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BRAZILIAN 5G BIDDING CALL - I
GENERAL ASPECTS

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General Aspects

By Ricardo Barretto Ferreira and Sylvia Werdmüller von Elgg Roberto

At its 896th Meeting held on February 25 of this year, the Board of Directors of the National Telecommunications Agency (ANATEL), the agency that regulates telecommunications in Brazil, approved the proposal for a new version of the public notice of the 5G technology auction that will take place in the country.

A previous version of the draft of the public notice had been the object of public consultation, which began and ended in the first half of 2020.

The current proposal, in turn, has been adapted for compliance with the provisions contained in Ordinance No. 1,924/SEI-MCOM, dated January 29, 2021, of the Ministry of Communications, which established the guidelines for the bidding process of radio frequency (RF) bands of 700 MHz, 2.3 GHz, 3.5 GHz and 26 GHz. This same Ordinance also defined criteria for the protection of users receiving free and open TV signals through satellite dishes in the satellite C band, adjacent to the 3.5 GHz band.

Following the approval by the Board of

Directors, the draft of public notice was also submitted to textual adjustments and corrections of errors identified and discussed within the Agency, and the updated version is available for verification on ANATEL's webpage (<https://www.gov.br/anatel/pt-br/>).

The bidding process is governed by Law No. 9,472/1997 (General Telecommunications Law, LGT), by Decree No. 2,617/1998 (provides for the capital composition of companies providing telecommunications services), Decree No. 6,654/2008 (approved the General Plan of Grants of Telecommunications Service provided under the public regime, PGO), Decree No. 9,612/2018 (provides for telecommunications public policies), by the aforementioned Ordinance No. 1,924/SEI-MCOM, as well as by several regulations issued by ANATEL, such as Resolution No. 65/1998, which approved the Bidding Regulation for the Concession, Permission and Authorization of Telecommunications Service and the Use of Radio Frequency, among others.

According to the wording currently given by

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the draft, one of the bidding procedure's objectives is "the increase of competition and of the offer of quality services."

The bidding object was divided into the following service provision areas (as defined in Exhibit I of the draft), in summary terms:

(i) Service Provision Area I: National; **(ii)** Service Provision Area II: National, except sectors 3, 22, 25 and 33 of the PGO; **(iii)** Service Provision Area III: North Region; **(iv)** Service Provision Area IV: Northeast Region; **(v)** Service Provision Area V: Midwest Region, except sectors 22 and 25 of the PGO; **(vi)** Service Provision Area VI: South Region; **(vii)** Service Provision Area VII: States of Rio de Janeiro, Espírito Santo and Minas Gerais, except sector 3 of the PGO; **(viii)** Service Provision Area VIII: State of São Paulo, except sector 33 of the PGO; and **(ix)** Service Provision Area IX: Sectors 3 (more than 50 Municipalities in the State of Minas Gerais, including Uberaba and Uberlândia), 22 (Municipality of Paranaíba, in the State of Mato Grosso do Sul), 25 (Buriti Alegre, Cachoeira Dourada, Inaciolândia, Itumbiara, Paranaiguara and São Simão, in the State of Goiás) and 33 (more than 20 Municipalities in the State of São Paulo, including Franca, Ituverava and Orlandia) of the PGO.

In addition, the frequencies to be auctioned were also divided into Lots (defined in Exhibit II of the proposal), as follows:

(i) Type A Lots (subdivided into lots A1 to

to A15): refer to the issuance of an authorization for the use of RFs, in primary character, of a block of 10 + 10 MHz or blocks of 5 + 5 MHz, in the RF sub-band from 708 MHz to 718 MHz and from 763 MHz to 773 MHz, governed by the Exhibit of ANATEL's Resolution No. 625/2013 (which approves the assignment, allocation and Regulation on Conditions of Use of RFs in the band from 698 MHz to 806 MHz), for 20 years, which may be extended; in addition, concomitantly and bound to the aforementioned authorizations, for all municipalities with up to 100,000 inhabitants located in the same provision areas, an authorization for the use of RFs in a secondary character will be issued for RFs in the band from 718 MHz to 748 MHz and 773 MHz to 803 MHz;

(ii) Type B, C and D Lots (subdivided into B1 to B4; C1 to C8; and D1 to D36): refer to the issuance of an authorization for the use of RFs, in primary character, of blocks of 80 MHz or 20 MHz in the RF sub-band from 3,300 MHz to 3,700 MHz, governed by the Exhibit of ANATEL's Resolution No. 711/2019 (which allocates radio frequency bands and approves the Regulation on Conditions of Use of the Radio Frequency Band of 3.5 GHz) and amendments to ANATEL's Resolution No. 742/2021 (which amends ANATEL's Resolution No. 711/2019 and the Regulation on Conditions of Use of the RF Band of 3.5 GHz, as well as approves the Regulation on Conditions of Use of the RF

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Band from 24.25 GHz to 27.90 GHz), for 20 years, which may be extended;

(iii) Type E and F Lots (subdivided into E1 to E8; and F1 to F8): related to the issuance of an authorization for the use of RFs, in primary character, of blocks of 50 MHz, in the RF sub-band from 2,300 MHz to 2,350 MHz, and of blocks of 40 MHz, in the RF sub-band from 2,350 MHz to 2,390 MHz, governed by the Exhibit of ANATEL's Resolution No. 710/2019 (which approves the allocation of the RF Band of 2.3 GHz to the Private Limited Service - SLP and the Regulation on Conditions of Use of the RF Band of 2.3 GHz), for 20 years, which may be extended; and

(iv) Type G, H, I and J Lots (subdivided into G1 to G5; H1 to H21; I1 to I10; and J1 to J42): concern the issuance of an authorization for the use of RFs, in primary character, of blocks of 400 MHz or 200 MHz in the RF sub-band from 24.3 GHz to 27.5 GHz, governed by the Exhibit of Resolution No. 742/2021, for 20 years, which may be extended.

The draft clarifies that, for the provision of telecommunications services using the RF sub-bands being the object of the public notice, authorizations to operate the Personal Mobile Service (SMP) will be issued; alternatively, the bands might be associated with an existing SMP authorization. However, in relation to the blocks of the Type G, H, I and J Lots, the authorization for the use of RFs might be initially associated with a new authorization

for the exploitation of Multimedia Communication Service (SCM), or with an existing SCM grant.

The terms of the public notice, as proposed, indicate that, if at a later time, the winner of the bidding wishes to operate a service other than that initially granted, but among those for which the band was intended, a new authorization will be issued for the remaining term of the first authorization.

According to the applicable legislation, only companies organized under Brazilian laws, headquartered and with administration in Brazil, may participate in the bidding process, there being restrictions on their capital composition (most of the quotas or shares with voting rights must belong to individuals residing in Brazil or companies organized under Brazilian laws, headquartered and with administration in Brazil, in accordance with the terms of Decree No. 2617/1998), or foreign companies that, if not meeting these requirements, undertake to adapt to such requirements or organize a company with the required characteristics, and consortia for participation are admitted.

Envelopes containing various documents of the participants, including those related to their tax regularity, as well as price proposals for the issuance of authorizations for the use of RFs, in addition to a guarantee of maintenance of the price proposal(s), must be submitted to the Special Bidding Commission (CEL). Moreover, the bidders

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must be qualified to participate in the bidding process, in accordance with the terms of the public notice.

The price proposals must be submitted in a specific envelope for each of the lots, the opening of which will occur in the order determined by the auction public notice. The envelopes with price proposals of bidders that do not meet the conditions for participation in the bidding will be returned to the same.

In addition to the price to be paid, the draft determines that the winning bidders must undertake certain commitments, stipulating specific conditions in accordance with the RF sub-bands. This is the case, for example, of the offer of SMP by means of a technological standard equal to or greater than the 3GPP 5G NR release 16 in certain locations, beginning on July 31, 2022, a requirement which was the object of controversy on the part of companies operating in the telecommunications sector.

After ANATEL determines the winning bid and calls the winning bidder accordingly, the signature of the term referring to the grant must take place within ten business days. The term of the authorizations is counted from the date of publication of the extract of the Instrument of Authorization for the Use of Radio Frequencies in the Brazilian Official Gazette (DOU).

The precise values of the lots were calculated by ANATEL's technical area and,

following this stage, the public notice is analyzed by the Federal Accounting Court. Even though this Court has a period of 150 days to complete the analysis, the Ministry of Communications expects the conclusion to take place within 60 days. Following the analysis, according to a statement from the same Ministry, the public notice may be published in 40 days.

According to ANATEL, based on preliminary calculations, the Agency estimates the total value of the auction between BRL 33 billion and BRL 35 billion, this value corresponding to the valuation of spectral assets, without considering the obligations. In addition, ANATEL estimates that 5G technology networks will involve approximately BRL 80 billion in investments by companies in the next 20 years. The Agency also points out that the auction will not have a collection nature, as agreed with the Ministry of Economics, which may have positive impacts on the Brazilian society and economy.

The event is eagerly awaited by players in the telecommunications area, including some small-sized providers (PPPs), which have shown interest in participating not only in possible consortia aiming to dispute the lots, but also in partnerships in order to meet the needs of large operators.

However, it is important to note that, even though the preparatory stages of the bidding process are advancing, until the official publication of the final version of the

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public notice takes place, the terms of the published draft might be subject to amendments, the impacts of which cannot be predicted at this time. In addition, the current proposed wording emphasizes that prior to receiving the identification and tax compliance documents and the price proposals, the public notice "may be amended for reasons of public interest or due to legal requirements", in which case, additionally, there might be amendments as to the applicable dates.

To receive the main legislative news and positioning on this and other topics related to telecommunications, follow the Technology, Media and Telecommunication (TMT) team of Azevedo Sette Advogados.

São Paulo, March 30, 2021.

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