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BRAZILIAN 5G BIDDING CALL - VIII
OPPORTUNITIES FOR SMALL SIZE
PROVIDERS (PPPS)

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Brazilian 5G Bidding Call – VIII Opportunities for Small Size Providers (PPPs)

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While waiting for the publication of the final version of the public notice of the bid that will auction spectrum and result in the issue of Authorizations for the Use of Radio Frequencies in the 700 MHz, 2.3 GHz, 3.5 GHz and 26 GHz bands, not only major players in the Brazilian telecommunications sector are getting ready for an occasional participation in the event, but also small companies have shown interest in the auction.

The definition of small size provider ("PPP") is given by Resolution No. 694/2018 of the National Telecommunications Agency ("ANATEL"), with the expression corresponding to the group holding a participation in the national market of less than five percent (5%) in each retail market in which it operates.

On the subject, ANATEL's Act No. 6539, dated October 18, 2019, aiming to promote competition and diversity of services, among other objectives, specifically stated that, due to exclusion criteria, telecommunications services providers not belonging to the Telefônica, Telecom Ameri-

cas, Telecom Italia, Oi and Sky/AT&T Groups are deemed PPPs, in accordance with the applicable terms of the General Plan of Competition Goals (ANATEL's Resolution No. 600/2012). In Brazil, it is worth remembering that Telefônica Group's products and services are marketed under the Vivo brand, and Telecom Americas' products, in turn, are on the market under the Claro, Net and Embratel brands. However, such Act should be revised within a minimum period of two (2) years from its publication, which occurred on October 21, 2019, except in extraordinary and duly justified cases.

The possible participation of PPPs in the bidding procedure might give cause to countless benefits to the country. According to ANATEL itself, PPPs can positively influence the market in which they are installed, helping for the digital inclusion in regions where large telecommunications services providers do not operate, in addition to increasing competition where such services are already available. Furthermore, also according to the aforementioned Agency, "with the availabili-

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ty of internet connections, opportunities for local entrepreneurs to implement new businesses multiply and citizens have more access to information and digital services. The city develops supported by Information and Communication Technologies”.

PPPs’ interest in the scope of the auction was evident even during Public Consultation No. 9, held in 2020, which submitted the public notice draft to contributions and suggestions. At that time, most contributions received were related to the 3.5 GHz band, which covers radio frequencies (“RFs”) from 3300 MHz to 3700 MHz.

The 3.5 GHz band, as ANATEL expressed in Vote No. 19/2021/PR within the scope of the bidding procedure (which might be consulted in the procedure’s set of documents), is deemed the “gateway” for the fifth mobile generation, by virtue of technical characteristics favorable to the establishment of dense and high-capacity urban networks, in addition to being located in a spectrum band close to others already used in personal devices for mobile connectivity. Moreover, precisely due to being the “pioneer band of 5G” (according to Vote No. 2/2021/MM of the same procedure), it is in this band of RFs that most networks and devices of such 5G technology are found around the world, and these factors might result in gains of scale and ease in implementing the applicable adjustments.

According to ANATEL’s Analysis No. 13/2021/CB, PPPs and medium size providers have suggested that regional blocks in this band should have a width of at least 80 MHz, as this would enable greater use of the 5G technology’s potential, in addition to allowing the balance of competition between agents in the market. The configuration in 80 MHz blocks, to wit, is included in the public notice draft that is currently being analyzed by the Federal Accounting Court (“TCU”) with regard to the aforementioned band.

According to the draft, ANATEL believes that the public notice terms favor the participation of PPPs, since, based on the division of the spectrum to be auctioned both in national and regional lots (see complementary articles regarding the Lot Types and respective Provision Areas), there will be equal opportunities for the performance of PPPs and other operators in the segment.

Specifically regarding the configuration of lots in the 400 MHz made available between 3300 MHz and 3700 MHz, ANATEL defends that the entry of new agents in the market will be possible, and not only the participation of large companies in the telecommunications sector. The Agency also highlighted that “the configuration of the regional blocks balances the variables necessary for models with a minimum economic scale to carry out the investments that 5G requires and allows the entry of

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agents with less economic strength for a national dispute”.

At the same time, the aforementioned division of lots will allow small municipalities, such as those with less than 30,000 inhabitants, to have access to 5G technology, similarly to what will happen with the population of large cities and capitals. In line with this statement, it has been highlighted, in Vote No. 1/2021/VA, that PPPs’ participation in regional blocks in the 3.5 GHz band, with the possible use of optical fiber networks already installed in smaller cities, will eventually enable 5G technology to be made available more quickly in such locations. Furthermore, as a result of this configuration and of all players involved, it will be possible for Brazil to obtain a myriad of economic benefits arising from the new mobile technology.

Another measure adopted by the Agency to encourage proposals on the part of the PPPs is the determination that each bidder may only acquire a maximum of two (2) Type C regional lots. By imposing this limitation, this body understands that it will be encouraging the acquisition of regional lots by PPPs which are indeed interested in providing services in the areas to which they refer. In addition, it is also worth noting the existence of a spectrum cap applicable to lots corresponding to the 3.5 GHz band (Types B, C and D), of 100 MHz.

Still on the subject, ANATEL considers that the requirement to implement 5G technolo-

gy with the standalone standard (5G NR Release 16 of 3GPP) will also play an important role in reducing the disadvantages for such small providers in relation to large operators, which are already implementing the 5G DSS that operates with the 4G network. This is because the networks related to the standalone 5G will need to be built in the country from their starting point, and this will have to be done by both small providers and giants of the sector.

On the other hand, the Agency considered that more favorable conditions for the fulfillment of any commitments provided for in the public notice should not be set forth in order to benefit PPPs solely because of them being smaller companies, as would be the case, for example, of a postponement of deadlines to be met, since such commitments are precisely intended to enable the society to enjoy the services resulting from the bidding as soon as possible.

In addition, the non-collection auction model itself will be positive for possible new entrants, according to ANATEL. In this regard, as stated by the Agency’s Chairman, the intent is for ninety percent (90%) of the net present value of the auctioned lots to be converted into investments, with the collection itself, therefore, being of ten percent (10%).

Even though ANATEL has positive expectations with regard to their participati-

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on in the event, PPPs consider that both the price of licenses and the obligations imposed by the public notice will have a more significant impact on this kind of companies than on large operators.

As a result, regional providers have been studying different possibilities for participating in the auction, such as, for example, by means of partnerships or other agreements. An example to be mentioned is "Iniciativa 5G Brasil" (which currently brings together 170 providers and is open to new adhesions), a group of small companies that, based on commissioned technical, regulatory and economic studies, evaluate the potential participation in the auction under the modality of a consortium. Therefore, it is easy to see that there are interesting opportunities for commercial negotiations to face the participation of large business groups in the future event.

With the auction, ANATEL intends to make 5G technology available in Brazil as of next year. This fact will result in important benefits for the country's society and economy, similarly to what happens in other world markets. Just to get an idea of its impact, according to news based on a report of the Swedish company Ericsson, 5G mobile telephony should show an extremely accelerated growth, with the first billion of compatible devices still in 2022 and, according to forecasts, the technology should correspond to 40% of global mobile connections in 2026. Given these numbers, it is easy to see the importance of the successful progress of the Brazilian bidding procedure.

Finally, we emphasize that this material contains only a brief summary of certain relevant points of the public notice proposal and, therefore, it should not be understood as legal advice regarding specific aspects within the scope of the bidding procedure.

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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