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BRAZILIAN 5G BIDDING CALL - VII  
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# Brazilian 5G Bidding Call - VII Spectrum to be Awarded

By Ricardo Barretto Ferreira and Sylvia Werdmüller von Elgg Roberto

Brazil is awaiting the unfolding of the process that will result in the largest auction of grants for the right to use radio frequencies (RFs) in its history, the respective public notice draft of which was approved by the Board of Directors of the National Telecommunications Agency (ANATEL) in the first quarter of this year.

In the intended bidding, the total spectrum auctioned will be of 3,710 MHz, with lots in the RF sub-bands from **(I)** 708 MHz to 718 MHz; **(II)** 763 MHz to 773 MHz; **(III)** 2300 MHz to 2390 MHz; (iv) 3300 MHz to 3700 MHz; and from (v) 24.30 GHz to 27.5 GHz being auctioned. With the subsequent issuance of the related Authorizations for the Use of RFs, there will be great benefits for the population and the Brazilian economy, with increased access to communication and increased competition and offer of services, also making use of the 5G technology that will be made available as a result of this process.

According to the proposed public notice, the bidding procedure will be governed by Law No. 9,472/1997 (General Telecommunications

Law, LGT), by Decree No. 6,654/2008 (which approved the General Plan for Grants of Telecommunications Services provided under the public regime, PGO), Decree No. 9,612/2018 (which provides for public telecommunications policies), as well as by several ANATEL's Resolutions published between 1998 and the current year, as is the case, for example, of Resolution No. 321/2002, which approved the General Plan of Authorizations for the Personal Mobile Service (PGA-SMP). The terms of Ordinance No. 1,924/SEI-COM, dated January 29, 2021, which established guidelines for bidding procedures for the aforementioned bands, in addition to having defined criteria for the protection of users receiving open and free television (TV) signals by means of satellite dishes in the satellite C Band, adjacent to the band of 3.5 GHz, will also apply.

According to the draft, the Lots to be auctioned (Types A to J) will be divided according to a table that will contain the following information in relation to each one of them, among others: **(I)** the Provision Areas; **(II)** the RF sub-bands or the reference band; **(III)** the minimum price; **(IV)** the value

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of the guarantee of maintenance of the price proposal; and **(V)** the value of the guarantee of execution of coverage commitments. Not all the details of that table are currently known, but the public notice proposal approved by ANATEL can be consulted on the Agency's website.

For example, the final minimum price, one of the points in the public notice draft that is currently being analyzed by the Federal Accounting Court (TCU), will be published in the future, although it has been reported that, in relation to the 26 GHz band, such value would correspond to BRL 4.1 billion for all the applicable lots. With regard to the 3.5 GHz band, in turn, a net present value (NPV) of BRL 60 billion could be reached.

Pursuant to the terms of the approved public notice draft, the 700 MHz band will be auctioned by means of Type A Lots, covering Provision Areas II, III, IV, V, VI, VII and VIII, according to the subdivision contained in the aforementioned table. Lots A1 to A5 will be 20 MHz blocks, corresponding to 10 + 10 MHz in the bands from 708 MHz to 718 MHz and from 763 MHz to 773 MHz. Lots A6 to A15 are 5 + 5 MHz blocks, in the bands from 708 MHz to 713 MHz and 763 MHz to 768 MHz, or 713 MHz to 718 MHz and 768 MHz to 773 MHz. The bidding order for the Lots should occur in accordance with what is set forth in the final version of the public notice, but the intent is to initially auction the 20 MHz blocks, with the subsequent offer of

the 5 + 5 MHz lots in case there are no bidding winners in the previous stages. Authorizations for the use of RFs on a primary basis of the auctioned Lots will be issued for a period of 20 years, extendable against payment, with the first extension until December 8, 2044.

The public notice draft provides, for Lots A1 to A15, a maximum limit for the acquisition of spectrum (spectrum cap), corresponding to the lowest percentage set forth by article 1, I, of ANATEL's Resolution No. 703/2018 (which sets forth the maximum limits of quantity of RF spectrum that might be held by collective interest telecommunications service providers in the same municipality).

It is important to note that, in relation to this 700 MHz RF band and Lots A1 to A5, the proposed wording provides that the participation of bidders, its subsidiaries, parent companies or affiliates **(I)** that, in the same geographic area, already hold an authorization for the use of RFs on a primary basis in the band from 698 MHz to 806 MHz, or **(II)** that are in the process of transferring corporate control based on an agreement, contract or other instrument having as its object the sale and/or acquisition of shares, with an economic group already holding an authorization for the use of RFs on a primary basis in the aforementioned band from 698 MHz to 806 MHz will not be allowed.

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In addition, the wording approved by ANATEL set forth that it is a mandatory condition for participation in the bidding procedure that companies holding Authorizations for the Use of RFs in the sub-bands from 718 MHz to 748 MHz and 773 MHz to 803 MHz agree to relocate their RFs in order to allow the grouping of blocks of Lots A6 to A15 acquired, bearing the costs involved.

Additionally, the winning bidders of the Lots in this band should undertake certain commitments, such as the offer of voice and data connections, with Personal Mobile Service (SMP) in a technological standard equal to or higher than the *Long Term Evolution - LTE Advanced release 10* of 3GPP, in certain Brazilian locations and highways or parts of highways which currently do not offer SMP by means of 4G technology.

In turn, the 3.5 GHz band will be divided into Types B, C and D Lots, with a total of 400 MHz being auctioned in the RF sub-band from 3,300 MHz to 3,700 MHz. The related authorizations for the use of RFs on a primary basis will also be issued for a period of 20 years, renewable against payment.

Lots B1 to B4 refer to Provision Area I, consisting of 80 MHz blocks. Lots C1 to C8, also with 80 MHz blocks, cover Provision Areas III, IV, V, VI, VII, VIII and IX. Lots D1 to D36, in turn, correspond to Provision Areas I, III, IV, V, VI, VII, VIII and IX, with 20 MHz blocks. Once again, the order of the auction will be set forth by the final version of the

public notice, although the current draft indicates that Lots B1 to B4 will be those initially offered.

Similarly, the final allocation of spectra will follow the provisions of the bidding public notice. However, the current draft under analysis by the TCU determines that, for each Provision Area, Type D Lots acquired by bidders which have also acquired Type B Lots will be grouped thereto, and should be allocated after the final frequency of the corresponding Lot according to provisions contained in said document. Thus, in accordance with the aforementioned public notice draft, just as an example, Lot B1 refers to the band from 3,300 MHz to 3,380 MHz. Lot B2, in turn, refers to the band from 3,380 MHz to 3,460 MHz, but if the winner of Lot B1 is also the winner of any Type D Lot, in that Provision Area Lot B2 will be related to the band from 3,400 MHz to 3,480 MHz.

For the set of B, C and D Lots, the spectrum cap will be 100 MHz. However, it should be noted that, according to the proposed draft, **(I)** for Type D Lots, only the participation of a bidder which has been declared the winner in relation to Type B Lots will be admitted; and **(II)** each bidder might acquire a maximum of two (2) Type C Lots, but there are no limits on the acquisition of Type D Lots.

Since the 3.5 GHz band is the most licensed spectrum in the world for use with 5G technology (5G), this RF has aroused great

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interest in several telecommunications players. However, bidders acquiring the related Lots should also undertake several commitments, the scope of which, although initially drawn in the draft approved by ANATEL, has not yet been confirmed by TCU. One of these commitments, for example, concerns the requirement to install stations allowing the provision of SMP by means of a standard equal to or higher than the 5G *Release 16* of 3GPP, the adoption of which was the subject of divergence on the part of Brazilian operators. Furthermore, regarding this band, the winners might also be charged with the controversial construction of a network for the Integrated and Sustainable Amazon Program (PAIS) and a private network for the Federal Government, among other commitments.

The 2.3 GHz band, to wit, will correspond to Types E and F Lots, respectively with 50 MHz and 40 MHz, the bidding of which will follow the order of the public notice in its final version. This band is currently used for the provision of 4G technology, but future use for 5G technology is expected; in addition, it is a higher RF band, which has the characteristic of adding more capacity to current networks, as highlighted by ANATEL in an analysis conducted within the scope of the bidding procedure.

Lots E1 to E8 concern RFs from 2,300 MHz to 2,350 MHz, corresponding to Provision Areas III, IV, V, VI, VII, VIII and IX. Lots F1 to

F8, in turn, are related to RFs from 2,350 MHz to 2,390 MHz and cover the same Provision Areas previously mentioned. The spectrum cap for these Lots is 50 MHz, and the terms of article 1, item II, of ANATEL's Resolution No. 703/2018 should be respected.

Once again, the acquisition of these Lots will also imply certain obligations. Thus, if the version of the public notice is published under the terms provided for until now for this band, among other commitments, the offer of voice and data connections by means of coverage with technology equal to or superior to *Long Term Evolution - LTE Advanced release 10* of 3GPP should be established for the Brazilian municipalities with less than 30,000 inhabitants and locations which still do not offer SMP by means of 4G technology, until certain predetermined dates.

Finally, in the 26 GHz band, the spectrum to be auctioned was divided into Types G, H, I and J Lots, to be offered in accordance with the order disclosed in the public notice. In relation thereto:

- Lots G1 to G5 will correspond to 400 MHz blocks, between 24.3 GHz and 27.5 GHz, with the respective Provision Area I;
- Type H Lots will also be 400 MHz blocks between 24.3 GHz and 27.5 GHz, but covering Provision Areas III (H1 to H3), IV

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(H4 to H6), V (H7 to H9), VI (H10 to H12), VII (H13 to H15), VIII (H16 to H18) and IX (H19 to H21);

- Lots I1 to I10 will be 200 MHz blocks, between 24.3 GHz and 27.5 GHz, relating to Provision Area I; and
- Type J Lots will also be 200 MHz blocks, between 24.3 GHz and 27.5 GHz, but the coverage of which will encompass Provision Areas III (J1 to J6), IV (J7 to J12), V (J13 to J18), VI (J19 to J24), VII (J25 to J30), VIII (J31 to J36) and IX (J37 to J42).

The spectrum cap for the set of G, H, I and J Lots referring to the 26 GHz band is 1 GHz. Furthermore, it is important to emphasize that this is the only band for which the public notice draft under review does not provide for specific commitments.

According to the terms of the proposed wording, for the sub-bands of RFs auctioned, authorizations will be issued for the exploitation of the SMP, but there will also be the possibility of its association with an already existing authorization of the same type, with the exception that, in relation to blocks of Types G, H, I and J Lots, should the winning bidder request, the respective authorization for the use of RFs might initially be associated with a new Authorization for the exploitation of Multimedia Communication Service (SCM) or an existing grant of that service.

Despite the Ministry of Communications' expectation in the sense that TCU would complete the analysis of the public notice draft within 60 days after its submission, which took place last March, the aforementioned body is still in possession of the documentation and has requested information from ANATEL regarding points it deems worthy of special attention. However, ANATEL does not expect that this analysis will lead to major changes in the terms proposed for the bidding procedure, which would require a new analysis by this Agency, although this possibility cannot be definitively ruled out. Thus, until the publication of the public notice final version, bidding conditions may change, the impact of which is not possible to predict in this opportunity. Regarding the timing of the bidding procedure, however, it is worth mentioning that ANATEL recently stated that this could take place in the middle of the second half of 2021.

We also emphasize that this article is only intended to provide a brief summary of some relevant aspects of the wording proposed for the auction public notice. Therefore, the material is not intended to exhaust the specificities of the bidding procedure and, therefore, should not be understood as legal advice on the matter.

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.

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