which the following objectives can be effectively achieved:

- the development of new electronic communications services via high-speed wireless networks, primarily high-speed broadband Internet access services, and to create the conditions for technological innovation;
- to ensure the effective use of radio frequencies in the 3600–3800 MHz band to the benefit of consumers by awarding the rights to allocated radio frequencies to ensure the technologically neutral public electronic communications networks of a fixed or mobile radiocommunication service⁴ for the provision of electronic communications services;
- support for competition in the sphere of the electronic communications services provided through public electronic communications networks at a wholesale and retail level, with impact on the entire electronic communications market, that is targeted at being of benefit to end users;

2.1 Developing new services and supporting technological innovation as a tool to increase competitiveness

The implementation of new technologies and the building of high-speed networks are among the top priorities in European countries, the Czech Republic included. According to the document entitled *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "A Digital Agenda for Europe"*⁵, as compiled by the European Commission, the development of high-speed networks (including wireless networks) helps ensure that the economy grows reliably and that jobs are created.

Similarly, it follows from the document entitled *"ICT and the Competitiveness of the Czech Republic"*⁶, compiled for the Government of the Czech Republic, that electronic communications networks provide a basis for the "technological infrastructure necessary to increase the competitiveness of the Czech Republic".

The document entitled *"Digital Czechia 2.0: The way to a digital economy"*⁷ further details the objectives defined in the "Digital Agenda for Europe", the priority being to bridge the "digital divide" in access to high-speed Internet between rural and urban areas.

The radio spectrum which is the subject-matter of the Tender is principally suitable for capacity coverage of locations with a high concentration of potential users and operation throughout the Czech Republic. The Office expects that this radio spectrum will mainly be used to deploy high-speed access networks under harmonized conditions.

The terms and conditions which determine the minimum population coverage are found in the terms and conditions of purposeful use of the radio spectrum which are defined in Chapter 7.4 of the ITT.

⁴ MFCN – Mobile Fixed Communication Network.

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>

⁶ http://www.cssi.cz/cssi/system/files/cssi/Studie ICT_a_konkurenceschopnost_CR_20101003.pdf (Czech version only)

⁷ http://www.vlada.cz/assets/media-centrum/aktualne/Digitalni-Cesko-v--2-0_120320.pdf (Czech version only)

2.2 Ensuring effective utilization of the frequency spectrum

The Office has decided to offer in the Tender all radio frequencies in the 3600–3800 MHz band in accordance with the objective of ensuring the effective utilization of the individual parts of the frequency spectrum.

The Office has defined in the subject-matter of the Tender the frequency segments being offered with regard to the maximum efficiency of utilization of the allocated blocks for the wireless radio network and with regard to the fact that this band, in which there is no collision with other users of the frequency spectrum, is prospective for the future deployment of electronic communications networks with very high access speed. For this reason the Office has decided to define Auction Lots by using channel widths which are several times larger than the channel width of 5 MHz defined in RSUP 7 such that the allocations of radio frequencies make it possible to operate technology which provides sufficient transmission capacity as suitable for the provision of electronic communications services which would satisfy the current and the future needs of the users of services provided through such radio frequencies, assuming rising demand for continually increasing volumes of data transmissions.

At the same time, the Office has decided to set different spectral limits for Applicants who are Incumbent Operators and for other Applicants. The Office's aim is to ensure the effective use of frequencies in the 3600–3800 MHz band and to encourage competition such that, in addition to developing existing electronic communications networks which use radio frequencies in the 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz bands, through which Incumbent Operators provide services at a retail and wholesale level, new public communication networks can also be developed, through which electronic communications services can be provided at a wholesale and retail level. With regard to the current spectral facilities held by Incumbent Operators, the Office supposes that the scope of the radio frequencies that are the subject-matter of this Tender which go beyond the spectral limit determined for Incumbent Operators in Chapter 6.1 of the ITT, it will be unnecessary for developing the mobile networks of Incumbent Operators for a significant part of the period of duration of allocation. They should therefore be allocated to Applicants that are not authorized to use radio frequencies in the above-mentioned mobile frequency bands. The Office explicitly states that when setting the spectral limits in this Tender, it also took into consideration the range of the frequencies which Incumbent Operators won in the tender for the award of rights to use radio frequencies to provide a public communication network in the 1800 MHz and 2600 MHz band announced on 8 March 2016.

2.3 Encouraging competition on the electronic communications market and creating conditions for possible market entry by other undertakings

Support for effective and sustainable competition in the sphere of electronic communications services provided via public electronic communications networks in accordance with the Union's Radio Spectrum Policy is another objective of the tender.

Following on from the Tender background described in Chapter 1 of the ITT, and in particular to encourage competition at the infrastructure level, the Office has determined the distribution of frequencies such that in the case of sufficient interest, the frequencies which are the subject of this Tender may be distributed among five Applicants in such a way that up to five separate national radio electronic communications networks that use these frequencies may be operated. At the same time, the Spectral Limits are set in this Tender in such a way that the radio frequencies in the 3600–3800 MHz band are distributed among a minimum of three radio frequency Allocation Holders, whether they emerge from this Tender or from future tenders.

3 BASIC PRINCIPLES OF THE TENDER

- a) The Tender will take the form of an Auction. The selected Auction format is simultaneous multiple-round auction (hereinafter referred to as "SMRA"), which will be conducted by means of the Electronic Auction System. The principles of the Auction are described in Chapter 9 of the ITT and in the Auction Rules, which constitute Appendix 4 to the ITT. The sole criterion for evaluation of Applications which comply with the terms and conditions of participation under Chapter 8 of the ITT is the result of the Auction.
- b) Only interested parties which meet the qualification requirements for participation specified in Chapter 8 of the ITT may register for the Tender. In order to participate in the Tender, an Application must be submitted that unconditionally meets the requirements of this ITT. The Applicant is not qualified to adjust or condition the requirements set out in this ITT in the Application in any way whatsoever.
- c) The Tender will take place in three stages: (1) Qualification, (a) Auction and (3) the procedure of the Office after the Closing of the Auction. In the first stage, the Office considers whether the Applicants that submitted their Applications by the end of the time limit for the submission of Applications determined in Chapter 5 of the ITT satisfy the terms and conditions of participation in the Tender, as determined in Chapter 8 of the ITT. Should an Applicant fail to satisfy those terms and conditions, or should it cease to satisfy them at any time during the Tender, the Office will decide to exclude such an Applicant from further participation in the Tender. Lodging an appeal against a decision to eliminate an Applicant from further participation in the Tender does not have suspensory effect. All qualified Applicants take part in the Auction in the second stage of the Tender. The unabridged wording of the rules of the Auction is presented in the Auction Rules, which constitute Appendix 4 to the ITT. In the third stage, the Office will proceed in accordance with Chapter 10 of the ITT.
- d) Each Applicant covers its own costs of participation in the Tender.
- e) The Office will answer written inquiries sent to the contact electronic address aukce@ctu.cz within the time limit set out in Chapter 5 of the ITT. The reference number of this Tender must be stated in all delivered inquiries.
- f) The Office may cancel this Tender and may do so even after passing of the time limit for submitting Applications. Further details of the cancellation of the Tender are presented in Chapter 12 of the ITT.
- g) The Office shall bear no financial obligations or any other obligations arising from the cancellation of this tender.

4 THE ORGANIZER OF THE TENDER

Name of Office:	Czech Telecommunication Office
Represented by:	Mr. Jaromir Novak
Registered seat:	Sokolovska 58/219 190 00 Praha 9
Address for the delivery of documents on paper:	Czech Telecommunication Office P.O.Box 02 225 02 Praha 025
Address for the delivery of documents in electronic format:	E-mail: podatelna@ctu.cz Data box: a9qaats
Company Number (IČO):	70106975
Taxpayer Identification Number (DIČ):	CZ70106975
Number of bank account into which the Security should be deposited according to Chapter 8.3 of the ITT:	6015-725001/0710, maintained at the Czech National Bank (ČNB), Prague Branch
Number of bank account number into which the Total Price should be paid:	19-725001/0710, maintained at the Czech National Bank (ČNB), Prague Branch

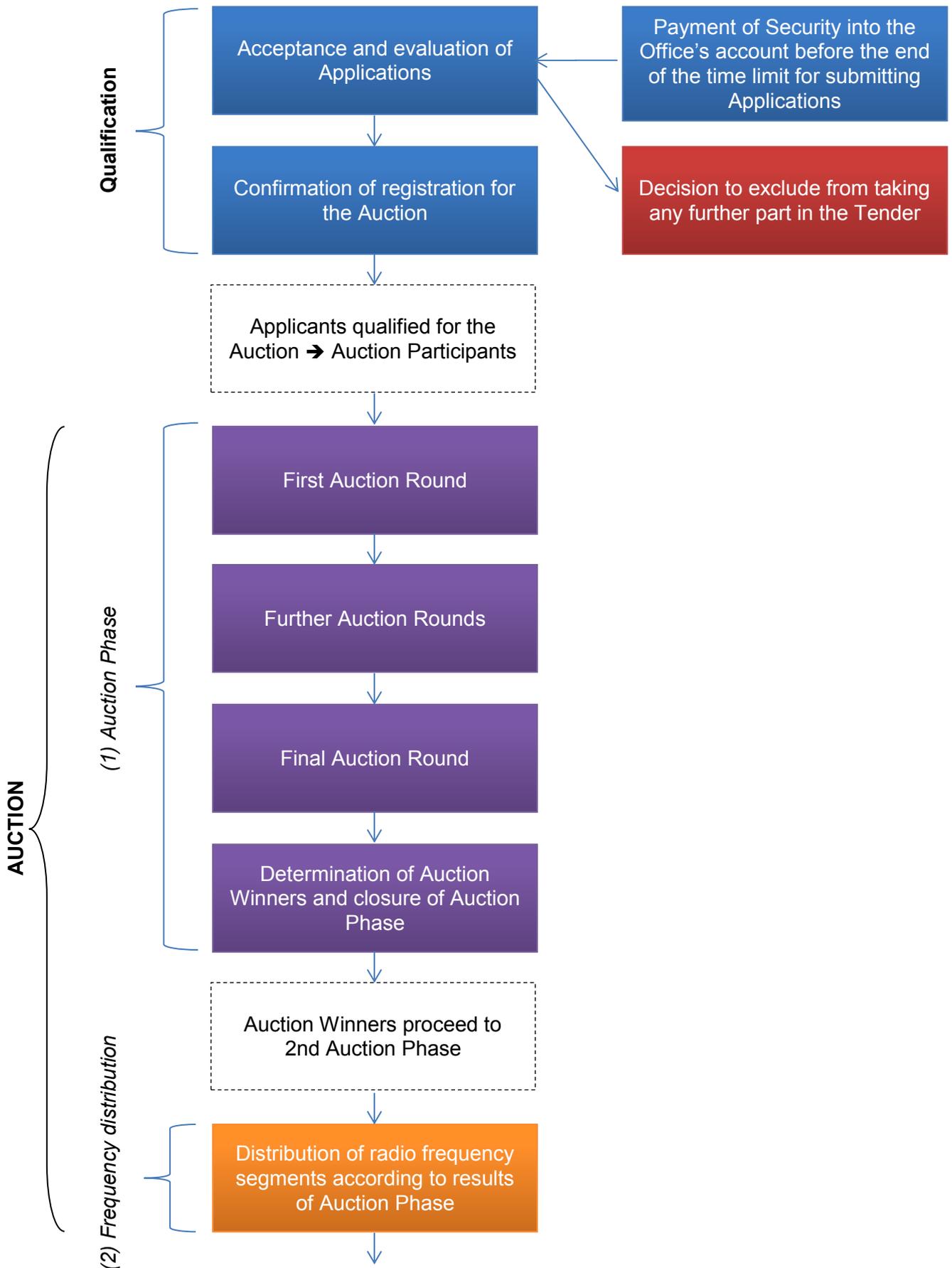
5 TENDER DATES

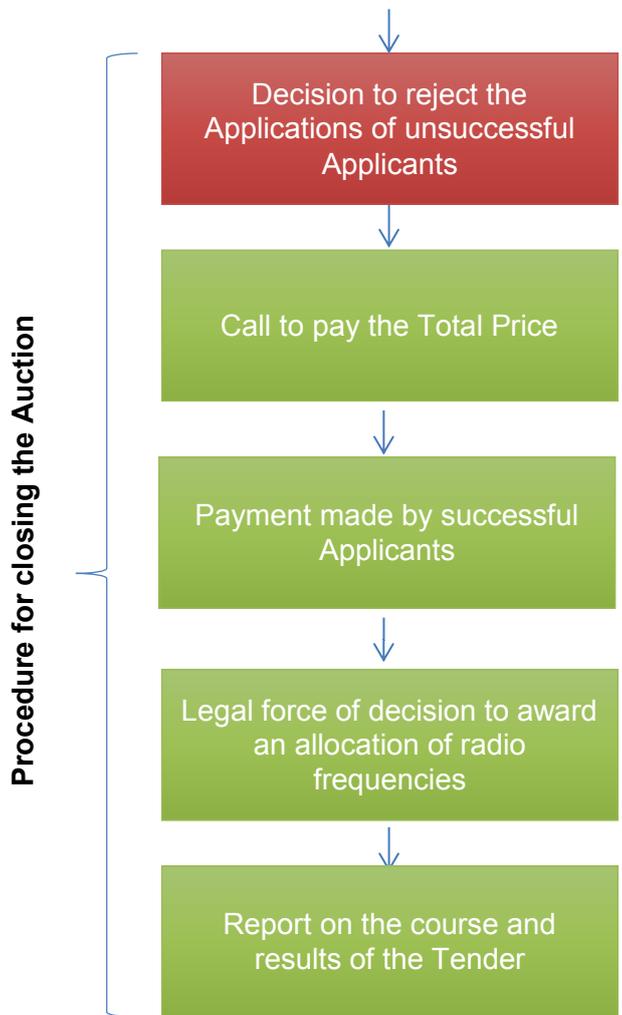
5.1 Time schedule of the Tender

Ref.	Activity	Date
a.	Invitation to Tender	March 27, 2017
b.	Delivery of inquiries according to Chapter 3(e) of the ITT	April 14, 2017
c.	Publication of answers to inquiries according to Chapter 3(e) of the ITT	April 21, 2017
d.	Delivery of Applications for the award of rights to use radio frequencies in accordance with Chapter 8 of the ITT	12.00 p.m. on May 9, 2017
e.	Opening envelopes containing submitted Applications	9:00 a.m. on May 10, 2017 at the registered seat of the Office

The actual time schedule of the Tender will be published on the Office website (www.ctu.cz). Unless provided otherwise, Section 40 of the Rules of Administrative Procedure will apply to the calculation of time limits. It stands, in particular, that the day when the event which determines the commencement of a time limit occurs is not included in the time limit itself. Should the end of a time limit fall on a Saturday, Sunday or public holiday, the next business day will be considered the final day of the time limit. Unless provided otherwise, time limits are set in calendar days.

5.2 Diagram of the sequence of the Tender, divided into individual phases





6 SUBJECT MATTER OF THE TENDER

6.1 The 3600–3800 MHz band

The 3600–3800 MHz band is an unpaired band delineated by the 3600–3800 frequencies. The band is intended for the provision of high-speed electronic communication services throughout the territory of the Czech Republic as part of mobile services under the conditions laid down in RSUP 7.

This frequency band is not currently in use. The operation of fixed point-to-point connections in this band ended in 2011, meaning before the planned award of allocations pursuant to this Tender. None of the allocations of radio frequencies in this band have as yet been issued.

The radio frequencies in the 3600–3800 frequency band will be divided into five abstract blocks of a size of 40 MHz (8 channels of a width of 5 MHz).

The following frequency segments will be allocated in the Tender (the boundaries of the frequency channels are stated):

Radio frequency segment identifier	Frequency range in MHz	Size of segment in MHz
A	3600–3640	40
B	3640–3680	40
C	3680–3720	40
D	3720–3760	40
E	3760–3800	40

The maximum Spectral Limit for Bids for radio frequencies submitted by Applicants that are not Incumbent Operators is set in such a way that the total quantity of radio frequencies allocated to one such Applicant based on this Tender may not exceed 80 MHz.

The maximum Spectral Limit for Bids for radio frequencies submitted by Applicants that are Incumbent Operators is set in such a way that the total quantity of radio frequencies allocated to one such Applicant based on this Tender may not exceed 40 MHz. If, based on the evaluation of the first Auction Round of this Tender, the situation arises in which not even one of the Auction Participants that is not simultaneously an Incumbent Operator submits a Bid, the Spectral Limit for Incumbent Operators will be increased to 80 MHz for all subsequent Auction Rounds. In such case it stands that the total quantity of radio frequencies allocated to one Applicant that is simultaneously an Incumbent Operator may not exceed 80 MHz.

The Auction procedure is regulated in the Auction Rules, which constitute Appendix 3 to the ITT.

6.2 The price for the award of rights to use radio frequencies

The price for the award of rights to use radio frequencies which each Applicant is obliged to pay based on this Tender will equal the sum of the Applicant's Winning Bids.

The size of the Bids in the Auction Phase may not be lower than the minimum price of the Auction Lots specified in this Chapter 6.2 of the ITT.

The minimum price for each Auction Lot A to E is set at CZK 29,000,000 (twenty-nine million Czech crowns).

The minimum price has been determined based on a benchmark analysis of the prices obtained for the award of rights to use radio frequencies in the 3400–3800 MHz band in relevant European countries. The benchmark was compiled as at 24 October 2016 and, with respect to the relevant prices, included auctions for spectrums in the 3400– 3800 MHz band carried out from the year 2008 onwards, when the European harmonization decision for this band was adopted².

In respect of the fact that this Tender concerns frequencies with national usage within the territory of the Czech Republic, the results of auctions or the prices achieved for regional allocations without the possibility of obtaining national allocations (for example, by obtaining allocations in all regions of the relevant country) were eliminated from the benchmark. At the same time, auctions in which the price obtained significantly exceeded the prices obtained in auctions in the other countries included in the benchmark were also eliminated from the benchmark.

Auctions for frequencies in the 3400–3800 MHz bands in the following countries met the criteria outlined above: Austria (2008), Austria (2009), Sweden (2009), Slovakia (2015, 2016) and Hungary (2016).

The price benchmark took into consideration the number of inhabitants in the relevant country – the unit price was determined in EUR per MHz per head of population, in that it also respected the value according to purchasing power parity. The length of the allocation in individual auctions was also taken into account in the price benchmark. The Minimum Price was calculated from the reference price identified by converting into national currency and taking into consideration the relevant length of allocation.

7 CONDITIONS AND OBLIGATIONS RELATED TO THE AWARD OF THE RIGHT TO USE RADIO FREQUENCIES

The conditions associated with the award of the right to use radio frequencies, including the conditions of the efficient utilization of the frequencies, and the obligations undertaken by the Applicant during the tender will be laid down by the Office in a decision on the award of radio frequency allocation issued based on the results of the tender and, as the case may be, in other documents issued based on the Act.

7.1 The conditions of using allocated radio frequencies

The radio frequencies being offered in the Tender are intended for use throughout the territory of the Czech Republic.

Procedure will respect the Act in the case of investigations into complaints regarding interference with radio reception as a result of the operation of transmitting radio stations that use allocations of the radio frequencies that are involved in this Tender.

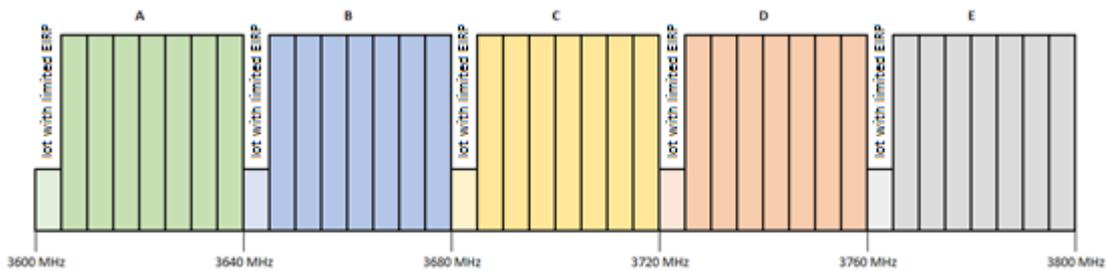
The conditions of using radio frequencies in the 3600–3800 MHz band are laid down in RSUP 7 and will be projected in IO or, where appropriate, in other documents issued pursuant to the Act. A public communications network or a part thereof which is operated with the use of frequencies in the 3600–3800 band must comply from the technical perspective with the conditions laid down in Commission Decision 2008/411/EC², as amended by Commission Implementation Decision 2014/276/EU³, and in Decision ECC/DEC/(11)06⁸ and must satisfy the conditions laid down in ETSI standards or, where appropriate, in other related Commission, CEPT or ITU documents within the scope of the standard chosen by the Applicant.

The conditions for using the 3600–3800 MHz band are coordinated in the Czech Republic in accordance with the foregoing documents, based on which primarily the following conditions of use are defined:

- Stations in the 3600–3800 MHz band work in the simplex regime;
- The basic technical parameters for base stations, termed the block edge mask (BEM), are determined in Commission Decision 2008/411/EC. These minimum technical requirements are required to ensure the coexistence of neighbouring networks in the case that no bilateral or multilateral agreements are in place between the operators of such neighbouring networks.
- The limit value of the EIRP (Equivalent Isotropically Radiated Power) for the base stations within a block is set at 68 dBm/(5 MHz), with the exception of the lowest 5 MHz of each frequency segment according to Chapter 6.1 of the ITT, where the output level is limited to +4 dBm/(5 MHz).
- The EIRP limit value limitation within a block for the lowest 5 MHz of each frequency segment according to the third point of this Chapter 7.1 of the ITT will not be applied between neighbouring frequency segments in the case that the same Applicant becomes the radio frequency Allocation Holder of these frequency segments. This limitation may also be moderated or entirely eliminated in the case that the Allocation Holder appends to the application for IO the consent of the concerned Allocation Holder of the (lower) neighbouring frequency segment. In such case, the Office will specify in the IO the conditions for preventing interference in this frequency segment of another Allocation Holder.

⁸www.erodocdb.dk/doks/filedownload.aspx?fileid=3842&fileurl=http://www.erodocdb.dk/Docs/doc98/official/pdf/ECCDEC1106.PDF

- The other requirements laid down in Commission Decision 2008/411/EC are not affected by this.



7.2 The issuance of individual authorizations (IO)

Commencing the use of the radio frequencies allocated based on the results of this Tender is conditional on the issuance of IO. Inter alia, the following additional conditions are set for the process of IO issuance:

- a) The obligation of Allocation Holders to invariably provide the Office at the end of the calendar month⁹ with a list (notification) of base stations operated at that time in a format which is suitable for a batch calculation of coverage¹⁰, including all changes to the data specified below to have occurred since previous notification as relating to base stations that have already been put into operation. A description of the base stations in operation according to these notifications will be an integral part of the IOs. Notifications will comprise the following data for each base station:
 1. District identifier according to Appendix 4 of the ITT;
 2. Municipality identifier according to Appendix 4 of the ITT;
 3. Unique name of the site (location). This name must be maintained even if there is a change in the technical parameters of the station;
 4. Address of the site;
 5. Geographic coordinates of the site (WGS 84 system, in degrees, minutes, seconds);
 6. Altitude of the site above sea level (m);
 7. The radio frequency of the transmitter and the receiver (frequency range in MHz);
 8. Height of the centre of the antenna system above the ground (m);
 9. Radiation characteristics of the antenna system (code description according the HCM agreement, Appendix 6¹¹);
 10. Azimuth of maximum radiation in each sector (°);
 11. Mechanically-set elevation in the radiation azimuth in each sector (°);
 12. Maximum radiated power ERP in individual sectors (W).
- b) The IO holder is obliged to report in notifications according to subparagraph a) the precise date and time of commencing or ending operation of individual transmitting radio equipment (network base stations) and of significant facts and situations to concern the operation of terminals, for example stress tests, etc.

⁹ This time limit may be amended subject to mutual agreement with the Office.

¹⁰ In csv format (comma separates columns, tenths are separated by point) or, where appropriate, in another format agreed with the Office.

¹¹ http://www.hcm-agreement.eu/http/englisch/verwaltung/index_berliner_vereinbarung.htm

7.3 Technologies and services for which the rights to use radio frequencies are to be awarded

In compliance with the principle of technological neutrality, the Office does not lay down any conditions or limitations in respect of the technologies which the Applicant intends to use for the provision of publicly available electronic communications services using the allocated radio frequencies over and above the conditions of using allocated radio frequencies laid down in Chapter 7.1 of the ITT. This is without prejudice to the provisions of RSUP 7.

All and any equipment operated using the frequencies that are the subject of this Tender must meet all applicable technical standards and other generally binding legal or other regulations in force at that time for the entire duration of its operation.

7.4 Conditions for the effective use of radio frequencies

Binding criteria from the perspective of meeting the conditions of effective utilization of the radio frequencies acquired in the tender are specified for the purposes of using radio frequencies:

- commencement of effective utilization of radio frequencies, i.e. commencing the provision of publicly available commercial electronic communication services via public communication networks operated using the radio frequencies allocated in this Tender, within 2 years of the date on which a decision to award an allocation of radio frequencies enters into legal force. To fulfil this condition, the Allocation Holder is obliged to use a minimum of 50 % of the width of the frequency allocation acquired in this Tender in order to provide publicly available commercial electronic communication services;
- commencement of effective utilization of radio frequencies in accordance with Section 22b(2) of the Act, i.e. the provision of commercial electronic communication services via public communication networks using the full range of radio frequencies allocated in this Tender, within 4 years of the date on which a decision to award an allocation of radio frequencies enters into legal force;
- ensuring coverage of the territory with an offer of commercial publicly available electronic communication services via public communication networks using the radio frequencies allocated in this Tender – development criteria – in defined time limit and scope:

Size of municipality	Development criteria valid as of 3 years following the date on which a decision to award an allocation enters into legal force until 5 years following the date on which a decision to award an allocation enters into legal force	Development criteria valid as of 5 years following the date on which a decision to award an allocation enters into legal force for the entire remainder of the period of validity of the allocation	
	Minimum number of covered communities according to Appendix 4 to the ITT	Minimum number of covered communities according to Appendix 4 to the ITT	Minimum number of districts covered in the Czech Republic
Municipality with population of > 2,000 and ≤ 5,000	—	40 % of communities	30 districts
Municipality with population of > 5,000 and ≤ 10,000	10 % of communities	45 % of communities	30 districts

The record date for determining the size of a municipality is 31. 12. 2014. A list of municipalities in the Czech Republic and their division according to the criteria of number of inhabitants is presented in Appendix 4 to the ITT.

Coverage of a municipality determined by size is understood to be the operation of at least one base station with valid IO according to Chapter 7.2 of the ITT.

The construction of one separate base station that uses the radio frequencies acquired in this Tender is required for each municipality; therefore, one base station may only be counted for one municipality for the purposes of checking satisfaction of the conditions of this Chapter 7.4 of the ITT.

It must also stand that a high-speed Internet access service, offered as a public electronic communication service, must be provided via this part of the public electronic communication network for the entire duration of performing development criteria. Such a public electronic communication service must be provided with the use of radio frequencies which are the subject of this Tender either by the Allocation Holder itself or by its direct wholesale partner, with which the Allocation Holder has entered into a wholesale contract that encompasses any type of wholesale cooperation on a commercial basis. These conditions may also be satisfied by renting the frequencies acquired in this Tender if the parameters of the offer for end users comply with the requirements laid down in this Chapter 7.4 of the ITT.

Coverage of a district is understood to be the coverage of at least one municipality determined by size according to the preceding three paragraphs of this Chapter 7.4 of the ITT.

The Office will verify satisfaction of the conditions of effective use of radio frequencies based on the information provided by the Allocation Holder. The Allocation Holder will invariably submit such information at the very minimum at the time of having satisfied the development criteria specified above. The Office is authorized to verify the information by way of an inspection of its own according to Chapter 7.5 of the ITT and in the case of divergence between the information provided by the Allocation Holder and the information ascertained by way of its own inspection, to draw on the information ascertained by way of its own inspection.

7.5 Inspecting satisfaction of the conditions for the effective utilization of radio frequencies

The Office inspects satisfaction of the effective utilization of radio frequencies according to Chapter 7.4 of the ITT based on the information submitted by the Allocation Holder for the purposes of the issuance of IO according to Chapter 7.2 of the ITT.

The Office will inspect the availability of an offer having the defined minimum service speed laid down in Chapter 7.4 of the ITT according to the methodology specified in the document entitled “*Stanovení základních parametrů a měření kvality služby přístupu k síti internet*”¹² (Determining the basic parameters and measuring the quality of an Internet access service). If it is necessary to verify the real parameters of the provided services, the Office will undertake measurements according to the “*Měření datových parametrů sítě pomocí TCP protokolu*” (Measuring the data parameters of a network using TCP protocol) method, which is published on the Office website¹³. The Office will inform the Allocation Holder of the results of the inspection. Inspections of satisfaction of the conditions of effective utilization of radio frequencies proceed in accordance with Act No. 255/2012 Coll., on inspection (Inspection Code). The Office will also conduct an inspection of satisfaction of the conditions of effective utilization of radio frequencies according to Chapter 7.4 of the ITT at the request of the Allocation Holder.

7.6 The modification, loss of validity, conveyance, transfer and lease of a radio frequency allocation

The modification, loss of validity, conveyance, transfer or lease of a radio frequency allocation is regulated by the provisions of Sections 22a, 22c, 22d and 23 of the Act.

In order to ensure that any transfer of an allocation of radio frequencies does not disrupt competition or threaten the effectiveness of utilization of radio frequencies, an allocation may be transferred under the terms and conditions laid down in Section 23 of the Act and cumulatively under the following conditions:

- the smallest unit which may be transferred is considered 5 MHz; and
- the transferee of radio frequencies acquired based on this Tender must, for a period of 5 years following the date on which the allocation of radio frequencies enters into legal force, satisfy the conditions laid down in Chapter 6.1 of the ITT which would relate to the transferee if it were an Applicant, with consideration for the conditions of participating in the Tender laid down in Chapter 8.5 of the ITT. If the transferee is a member of a Business Grouping, this Business Grouping may not exceed a maximum Spectral Limit of 40 MHz if the member of the Business Grouping is also an Incumbent Operator that acquired an allocation of radio frequencies based on this Tender, or 80 MHz if, based on evaluation of the first Auction Round, the situation arises in which not even one of the Auction Participants that is not simultaneously an Incumbent Operator submits a Bid and the Spectral Limit for

¹² http://www.ctu.cz/cs/download/datovy_provoz/rizeni_datoveho_provozu_stanoveni_zakladnich_parametru_18_12_2014.pdf (Czech version only)

¹³ http://www.ctu.cz/cs/download/datovy_provoz/rizeni_datoveho_provozu_metodika_mereni_17_12_2014_v0_4_5.pdf (Czech version only)

Incumbent Operators is increased to 80 MHz or the member of a Business Grouping is a successful Applicant in this Tender and not an Incumbent Operator in accordance with the ITT Proposal.

Only an Allocation Holder may be the holder of an IO to use the radio frequencies that are the subject of this Tender.

The rental of the rights arising from individual authorizations to use radio frequencies will only be made possible in an IO to use the radio frequencies that are the subject of this Tender with the prior consent of the Office, in accordance with Section 18(1)(h) of the Act.

The Office will grant consent to the renting of the rights arising from IOs to use the radio frequencies that are the subject of this Tender if the rental of rights arising from IOs does not lead to the lessee of the rights exceeding the Spectral limits, laid down in Chapter 6.1 of the ITT, that would relate to the lessee if it were the Applicant, with consideration for the conditions of participating in the Tender according to Chapter 8.5 of the ITT. If the lessee is a member of a Business Grouping, the Spectral Limits laid down in Chapter 6.1 of the ITT may not be exceeded within this grouping. For the purposes of renting authorization only for a specific geographical area, the Spectral Limits in each such geographical area will be considered separately.

It is required, with regard to the provisions of Section 19(4) and Section 22b(1) of the Act, for an Allocation Holder (Applicant and/or its successor or another party to which an allocation of radio frequencies is transferred, conveyed or rented) to comply with or, for lasting conditions, continue to comply with, for a period of 5 years following the date on which the allocation enters into legal force, any of the conditions based on which the Applicant was awarded an allocation of radio frequencies. This is a matter of adhering to the obligations accepted in accordance with Chapter 7.9 of the ITT irrespective of disposal of the frequencies which such obligations concern.

In order to ensure that competition is not disrupted and that the effectiveness of utilization of radio frequencies or any other objective of the Tender is not threatened and with regard to the provisions of Section 19(4) and Section 22b(1) of the Act, it is essential that an Allocation Holder (Applicant and/or its successor or another party to which an allocation of radio frequencies is transferred, conveyed or rented) continue to comply, for a period of 5 years following the date on which the allocation enters into legal force, with all of the conditions of economic independence of Allocation Holders of radio frequencies and of the manner of participating in the Tender laid down as conditions for participation in Chapter 8.5 of the ITT.

The procedure of the Office according to Section 23(5) of the Act is unaffected by the conditions according to this Chapter 7.6 of the ITT.

7.7 Period of validity of radio frequency allocations

Allocations of the radio frequencies which are the subject of the Tender will be awarded with effect until **30 June 2032**.

7.8 Conditions resulting from international agreements on the use of radio frequencies

The use of radio frequencies is contingent on compliance with the conditions laid down in binding international and bilateral agreements which coordinate the technical parameters of transmitters on the borders of the Czech Republic. International coordination of the radio frequencies of terrestrial mobile services and fixed services is governed by the HCM Agreement, as amended¹¹. Agreements on the mutual coordination of radio frequencies between the Czech Republic and surrounding states for the 3600–3800 MHz band which are entered into in the future shall override the HCM Agreement.

7.9 The refarming obligation

7.9.1 Refarming the 3400–3800 MHz frequency band

Applicants are aware that the objective of the Office in this Tender is to ensure the effective utilization of radio frequencies in the 3600–3800 MHz band and in the entire 3400–3800 MHz band by allowing the future unification of the radio frequency allocations of individual Allocation Holders within the 3400–3800 MHz band as a whole. In order to achieve this objective, the Office lays down for the holders of allocations issued based on this Tender the refarming obligation such that, after the issuance of further allocations in the 3400–3800 MHz band based on a future tender or future tenders, the entire 3400–3800 MHz band could be refarmed, meaning the re-division of the radio frequencies allocated in this frequency band such that the integrity of the radio frequency allocations issued to a single Allocation Holder in this band is secured to the maximum possible extent.

7.9.2 The obligation to submit an application for a change of allocation based on a Call

Every Applicant undertakes to submit to the Office a full application for the change of its allocation of radio frequencies issued based on this Tender which complies with all statutory particulars and which complies with the content requirements described hereunder in this Chapter 7.9.2 of the ITT, at the Call of the Office, in accordance with Section 22a of the Act or an analogous provision of the Act effective at the time of issuance of the Call, which allows an Allocation Holder to change its allocation; Applicants shall do so not later than within 60 days of the date of delivery of the Call.

The Office permits the possibility of agreement among all Allocation Holders of radio frequencies in the 3400–3800 MHz band on the specific location of their undivided radio frequency segments. In such a case, all Allocation Holders of radio frequencies in the 3400–3800 MHz band must submit a common Agreement on Targeted Division to the Office as an appendix to each application for a change of allocation according to this Chapter 7.9.2 of the ITT. This shall be without prejudice to the time limit for submitting an application according to this obligation.

Applications according to this obligation shall describe the change of specification of radio frequencies such that the specification of radio frequencies corresponds to the Agreement on Targeted Division or information on the targeted division of radio frequencies in the 3400–3800 MHz band specified by the Office in the Call if the Agreement on Targeted division is not concluded within the sixty-day time limit for submitting applications for a change of allocations that commences with the delivery of the Call.

Applicants further undertake to take all steps and measures within procedure regarding their applications under this obligation and to provide all coaction required to ensure that the Office is able to satisfy the application with a final decision and change the allocations of radio frequencies of individual Allocation Holders in the 3400–3800 MHz band in the way described above.

Applicants undertake to cease using the radio frequencies that are no longer allocated to them when the decision of the Office to change the allocation of radio frequencies enters into legal force and to do so within one month of the date of delivery of notification from the Office of the legal force of the final decision on the change of allocation according to the refarming obligation in the 3400–3800 MHz band. The Office will inform the Allocation Holder in writing of the legal force of the final decision on the change of allocation according to the refarming obligation in the 3400–3800 MHz band.

7.10 Refarming procedure

The Office is authorized to call on an Allocation Holder to submit an application according to Chapter 7.9.2 of the ITT if the following conditions are met:

- (i) the use of the 3400–3800 MHz band is subject to the harmonization plans of the European Union for the use of the radio spectrum; and, at the same time
- (ii) the Office has finally and conclusively decided on the issuance of allocations for all radio frequencies in the 3400–3800 MHz band.

The Office may issue a Call at any time within sixty days of the date of legal force of the final allocation of radio frequencies in the 3400–3800 MHz band based on a tender held after the closure of this Tender. The Office may issue a Call following fulfilment of the conditions laid down in this Chapter of the ITT by publishing this on its website and subsequently delivering it to all Allocation Holders. The time limit for submitting applications begins for individual Allocation Holders at the time of delivery of the Call of the Office to such Allocation Holder.

The Call must also include information about the target division of radio frequencies from which the change of specification of radio frequencies for which the Allocation Holder is to apply is made clear. If an Allocation Holder based on this Tender is not the holder of any frequency segment in the 3400–3800 MHz band on the date of delivery of the Call of the Office, information about the target division of radio frequencies cannot determine that the specification of the radio frequencies in the allocation of such an Allocation Holder, acquired based on this Tender, will be outside the scope of the 3600 –3800 MHz band, which is the subject of this Tender.

Allocation Holders of radio frequencies in the 3400–3800 MHz band have the opportunity to agree among themselves on the target division of radio frequency segments in the 3400–3800 MHz band; this they must do within a time limit of sixty days following the submission of applications for a change of allocations, commencing upon the delivery of the Call. Such an Agreement on Target Division must be freely made by all Allocation Holders in the 3400–3800 MHz band with the sole objective of effectively dividing the radio frequency segments in this band. The Agreement on Target Division must respect the requirement of integrity of allocations.

An Allocation Holder is obliged, within a time limit of sixty days following delivery of the Call:

- (i) to submit to the Office an application for a change to its radio frequency allocations in accordance with the refarming obligation which specifies the change of radio frequencies under an Agreement on Target Division, together with one counterpart of the Agreement on Target Division; or
- (ii) if it does not submit an Agreement on Target Division, to submit an application for a change to radio frequency allocations in accordance with the refarming obligation which specifies the radio frequencies according to information on the targeted division of radio frequencies in the 3400–3800 MHz band specified by the Office in the Call.

Allocation Holders must submit an application according to this chapter on the form appended as Appendix 5 to the ITT.

For the sake of precluding doubt, if any Allocation Holders submit an application under point (i) above and others under point (ii) above or if the applications for a change of allocation are for any reason mutually incompatible, the Office is authorized to issue a Call to one, some or all Allocation Holders to amend their applications for a change of allocation, remove flaws in the applications or submit new applications such that the refarming objective can be met. Allocation Holders are obliged to satisfy this second Call of the Office within 10 days of the delivery thereof.

The Office will inform the Allocation Holder in writing of the legal force of the final decision on the change of allocation according to the refarming obligation in the 3400– 3800 MHz band.

Applicants shall cease using the radio frequencies that are no longer allocated to them when the decision of the Office to change the allocation of radio frequencies enters into legal force and shall do so within one month of the date of delivery of notification from

the Office of the legal force of the final decision on the change of allocation according to the refarming obligation in the 3400–3800 MHz band.

Each Allocation Holder shall cover its own costs associated with fulfilling the refarming obligation and any subsequent implementation within the scope of its own communication network.

8 RULES AND CONDITIONS OF PARTICIPATION IN THE TENDER (QUALIFICATION)

8.1 Qualification requirements

8.1.1 General rules of proving qualification

The Office, in accordance with the provisions of Section 21(2) of the Act, lays down the terms and conditions of participation in the Tender with consideration for meeting the objectives laid down in Section 5(2) through (4) of the Act and in accordance with the principles specified in Section 6 of the Act.

All terms and conditions of participation in the Tender laid down in Chapter 8 of the ITT must have been satisfied at the moment of expiry of the time limit for the submission of Applications laid down in Chapter 8.4 of the ITT. If an Applicant's qualification changes during this Tender and the change results, or could result, in failure to satisfy the rules and conditions laid down in Chapter 8 of the ITT, the Applicant concerned must notify the Office of this in writing without delay, within 7 days at the latest. If the Applicant ceases to comply with the rules and conditions of participation in the Tender at any moment during the Tender, the Office will decide on its exclusion from the Tender.

An Applicant that fails to prove having satisfied the conditions for participating in the Tender within the time limit for the submission of Applications or that ceases to satisfy these conditions during the Tender shall be called on by the Office to remove the flaws identified and if such flaws are not removed within a reasonable time limit, determined by the Office, the Applicant will be excluded from taking any further part in the Tender.

8.1.2 Basic conditions of participation in the Tender

The basic conditions of participation in the Tender are satisfied by an Applicant

- a) on whose assets insolvency proceedings are not pending on the date of submission of the Application and have not been subject to such proceedings in which a decision of bankruptcy has been handed down during the three years prior to the date of submission of the Application; or an insolvency petition has not been rejected due to the fact that assets are insufficient to cover the cost of insolvency proceedings; or bankruptcy procedure has not been discontinued due to the fact that assets are entirely insufficient; or compulsory administration has not been imposed pursuant to special legal regulations; the Applicant shall prove this by way of **solemn declaration**;
- b) that is not being wound up as at the date of submission of the Application; the Applicant shall prove this by way of **solemn declaration**; and
- c) that is not in the register of persons banned from executing public contracts on the date of submission of the Application; the Applicant shall prove this by way of **solemn declaration**.

8.1.3 Professional and technical conditions of participation in the Tender

The professional and technical conditions of participation in the Tender are satisfied by an Applicant that, on the date of submission of the Application, is authorized to undertake

business in electronic communications under Sections 8 and 13 of the Act; the Applicant shall prove this by way of **solemn declaration**.

8.1.4 Economic and financial conditions of participation in the Tender

The economic and financial conditions of participation in the Tender are satisfied by an Applicant who, not later than on the final day of the time limit for the submission of Applications under Chapter 8.4 of the ITT, deposits Security in the amount laid down in Chapter 8.3 of the ITT into the Office's bank account held for the purpose of depositing security, specified in Chapter 4 of the ITT, and proves this with a **bank certificate** on having sent the corresponding amount to the specified bank account of the Office. The bank certificate must clearly indicate that the Security amount has been irreversibly debited from the Applicant's account and sent to the specified account of the Office. Security must be credited in full to the Office's specified bank account not later than on the last day of the period for the submission of Applications under Chapter 8.4 of the ITT.

8.2 Application for the award of rights to use radio frequencies

8.2.1 Formal aspects of the Application

Applications must be submitted in writing in 2 (two) counterparts, one of which may be marked as the original and the other as a copy. The Applicant is responsible for the fact that both counterparts are identical. Originals of relevant documents, or officially authenticated copies thereof, must be attached to the original Application. Plain, unauthenticated copies of such documents may be attached to the copy of the Application. The original Application must be secured against the removal or addition of any sheets. Together with printed documents, the Applicant shall also submit a full electronic version of the Application in PDF format on a physical data carrier which is write-protected (e.g. CD-R, DVD-R).

If the Application or the Appendices thereto comprise(s) information whose disclosure to third parties could affect the Applicant's legitimate interests or could threaten or frustrate the course of the Tender or the results thereof, the Applicant shall attach to its Application another copy of the Application in which such information is not contained such that the Office may use such a copy (version) for the purposes of access to file in accordance with Section 21(7) of the Act. The Applicant shall also append to the Application a report containing a clearly-arranged list of information which is to be precluded from access to file according to Section 21(7) of the Act and brief reasoning for the preclusion of particular parts of the Application. The Office is not bound by the determination of information which is, in the Applicant's view, to be excluded from access to file under this Chapter 8.2.1 of the ITT.

Applications must be made in Czech language. Papers and other documents appended to the Application may be in another language with official translation into Czech. Documents which are appended to the Application that are in Slovak need not be translated.

Applications must be delivered to the Office's registered seat, as specified in Chapter 4 of the ITT, before the expiry of the time limit for the delivery of the Applications laid down in Chapter 8.4 of the ITT. The original Application and the copy must be delivered to the Office together in one sealed or otherwise suitably-closed envelope marked with the Applicant's identification number (IČO), the reference number of this Invitation to Tender and the clear wording "*NEOTVÍRAT – VÝBĚROVÉ ŘÍZENÍ 3600–3800 MHz*" (*DO NOT OPEN – TENDER 3600–3800 MHz*).

A specimen Application and the appendices thereto are found in Appendix 1 and Appendix 2 to the ITT.

8.2.2 Mandatory appendices to the Application

The Applicant must attach to the Application **all the documents required to satisfy the conditions of participation in the Tender under Chapter 8.1 of the ITT** and:

- a) legal entities must submit a **copy of an entry in the Companies Register** or in another similar register, whereby such a copy must have been issued a maximum of 90 days before the final day of the term for the submission of Applications under Chapter 5 of the ITT;
- b) legal entities whose Application is not signed by person(s) having authorization to do so according to an entry in the Czech Companies Register must submit **power of attorney** which proves that the natural persons that append their signatures are authorized to sign the Application;
- c) Applicants that are members of a Business Grouping must submit a **clear graphical presentation of the Business Grouping** of which the Applicant is a member and an indication of the **controlling persons and the size of individual stakes (ownership interest) of all the members of the Business Grouping in the Applicant exceeding 10%**, irrespective of whether the stake in the Applicant is held directly or indirectly. If a stake in the Applicant is held directly or indirectly through one or more trusts (trust funds)¹⁴ or other similar construct of the Czech or a foreign legal order (e.g. a foundation), then such holding or ownership is included in the 10 % limit mentioned above and the Applicant must state information about the person of the trustee and, primarily, information about the person or persons to whose benefit the relevant trust has been set up or that is/are the trust beneficiary/beneficiaries and that directly or indirectly holds/owns a stake in the Applicant which exceeds the 10% limit even through such a trust beneficiary. If there is a company which is quoted on the stock Exchange within the asset structure of the Applicant or of a company which holds in the Applicant a stake that exceeds the 10% limit, the Applicant will state the most recent available data about stakes in this company, e.g. from the most recent general meeting or the reports submitted to the stock exchange. The Applicant will also submit a solemn declaration that the material provided under this paragraph is true;
- d) **statement of consent to the Office's right to use all and any information contained in the Application and in the appendices thereto for the purposes of this Tender**, signed by a person or persons authorized to act on behalf of or represent the Applicant;
- e) **statement of acceptance of the obligations which the Applicant accepts in the course of the Tender, as indicated in Chapter 7.6 and Chapter 7.9 of the ITT** in the form of Appendix 2 to the ITT, signed by a person or persons authorized to act on behalf of or represent the Applicant.

8.2.3 Binding nature of the Application

The Applicant may amend or withdraw its Application at any time before the expiry of the time limit for the submission of Applications under Chapter 8.4 of the ITT. The Application must be signed by a person or persons authorized to act on behalf of or represent the Applicant and must be delivered to the Office to the registered seat of the Office specified in Chapter 4 of the ITT.

No amendment initiated by the Applicant may be made to the Application after the expiry of the time limit for the submission of Applications under Chapter 8.4 of the ITT. Failure to act on time cannot be excused.

¹⁴ A trust is understood to be a structure according to foreign legislation (trust under Act No. 89/2012 Coll., the Civil Code) and other funds of similar type managed by a trustee to the benefit of a beneficiary/beneficial owner).

8.3 Security

Participation in the Tender according to Chapter 8.1.4 of the ITT is contingent on the deposition of financial Security (“**Security**”). Security serves to secure the Applicant’s obligation to pay the Total Price and to secure the Applicant’s obligation under Chapter 11 of the ITT to refrain from any action which would threaten or frustrate the course or result of the Tender in accordance with Section 21(6) of the Act.

The total amount of Security for all Auction Participants is set at CZK 29,000,000 (twenty-nine million Czech crowns).

The Office further states that all Auction Participants have at their disposal in the Auction Phase 2 Eligibility points to limit the total quantity of radio frequencies acquired in the Tender.

Security must be deposited by way of credit transfer and must be credited to the Office’s account for the deposition of Security specified in Chapter 4 of the ITT before the expiry of the time limit for the submission of Applications according to Chapter 8.4 of the ITT. The Applicant must use its company number (IČO), or another identifier for Applicants not having a company number. The Applicant will cover all bank charges and other costs associated with the payment of Security. The Applicant is responsible for ensuring that Security is credited to the Office’s account in full and on time.

Failure to deposit Security for an Application on time will be considered failure to comply with the conditions of participation in the Tender and the Office will decide to exclude the Applicant from taking any further part in the Tender. Filing an appeal against such decision does not have suspensory effect. The account used for the deposition of Security bears no interest.

Security is forfeited in the following cases:

- a) the Office calls on the successful Applicant, based on the results of the Auction, to pay the Total Price and the Applicant fails to pay the Total Price, of a part thereof, within the time limit laid down in Chapter 10 of the ITT; or
- b) the Applicant commits any action referred to in Chapter 11 of the ITT.

Security forfeited in accordance with this Chapter 8.3 is treated as income for the national budget of the Czech Republic.

Unless there are grounds for Security to be forfeited, Security is returned to Applicants

- a) following the date on which the decision to exclude an Applicant from further participation in the Tender according to Section 21(2) of the Act or according to Chapter 8.5 of the ITT enters into legal force;
- b) following the date on which the decision to exclude an Applicant from further participation in the Tender according to Section 21(6) enters into legal force;
- c) following the date on which the Application of an unsuccessful Applicant is rejected under Section 21(8) of the Act;
- d) following the date on which the Office’s decision to cancel the Tender enters into legal force; or
- e) following payment of the Total Price according to Chapter 10 of the ITT.

Security is returned to an Applicant into the bank account from which it was sent to the Office within 14 days of the date on which any of the foregoing events occurs.

The Office covers the costs of returning Security.

8.4 The time limit for submitting Applications for the Tender

Applications must be delivered to the Office by **12.00 p.m. on May 9, 2017**.

Applicants may send their Applications to the Office's registered seat, specified in Chapter 4 of the ITT, or may deliver them in person to the Office's registered seat on weekdays from 9.00 to 15.00 hours and on the final day of the time limit for submitting Applications from **9.00 to 12.00 hours**.

8.5 Multiple participation in the Tender, participation on behalf of a Business Grouping

Only persons/entities that are economically independent of each other may take part in the Tender. Business Groupings may submit only one Application for this Tender and may do so through only one person/entity.

If an Incumbent Operator is a member of a Business Grouping, this Business Grouping may only participate in the tender through that Incumbent Operator.

8.6 Opening envelopes containing Applications for the Tender

All envelopes containing Applications that have been submitted on time will be opened on the business day that follows the day specified as the deadline for submitting Applications for the Tender according to Chapter 8.4 of the ITT, i.e. at the Office's address **from 9.00 a.m. on May 10, 2017**.

The opening of envelopes will be attended by a notary, who will take minutes regarding the entire process, and members of the Selection Committee. All Applicants who submitted their Applications on time may attend the opening of envelopes, whereby each Applicant may be represented by only one person so authorized based on power of attorney. The Office will open envelopes one by one according to their serial numbers in the presence of the Selection Committee and will check each for compliance with the **following requirements placed on Applications**, i.e.:

- a) whether the Application is in Czech language and whether the appendices to the Application which may be in other languages are accompanied by official translations into Czech (this does not apply to appendices which are in Slovak);
- b) whether the Application and all relevant appendices are signed by persons that are authorized to do so; and
- c) whether the Application contains all parts and appendices required by this ITT.

After checking that an Application satisfies the above requirements, the Office will announce to the Applicants in attendance the identification data of the Applicant whose Application has been checked and whether it meets the above requirements.

The Office may ask the Applicant to clarify, correct or supplement in writing the information submitted or the documents which prove compliance with the above requirements placed on Applications.

The Applicant undertakes to satisfy such request within a reasonable period of time, to be determined by the Office. The Applicant's onward participation in the Tender is conditional on satisfying such a request.

The Office will decide to exclude from participation in the Tender those Applicants who have submitted an Application which the Office finds, based on the recommendation of the Selection Committee, as failing to meet the above requirements placed on Applications and if the Applicant fails to clarify, correct or supplement the information submitted or the documents which prove compliance with the above requirements placed on Applications within the time limit even after being called upon by the Office to do so.

The Office will subsequently make public on its website a list of the Applicants whose Applications were found to meet the above requirements placed on Applications.

8.7 The evaluation of Applications

The Office will evaluate, based on the recommendations of the Selection Committee, whether the Applications that have not been excluded according to the preceding Chapter 8.6 of the ITT meet the terms and conditions of participation in the Tender according to Chapter 8.1 of the ITT.

The Office may ask an Applicant to clarify, correct or supplement in writing the information submitted or the documents which prove compliance with the terms and conditions of participation in the Tender according to Chapter 8.1 of the ITT.

The Applicant undertakes to satisfy such request within a reasonable period of time, to be determined by the Office. The Applicant's onward participation in the Tender is conditional on satisfying such a request.

Depending on the results of the evaluation, the Office will subsequently deliver to each Applicant a **certificate of admission to the Auction** or a **decision on elimination from further participation in the Tender** according to Section 21(2) of the Act. The Office must indicate in a decision on elimination from further participation in the Tender according to the preceding sentence the grounds on which the Applicant's Application has been eliminated. Lodging an appeal against such decision does not have suspensory effect, in accordance with Section 21(2) of the Act.

The Office will subsequently publish a list of the Applicants who may participate in the Auction. In cases of doubt, the Office reserves the right to postpone the publication of this list of Applicants until such doubts have been resolved.

9 AUCTION

9.1 The subject of the Auction

Auction Lot Category	Frequency band	Frequencies [MHz]	Auction Lots	Spectral Limit	Minimum price [millions of CZK per lot]	Activity points [points per one lot]
A	3600–3800 MHz unpaired spectrum	3600–3800	5 abstract blocks of a size of 40 MHz	For Incumbent Operators: 40 MHz; If the conditions laid down in Chapter 6.1 of the ITT are met, this will be increased to 80 MHz from the second Auction Round onwards.	29	1
				For other Applicants: 80 MHz		

9.2 Basic information

The Auction is the part of the Tender whose purpose it is to determine the price and the Auction Winners that, after satisfying all the requirements of the Tender, may become the Holders of the individual radio frequency segments which are the subject of this Tender.

The Auction is divided into 2 phases:

1. the Auction Phase – the phase in which Auction Lots are distributed (using the SMRA auction method) among the Auction Participants that offered the highest price for individual Auction Lots (Auction Winners) in the final round of the Auction Phase;
2. Frequency Distribution – the phase in which specific segments of the radio spectrum being offered are distributed to Auction Winners to an extent and in a structure that corresponds to the Auction Lots they acquired in the Auction Phase.

Comprehensive terms and conditions of the Auction are defined in the Auction Rules, which constitute Appendix 3 to the ITT.

9.3 Closing the Auction

The Office will inform all Applicants about the close of the auction and the distribution of the radio frequencies won in the Auction to the Auction Winners using the procedure laid down in Chapter 7 of the Auction Rules.

10 PROCEDURE FOLLOWED BY THE OFFICE AFTER THE CLOSE OF THE AUCTION

The Office will decide on the result of the Tender based on the recommendations submitted by the Selection Committee in the form of a report on the course and results of the Auction. The report will contain an overview of all the Applications received, the result of the Auction and reasoning. The Report must be approved by a majority of votes of the members of the Selection Committee, confirmed with their signatures and delivered to the Office within 30 days of the close of the Auction.

The Office will decide on the result of the Tender using the procedure specified in Section 21(8) of the Act after the Selection Committee's report has been delivered.

The Office will reject the Applications of unsuccessful Applicants based on the result of the Auction stated in the report of the Selection Committee and shall do so within two months of the close of the Auction. The Office will then call on successful Applicants to pay the Total Price following the date on which the decision to reject the Applications of unsuccessful Applicants enters into legal force. After the payment of the Total Price, the Chairman of the CTU Council will decide, within 30 days, on awarding the allocation of radio frequencies according to Section 22 of the Act.

The Total Price must be paid in Czech crowns into the account specified for payment of the price for the award of the right to use radio frequencies specified in Chapter 4 of the ITT. The Applicant must enter its Company Number (IČO) as the payment identification code (variabilní symbol) when making the payment. The amount must be paid not later than within 15 days of the date of delivery of the call for payment. The amount is considered to have been paid at such time as it is credited to the Office's specified account.

If an Applicant to which radio frequencies are to be allocated based on the result of the Auction fails to pay the Total Price within 15 days of the date of delivery of the call to do so, the radio frequencies which were to be allocated to this Applicant will not be allocated as part of the Tender.

If an Applicant has only paid part of the Total Price by the end of the fifteen-day time limit, beginning on the date of delivery of the call for payment, the Office will call on the Applicant to pay the remainder of the Total Price within an additional time limit of three days. If the Applicant fails to pay the remainder of the Total Price even within this additional time limit, the Office shall proceed as if the Applicant has failed to pay the Total Price and shall return the part of the Total Price which the Applicant *has* paid into the account from which this part of the price was paid. An Application is rejected if the whole of the Total Price or a part thereof is not paid within this set additional time limit. This shall be without prejudice to provisions regarding the forfeiture of Security and other sanctions which the Office may apply in such cases.

Security is not offset against the obligation to pay the Total Price or the outstanding part thereof.

The Office will publish a report on the course and results of the Tender within one month of the close of the Tender and the award of allocations of radio frequencies to winning Applicants. If one or more radio frequency allocations is/are issued based on the Tender, the Office will publish the comprehensive Auction log created by the Electronic Auction System within the same time period.

11 THE RULES OF CONDUCT OF PARTICIPANTS DURING THE TENDER

Applicants must refrain from any action that endangers or frustrates the course or result of the Tender throughout the entire Tender process. Such action includes, in particular:

- a) coordinating action in the Tender with another Applicant, primarily in matters to concern the size of Bids in the Auction or the distribution thereof (with the exception of the action envisaged in Chapter 5 of the Auction rules within the Frequency Distribution Phase);
- b) inhibition or disturbance of the progress of the Tender;
- c) conduct which prevents or threatens the participation of another undertaking in the Tender;
- d) breach of the obligations and rules laid down in this ITT and in particular in the Auction Rules.

An example of action which the Office would consider to be breach of the rules of conduct in accordance with this Chapter 11 of the ITT would be action which results in any Auction Participant submitting a Bid in the Auction without being prepared to acquire the requested combination of Auction Lots that are the subject of the Bid for the offered price (and consequently in contravention of the principle of the binding nature of a Bid, as required in the ITT), for instance for the purpose of prolonging the Auction, preventing another Auction Participant from obtaining Auction Lots or otherwise threatening or frustrating the course or result of the Auction. In this regard, the Office would consider as breach of the rules of conduct by an Auction Participant in accordance with this Chapter 11 of the ITT failure to submit the identical scope of a Bid for a price which is the same or a lower than for which that Auction Participant has already submitted a Bid in previous Auction Rounds, if the submission of such a Bid is possible. A specific example of this is, for instance, the situation in which an Auction Participant submits in the first Auction Round a Bid for one Auction Lot (i.e. for the Minimum Price), but in consequence of the concurrence of identical Highest Bids and the application of the rules laid down in Chapter 4.4.3 of the Auction Rules does not become the Highest Bid Holder for this Auction Lot and this Auction Participant subsequently submits a Bid with zero activity (without using the option of abstaining) in the second Auction Round even though at least one Auction Lot is still available for the Minimum Price.

The Office would consider further indication of breach of the rules of conduct in accordance with this Chapter 11 of the ITT to be action by way of which an Auction Participant submits a Bid within the Auction Phase whose amount is clearly without economic substantiation; in particular the situation in which an Auction Participant submits without any objective reason the Bid with the highest price in an Auction Round even though it could have submitted a Bid for the Auction Lot in the Auction Round at a lower price.

In the case of conduct which violates the rules of this Chapter 11 of the ITT, the Office shall decide, in accordance with the provisions of Section 21(6) of the Act, to eliminate the concerned Applicant from taking any further part in the Tender. If an Applicant is guilty of conduct according to this Chapter 11 of the ITT, the Security deposited by that Applicant in accordance with Chapter 8.3 of the ITT shall be forfeited.

12 CANCELLATION OF THE TENDER

The Office is authorized to cancel and discontinue this Tender in accordance with the provisions of Section 21(6) of the Act. The Office may take such a step at any time, at its own discretion, inter alia, primarily in the situation in which the Tender cannot be conducted due to a technical error or any other circumstances or in which the Tender is frustrated due to the action of the Applicants or other persons, etc.

13 COMMUNICATION DURING THE TENDER

The Office defines the possibilities of bilateral communication during the Tender as relating to matters to concern the Tender in the following cases:

- General communication during the Tender – the Office will provide regular information about the sequence and terms of the Auction on its website.
- Communication during the individual phases of the Tender:
 1. before submitting an Application – Applicants may communicate with the Office according to Chapter 3(e) of the ITT in the form of questions and answers to concern the interpretation of this ITT and the requisites of Applications;
 2. the submission of Applications – delivery of the “Application for the Award of Rights to Use Radio Frequencies” document to the Office according to Chapter 8.2 of the ITT and the possibility of attending the opening of envelopes. The Applicant must provide additional explanation of or supplement the Application should the Office request as such in the case that anything is unclear;
 3. training in the Electronic Auction System and test auctions, including the possibility of sending inquiries to concern the relevant training or test auctions;
 4. the Auction Phase – information to the extent defined in the Auction Rules;
 5. dealings to concern the distribution of radio spectrum segments.
- information from the Office during the Tender about the conclusion of individual phases of the Tender and the results thereof:
 1. Information about the commencement of the Tender;
 2. information about evaluation of the qualification part of the Tender and about the results of qualification;
 3. information about the commencement of the Auction Phase of the Tender;
 4. information about the close of the Auction Phase of the Tender and information about the results of the Auction Phase;
 5. information about the close of the Auction and about the distribution of radio frequencies to Auction Winners.

Applicants are obliged to maintain confidentiality with regard to all facts and situations relating to their participation in this Tender. According to Chapter 5 of the Auction Rules, the Office will only permit Auction Winners to coordinate their action before negotiations to concern radio frequency distribution based on the results of the Auction and to agree on the final distribution of radio frequencies based on the results of the Auction.

This Chapter 13 of the ITT is without prejudice to the provisions of the Rules of Administrative Procedure and of the Act which regulate the requisites of submission and the methods of delivery thereof.

14 LIST OF DEFINITIONS AND ABBREVIATIONS

Act – Act No. 127/2005 Coll., on electronic communications and amending certain related acts (the Act on Electronic Communications), as amended.

Activity – the scope of the Bid of the Auction Participant in the Auction Round calculated as the sum of the activity points of all Auction Lots included in the Bid. Every Auction Lot has a determined number of 1 activity point. The activity of an Auction Participant in an Auction round may not exceed his Eligibility.

Agreement on Targeted Distribution – a written agreement among all radio frequency allocation holders in the 3400–3800 MHz band on the targeted distribution of radio frequency segments in the 3400–3800 MHz band.

Allocation Holder – the Auction Winner, who has satisfied all terms and conditions of the tender and to whom an Allocation of the radio frequencies which are the subject-matter of this Tender has been awarded.

Applicant – a person/entity that submits an Application.

Application – Application for the award of rights to use radio frequencies according to the provisions of Section 21 of the Act.

Auction – a form of evaluation of applications for the award of rights to use radio frequencies. The Auction is a part of the Tender for the award of the rights to use radio frequencies which are the subject-matter of this Tender. The objective of the Auction is to determine the price and identify the holders of individual radio frequency segments. The Auction takes place in two phases: the Auction Phase and the Frequency Distribution Phase.

Auction Lot – the radio spectrum block which is offered in the Auction. The radio frequency segments which are the subject-matter of the Tender correspond to individual radio spectrum blocks. Owing to the fact that the Auction Lots are abstract, such a block will be allocated to an unspecified radio frequency segment of defined size; the specific radio frequency segment will be allocated to such a block only on the basis of the second Auction Phase – Frequencies distribution.

Auction Phase – the phase of the Auction in which the Auction Lots are distributed among the Auction Participants using the SMRA Auction method. The Auction Phase is split into several Auction Rounds.

Auction Categories – see Auction Lot Categories.

Auction Round – Auction Participants may offer a price bid for the individual Auction Lots being offered in the Auction within an Auction Round. Each Auction Participant may submit only one Bid in an Auction Round. At the end of each Auction Round, the Electronic Auction System will define, according to the rules set out in Appendix 3 to the Invitation to Tender (ITT), the Highest Bid Holder and the amount of the Highest Bid for all Auction Lots offered.

Auction Rules – the document defining the rules of an Auction Phase and the Frequency Distribution Phase. This document constitutes Appendix 3 to the Invitation to Tender.

Auction Participant – an Applicant who has fulfilled the qualification requirements indicated in Chapter 8 of the ITT and has received from the Office a certificate of registration in the Auction.

Auction Winner – the Auction Participant that is the Highest Bid Holder for the Auction Lot after the final round of the Auction Phase according to the terms and conditions set out in the Auction Rules.

Bid – a binding price offer submitted by an Auction Participant in an Auction Round for a selected combination of Auction Lots.

Business Grouping – complies with the definition of Business Groupings in Section 71 et seq of Act No. 90/2012 Coll., on commercial companies and cooperatives (Act on Business Corporations), meaning, in particular, controlling person and controlled person, persons controlled by a common controlling person, parent company and subsidiary constituting a concern, influenced persons or persons acting in concert. Persons to the benefit of which a trust (trust fund)¹⁴ or any other similar construct was established under a foreign legal order (e.g., a foundation) or who are to receive performance from the trust are considered members of the Business Grouping of which the Applicant is a member.

CEPT – European Conference of Postal & Telecommunications Administrations

Commission – The European Commission is one of the main bodies of the European Union, representing and defending the interests of the Union as a whole. The Commission prepares drafts for new European legislation and is responsible for the implementation of EU policies and utilization of Union funds.

Digital Czechia – the “National Policy in Electronic Communications – Digital Czechia” document, the purpose of which is to evaluate the current situation regarding the availability and development of selected electronic communications areas in the Czech Republic with the highest growth potential and to propose the tools necessary to ensure that realistic targets of providing adequate support to the economic, cultural and social development of Czech society are met. The document was approved by the Government of the Czech Republic based on Government Resolution No. 50 of 19 January 2011. This document was updated by “Digital Czechia in 2.0. The Way to a Digital Economy”, which was approved by the Government of the Czech Republic based on Government Resolution No. 203 of 20 March 2013.

Electronic Auction System / EAS – an information system that makes it possible to organize and ensure the proper course of an Auction Phase by way of remote access.

Eligibility – the authorization of an Auction Participant to submit bids in an Auction Round. The number of Eligibility points defines the maximum number of activity points that may be used to submit a Bid in an Auction Round.

ETSI – European Telecommunications Standards Institute.

EU – European Union.

Frequency Distribution – the phase of the Auction whose objective it is to allocate specific radio frequency segments to Auction Winners.

Highest Bid – the bid with the highest price for an Auction lot in the relevant Auction Round.

Highest Bid Holder – the Auction Participant who submits the Highest Bid for an Auction Lot in an Auction Round and, based on evaluation of the Auction Round, is identified as the Highest Bid Holder for the relevant Auction Lot according to the rules set out in the Auction Rules.

Incumbent Operator – a legal or natural person that is a holder of a radio frequencies allocation in the 800 MHz and/or 900 MHz and/or 1800 MHz and/or 2100 MHz and/or 2600 MHz band on the final day of the period available for the submission of the Application determined in Chapter 8.4 of the ITT.

Call – Call of the Office to submit an application for a change to a radio frequencies allocation according to Chapter 7.10 of the ITT.

IO – individual authorization to use radio frequencies

ITT – Invitation to Tender, the document entitled “Invitation to Tender for the Award of Rights to Use Radio Frequencies to Provide an Electronic Communications Network in the 3600–3800 MHz Band”

ITU – International Telecommunication Union

Office – the Czech Telecommunication Office. Established by the Act on 1 May 2005 as the central administration authority to exercise state administration in matters specified by the Act, including market regulation and determination of the terms and conditions of undertaking business in the sphere of electronic communications and postal services.

Qualification – the phase of the Tender in which evaluation is made as to whether the Applicants comply with the rules and the terms and conditions for participation in the Tender, as defined in Chapter 8 of the ITT.

Radio Spectrum Policy – Decision of the European Parliament and of the Council establishing a multiannual radio spectrum policy

RSC – Radio Spectrum Committee (a Commission body)

RSPG – Radio Spectrum Policy Group (a Commission body)

RSUP 7 – part of Radio Spectrum Utilization Plan PV-P/7/06.2015-4 for the 2700–4200 frequency band. The Radio Spectrum Utilization Plan is issued by the Czech Telecommunication Office, as the competent body of state administration under Section 108(1)(b) of the Act based on the results of public consultation conducted under Section 130 of the Act and based on a CTU Council decision according to Section 107(8)(b)(2) of the Act, and for the implementation of Section 16(2) of the Act, through Measures of a General Nature.

Rules of Administrative Procedure – Act No. 500/2004 Coll., the Rules of Administrative Procedure, as amended

Selection Committee – an advisory body to the Office consisting of three members, appointed by the Chairman of the CTU Council, whose purpose it is to recommend the appropriate procedure to be followed by the Office in accordance with Section 146(6) of the Rules of Administrative Procedure. The Selection Committee is appointed before the announcement of the tender.

SMRA – Simultaneous Multiple Round Auction (SMRA) is an Auction format based on simultaneous multiple rounds.

Tender – the Tender for the Award of Rights to Use Radio Frequencies to Provide an Electronic Communications Network in the 3600–3800 MHz Band announced by this ITT.

TDD – Time Division Duplex, a type of duplex traffic with time division.

Total Price – the sum of the Applicant’s Winning Bids.

Security – financial security deposited by the Applicant according to the terms and conditions defined in Chapter 8.3 of the ITT. Deposition of Security is a condition for participation in the Auction.

Winning Bid – the Bid submitted by the Auction Winner in the final Auction Round.

15 LIST OF APPENDICES

Appendix 1 – Specimen form: “*Application for the award of rights to use radio frequencies*”

Appendix 2 – “Statement of Acceptance of Obligations by the Applicant”

Appendix 3 – Auction Rules

Appendix 4 – List of municipalities of the Czech Republic including the division based on the population criterion

Appendix 5 – Specimen “Application for a change to an allocation of radio frequencies”

Signed by Mr. Jaromir Novak
Chairman of the Council of the
Czech Telecommunication Office

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