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NON-BINDING TRANSLATION

DRAFT INFORMATION MEMORANDUM

**PUBLIC TENDER FOR THE AWARD OF RADIO FREQUENCIES FOR
PROVISION OF PUBLIC COMMUNICATIONS SERVICES IN RADIO
FREQUENCY BANDS 800 MHz, 900 MHz, 1800 MHz, 2100 MHz AND
2600 MHz, WITH A PUBLIC AUCTION**

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1 INTRODUCTION

This draft Information Memorandum sets out the processes and procedures in relation to the forthcoming Public Tender for the Award of Radio Frequencies for Provision of Public Communications Services in Radio Frequency Bands 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz. It details the subject of the Public Tender and conditions that will apply, the tender procedure, and the format, and rules of the Public Auction¹.

The objectives of the Tender and general provisions are discussed in Section 2: OBJECTIVES AND GENERAL PROVISIONS.

In total 500 MHz of spectrum, including 215 MHz of paired and 70 MHz of unpaired spectrum for terrestrial radio applications capable of providing electronic communications services, will be included in the Public Tender. Details of the included spectrum are presented in Section 3: SUBJECT OF THE PUBLIC TENDER, whilst usage restrictions are described in Annex 1: General usage conditions.

Procedural aspects of and the legal requirements for the tender process are set out in Section 4: OVERVIEW OF THE TENDER PROCEDURE AND LEGAL OBLIGATIONS. This chapter includes general provisions, rules for the entitlement to participate in the procedure, requirements to be met by applicants' submissions, information on the application review process (which will end by issuing a decision on the selection of bidders), general rules of the auction and the process of issuing decisions on allocating radio frequencies.

Section 5: SPECIAL CONDITIONS AND OBLIGATIONS describes special conditions in allocating spectrum, i.e. reserved spectrum and spectrum caps, and special conditions and obligations that will apply to the use of these frequencies after the allocation, i.e. general coverage obligations and special coverage obligations in the available 800 MHz band.

The rules of the Public Auction are presented in detail in Section 6: AUCTION RULES.

¹ The format, and rules to be used for a Public Auction are not yet part of this document and will be published additionally.

2 OBJECTIVES AND GENERAL PROVISIONS

In accordance with Art. 195–197 of ZEKom-1², and the Digital Agenda for Europe³, APEK's objectives for the upcoming public tender are:

- to allocate sufficient and appropriate spectrum in a timely manner,
- to encourage efficient use of spectrum,
- to bridge the digital divide and contribute to the objectives of the Digital Agenda for Europe,
- to provide access to modern communications to the widest population possible
- to provide flexibility in the use of spectrum,
- to maintain and develop effective competition in the markets for mobile electronic communication services,
- to promote technology and service neutrality in the use of spectrum in accordance with EU guidelines,
- to promote investment and innovation.

Following international and European best practice these objectives can be best achieved by using a competitive allocation procedure. As already announced in APEK's Frequency Management Strategy and following Art. 35, 36 of ZEKom-1, APEK decided to allocate these frequencies by public tender with a public auction where all frequencies are offered simultaneously to the market.

In this tender procedure, APEK will offer the entire 800 MHz, 900 MHz, 1800 MHz and 2600 MHz bands and all unassigned spectrum in the 2100 MHz band. All frequencies will be made available for terrestrial radio applications capable of providing electronic communications services and will be technologically neutral. Since mobile operators' demand for spectrum is increasing, this public tender will try to meet their demands to the highest extent possible. Offering all available spectrum simultaneously will allow operators to obtain a suitable spectrum portfolio without the uncertainty of whether they might be able to acquire complementary spectrum in separate subsequent procedures.

Such procedure allows the decisions on allocating radio frequencies to contain conditions that ensure adequate provision of communications services throughout the country in accordance with the objectives of the Digital Agenda for Europe. In particular, the 800 MHz spectrum included in the tender has very good propagation characteristics, allowing for a cost-effective means of providing a coverage layer that can be boosted with additional capacity using higher frequency spectrum in high-traffic areas. In order to ensure that these benefits are realized, a coverage obligation on some of the 800 MHz spectrum blocks will be specified to ensure that a minimum level of data services is provided in rural areas.

Although Apek has established that the competition in the Slovenian wholesale markets for mobile communication services is effective and ex-ante regulation in these markets is no longer planned, the current structure of the end user markets for mobile communication services and implementation of new technologies requires further support for both infrastructure-based and retail competition. This requires the implementation of measures specifically designed to safeguard competition such as

² Electronic Communications Act-1 (Official Gazette, nb. 109/2012; 31.12.2012), short ZEKom-1

³ 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, COM(2010) 245 final/2; Replacing the document COM(2010) 245 final of 19.5.2010; Brussels, 26.8.2010

spectrum caps and spectrum reservations to ensure that a sufficient number of credible competitors have access to spectrum, and to limit the scope for highly asymmetric spectrum holdings after the award.

The procedures for the allocation of radio frequencies must be open, objective, transparent, proportionate and non-discriminatory. APEK's frequency allocation procedure, for which APEK is responsible under Art. 33 of ZEKom-1, must also conform to the Slovenian Radio Frequency Band Allocation Plan⁴ (Art. 26 of ZEKom-1) and be in accordance with the General Act on the Radio Frequency Utilization Plan⁵ (hereinafter: *NURF-2*), (Par. 1 of Art. 27 of ZEKom-1) and international law.

According to Par. 3 of Art. 33 of ZEKom-1, decisions allocating radio frequencies for the provision of public communications services to end-users shall be issued on the basis of a public tender without a call for interest. Since the price offered by a bidder should be the single criterion for the selection of the winning bid, the public tender will be followed by a public auction in accordance with Par. 1 of Art. 44 of ZEKom-1. The subject of the public tender, which will be presented in more detail in the next section, comprises the following frequencies:

- 791 - 821/832 - 862 MHz (hereinafter "800 MHz band"),
- 880 - 915/925 - 960 MHz (hereinafter "900 MHz band"),
- 1710 - 1785/1805 - 1880 MHz (hereinafter "1800 MHz band"),
- 2 x 5 MHz FDD⁶ and 20 MHz TDD⁷ spectrum in the 2100 MHz band (hereinafter "2100 MHz band"),
- 2500 - 2570/2620 - 2690 MHz FDD and 2570 - 2620 MHz TDD (hereinafter "2600 MHz band").

⁴ Decree on the radio frequency bands allocation plan (Official Gazette, nb. 69/2013)

⁵ General Act on Radio Frequency Utilization Plan (Official Gazette, nb. 66/2012 (68/2012 popr.))

⁶ FDD – Frequency Division Duplex

⁷ TDD – Time Division Multiplex

3 SUBJECT OF THE PUBLIC TENDER

This defines the subject of the public tender. In total, 500 MHz, including 2 x 215 MHz of paired and 70 MHz unpaired spectrum allocated for terrestrial radio applications capable of providing electronic communication services will be offered to the market. In general, the available spectrum will be divided into 5 MHz blocks and for the purposes of bidding in the action will be grouped into lot categories, with blocks within a category having comparable technical and usage properties. These categories are detailed in Section 6: AUCTION RULES.

More detailed descriptions are given in the following subsections, and the detailed technical specifications of all frequency blocks are provided in Annex 1: General usage conditions.

Frequency band	Lower band (FDD) from...to... [MHz]	Upper band (FDD) from...to... [MHz]	Simplex band (TDD) from...to... [MHz]	Bandwidth to be awarded [MHz]	Availability for use
800 MHz	791 – 821	832 – 862		2 x 30	from award of license for 15 years
900 MHz	880 – 915	925 – 960		2 x 35	from 3.1.2016 for 15 years
1800 MHz	1710 – 1785	1805 – 1880		2 x 75	from 3.1.2016 for 15 years
2100 MHz FDD	1920 – 1980	2110 – 2170		2 x 5	from award of license till 21.09.2021
2100 MHz TDD			1900 – 1920 2010 – 2025	1 x 5 1 x 15	from award of license till 21.09.2021
2600 MHz FDD	2500 – 2570	2620 – 2690		2 x 70	from award of license for 15 years
2600 MHz TDD			2570 – 2620	1 x 50	from award of license for 15 years

Table 3-1: Frequencies available in the tender procedure

3.1 800 MHz band

The band includes a total of 2 x 30 MHz of paired spectrum between 791 MHz and 862 MHz (downlink: 791-821 MHz, uplink: 832-862 MHz). Having been released from usage by terrestrial broadcasting, the 800 MHz frequency band is subject to a forthcoming public tender procedure.

The whole band will be awarded in 6 blocks of 2 x 5 MHz (BA01 to BA06) for the period of 15 years from the date of the award.

For the lowest block (BA01) there is some potential interference with Hungarian analogue TV in Prekmurje till 1 January 2015, and with DVB-T close to neighboring

countries' Channel 60 and 59 transmitters. Further details are provided in Annex 1: General usage conditions.

All blocks in this band will be auctioned as generic blocks till the last phase of the auction (assignment stage) when they become specific in accordance with the Section 6: AUCTION RULES. The lowest block (BA01) will in no event be assigned as a block with special coverage obligations in accordance with Section 5.2.2: Special coverage obligations in the 800 MHz band.

BA 01	BA 02	BA 03	B A04	BA 05	BA 06
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 Available immediately

Figure 3-1: Overview of the 800 MHz frequency band

Block name	Frequencies	Block size
BA01	791-796/832-837 MHz	2 x 5 MHz
BA02	796-801/837-842 MHz	2 x 5 MHz
BA03	801-806/842-847 MHz	2 x 5 MHz
BA04	806-811/847-852 MHz	2 x 5 MHz
BA05	811-816/852-857 MHz	2 x 5 MHz
BA06	816-821/857-862 MHz	2 x 5 MHz

Table 3-2: Blocks to be awarded in the 800 MHz band

3.2 900 MHz band

The 900 MHz band consists of 2 x 35 MHz of spectrum: 880 – 915 MHz (uplink) and 925 - 960 MHz (downlink). The 900 MHz band is currently completely assigned to three mobile operators.

In this public tender, the whole band will be awarded in 7 blocks of 2 x 5 MHz (BB01 to BB07).

As a consequence of Decisions⁸ issued on 25 May 2013 to Telekom Slovenije (Decision No. 38115-7/2013/8) and to Si.mobil (Decision No. 38115-14/2013/10), the 900 MHz spectrum will be available for use by the winning bidders from 3 January 2016, for a period of 15 years. Consequently, the licence period for frequencies in this band will end on 3 January 2031.

Information on GSM preferential frequencies and protection of other services is provided in Annex 1: General usage conditions.

BB 01	BB 02	BB 03	BB 04	BB 05	BB 06	BB 07
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 Available from 3.1.2016

Figure 3-2: Overview of the 900 MHz frequency band

Block name	Frequencies	Block size
BB01	880-885/925-930 MHz	2 x 5 MHz
BB02	885-890/930-935 MHz	2 x 5 MHz
BB03	890-895/935-940 MHz	2 x 5 MHz

⁸ In this decision the licenses for 900 MHz spectrum of Mobitel and Simobil were prolonged in accordance with the Art 243 ZEKom-1 until 3.1.2016

BB04	895-900/940-945 MHz	2 x 5 MHz
BB05	900-905/945-950 MHz	2 x 5 MHz
BB06	905-910/950-955 MHz	2 x 5 MHz
BB07	910-915/955-960 MHz	2 x 5 MHz

Table 3-3: Blocks to be awarded in the 900 MHz band

3.3 1800 MHz band

The 1800 MHz band consists of 2 x 75 MHz in the range 1710 MHz – 1785 (uplink)/1805 - 1880 MHz (downlink). 14 blocks of 2 x 5 MHz are currently assigned to three mobile operators. One block is currently unassigned.

The whole band will be awarded in 15 blocks of 2 x 5 MHz (BC01 to BC15). All currently assigned licences will expire on 3 January 2016. After that date the frequencies will be available and will be assigned for 15 years. Consequently, the licence period for frequencies in this band will end on 3 January 2031.

Detailed information on GSM preferential channels is provided in Annex 1: General usage conditions.

BC 01	BC 02	BC 03	BC 04	BC 05	BC 06	BC 07	BC 08	BC 09	BC 10	BC 11	BC 12	BC 13	BC 14	BC 15
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 Available from 3.1.2016

Figure 3-3: Overview of the 1800 MHz frequency band

Block name	Frequencies	Block size
BC01	1710-1715/1805-1810 MHz	2 x 5 MHz
BC02	1715-1720/1810-1815 MHz	2 x 5 MHz
BC03	1720-1725/1815-1820 MHz	2 x 5 MHz
BC04	1725-1730/1820-1825 MHz	2 x 5 MHz
BC05	1730-1735/1825-1830 MHz	2 x 5 MHz
BC06	1735-1740/1830-1835 MHz	2 x 5 MHz
BC07	1740-1745/1835-1840 MHz	2 x 5 MHz
BC08	1745-1750/1840-1845 MHz	2 x 5 MHz
BC09	1750-1755/1845-1850 MHz	2 x 5 MHz
BC10	1755-1760/1850-1855 MHz	2 x 5 MHz
BC11	1760-1765/1855-1860 MHz	2 x 5 MHz
BC12	1765-1770/1860-1865 MHz	2 x 5 MHz
BC13	1770-1775/1865-1870 MHz	2 x 5 MHz
BC14	1775-1780/1870-1875 MHz	2 x 5 MHz
BC15	1780-1785/1875-1880 MHz	2 x 5 MHz

Table 3-4: Blocks to be awarded in the 1800 MHz band

3.4 2100 MHz band

The 2100 MHz band consists of 2 x 60 MHz of paired FDD spectrum from 1920 to 1980 MHz (uplink) and from 2110 to 2170 MHz (downlink), and two unpaired TDD bands (20 MHz from 1900 to 1920 MHz, and 15 MHz from 2010 to 2025 MHz). At present 11 of the 12 FDD blocks and 3 of the 7 TDD blocks are assigned to the four mobile operators. Three of the mobile operators' licences will expire on 21 September 2021 and those of the fourth will expire on 8 April 2023, therefore these blocks are not subject of this public tender. Only the unassigned blocks are included in this public tender. To align the expiration dates for frequencies in the 2100 MHz band, the licences for auctioned blocks will expire on 21 September 2021.

The following blocks will be awarded in this public tender:

- BD01 (2 x 5 MHz FDD),
- BT01 (5 MHz TDD),
- BT02 to BT04 (15 MHz TDD).

The frequencies associated with these blocks are shown in Figure 3-4: Overview of the 2100 MHz band. Usage restrictions regarding FDD/TDD compatibility and other services are detailed in Annex 1: General usage conditions.

FDD



TDD

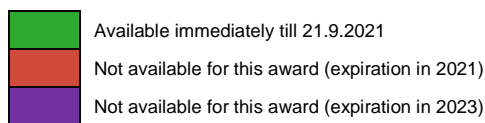


Figure 3-4: Overview of the 2100 MHz band

Block name	Frequencies	Block size
BD01	1955 – 1960 MHz/2145 – 2150 MHz	2 x 5 MHz
BT01	1905-1910 MHz (TDD)	5 MHz
BT02	2010-2015 MHz (TDD)	5 MHz
BT03	2015-2020 MHz (TDD)	5 MHz
BT04	2020-2025 MHz (TDD)	5 MHz

Table 3-5: Blocks to be awarded in the 2100 MHz band

3.5 2600 MHz band

The band extends from 2500 to 2690 MHz, consisting of paired FDD blocks (uplink: 2500 MHz - 2570 MHz; downlink: 2620 MHz - 2690 MHz) and unpaired TDD blocks between 2570 MHz and 2620 MHz. Some frequencies in the 2600 MHz band are currently still used for fixed radio links. These licences will expire before 1 June 2014 and will not be extended. .

The whole band will be awarded in 14 FDD blocks of 2 x 5 MHz (BE01 to BE14) and 9 TDD blocks of 5 MHz (BF01 to BF09), with a licence duration of 15 years.

The bidder that is awarded the BF09 block will also receive the additional block BF10 (2615-2620 MHz). If the BF09 and BE01 blocks are awarded to the same bidder, the additional block BF10 can be used as all other unrestricted blocks. Otherwise, BF10 is subject to usage restrictions (see Annex 1: General usage conditions).

Details on the usage restrictions that will apply to the 2600 MHz spectrum regarding FDD/TDD compatibility and other services are provided in Annex 1: General usage conditions.

FDD

BE 01	BE 02	BE 03	BE 04	BE 05	BE 06	BE 07	BE 08	BE 09	BE 10	BE 11	BE 12	BE 13	BE 14
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TDD

BF 01	BF 02	BF 03	BF 04	BF 05	BF 06	BF 07	BF 08	BF 09	BF 10
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 Available immediately

Figure 3-5: Overview of the 2600 MHz frequency band

Block name	Frequencies	Block size
BE01	2500-2505/2620-2625 MHz (FDD)	2 x 5 MHz
BE02	2505-2510/2625-2630 MHz (FDD)	2 x 5 MHz
BE03	2510-2515/2630-2635 MHz (FDD)	2 x 5 MHz
BE04	2515-2520/2635-2640 MHz (FDD)	2 x 5 MHz
BE05	2520-2525/2640-2645 MHz (FDD)	2 x 5 MHz
BE06	2525-2530/2645-2650 MHz (FDD)	2 x 5 MHz
BE07	2530-2535/2650-2655 MHz (FDD)	2 x 5 MHz
BE08	2535-2540/2655-2660 MHz (FDD)	2 x 5 MHz
BE09	2540-2545/2660-2665 MHz (FDD)	2 x 5 MHz
BE10	2545-2550/2665-2670 MHz (FDD)	2 x 5 MHz
BE11	2550-2555/2670-2675 MHz (FDD)	2 x 5 MHz
BE12	2555-2560/2675-2680 MHz (FDD)	2 x 5 MHz
BE13	2560-2565/2680-2685 MHz (FDD)	2 x 5 MHz
BE14	2565-2570/2685-2690 MHz (FDD)	2 x 5 MHz
BF01	2570-2575 MHz (TDD)	5 MHz
BF02	2575-2580 MHz (TDD)	5 MHz
BF03	2580-2585 MHz (TDD)	5 MHz
BF04	2585-2590 MHz (TDD)	5 MHz
BF05	2590-2595 MHz (TDD)	5 MHz
BF06	2595-2600 MHz (TDD)	5 MHz
BF07	2600-2605 MHz (TDD)	5 MHz
BF08	2605-2610 MHz (TDD)	5 MHz
BF09	2610-2615 MHz (TDD)	5 MHz
BF10	2615-2620 MHz (TDD)	5 MHz

Table 3-6: Blocks to be awarded in the 2600 MHz band

4 OVERVIEW OF THE TENDER PROCEDURE AND LEGAL OBLIGATIONS

4.1 Overview of the tender procedure

The tender procedure is initiated by publishing the decision on the initiation of a public invitation to tender⁹ in the Official Gazette of the Republic of Slovenia (Par. 5 of Art. 38 of ZEKom-1). Director of APEK will appoint a special impartial commission for conducting the public invitation to tender (hereinafter: Tender Commission). Alongside the decision on the initiation of public invitation to tender APEK will issue also the Tender Documentation which will be published on APEK's website and in which APEK will explain all items of the Decision and indicate which evidence on compliance with the conditions must be provided for tenders to be deemed acceptable.

Applicants will then prepare their tender applications in line with the provisions set out below.

Tender applications will be opened publicly and anonymously, and the Tender Commission will then review these applications and prepare a summary document setting out whether individual applicants meet the qualification conditions.

On the basis of this report, a decision on the selection of bidders will be issued. With the decision on the selection of bidders applicants which will meet the conditions will become 'bidders'.

This will be followed by the Public Auction in accordance with the provisions of ZEKom-1 and the detailed auction rules (see Section 6: AUCTION RULES).

The Public Auction concludes with the decision in accordance with Par. 6 of Art. 45 of ZEKom-1 and delivering the decisions to the successful bidders.

When the successful bidder or bidders pay the fee for the efficient use of a limited natural resource, administrative procedure for issuing licences will start. The procedure ends with the licences being issued.

A detailed timetable for the forthcoming tender procedure is presented in Annex 8: Timetable.

4.2 General provisions

4.2.1 Confidentiality

APEK will treat all information received by applicants as confidential. In particular, information relating to the initial bids included in the tender applications (see Section 4.4.1.4: Frequency allocation application (the initial bid) and any further bids submitted in the course of the Public Auction will be considered to be confidential.

Applicants are obliged to treat as confidential any information received from APEK or the Tender Commission in the course of the procedure. In particular, the decision on the selection of bidders, or any decision made in relation to exclusion of applicants or bidders must not be communicated to third parties other than where the applicant is required to do so by law.

⁹ See Par. 1 Art38 ZEKom-1

The obligation to treat as confidential any information received from APEK or the Tender Commission remains in force until the licences have been awarded to successful bidders. This also applies to applicants that fail to be confirmed as bidders, or bidders excluded during the public auction.

4.2.2 Prohibition of collusive behavior

Throughout the procedure, applicants and bidders must not enter into agreements, or engage in any other behaviour, that could have the effect of compromising the integrity of the tender procedure.

From the publication of the Tender Documentation onwards, it is forbidden for parties interested in participation to establish contact with other interested parties directly or indirectly or to exchange information with the aim of influencing the outcome of the tender procedure.

In particular, the following actions during the tender procedure constitute collusive or prohibited behaviour:

- any cooperation of applicants and/or potential applicants, particularly with the intention of influencing the course or result of the tender procedure,
- disclosure of any information concerning the participation in the tender procedure,
- disclosure of bid amounts or bidding strategies, specific bids or other statements likely to influence the participation or bidding behavior of third parties,
- making any announcements that might provide an indication of the intended behavior throughout the tender procedure,
- co-ordinating bidding in the Public Auction.

Bidders violating these rules may be excluded from the public auction, without having the right to appeal against this decision.

Should such behaviour become known after the completion of the tender procedure or after issuing of licences, APEK may revoke licences granted without refunding fees for efficient use of a limited natural resource paid by the licensee.

4.2.3 Accurate and complete information

An applicant or bidder may be excluded at any time from the tender procedure if it is found that the application contains incorrect or false information.

4.2.4 Requests for clarification

Interested parties may address to APEK requests for clarifications to the attention “Pojasnila v zvezi z javnim razpisom za zagotavljanje javnih komunikacijskih storitev” (which means: Explanations in regard to public invitation to tender for the provision of public communication services) within the deadline set out in the Tender Documentation.

These requests for clarification can be sent in written form to: APEK, Stegne 7, 1000 Ljubljana, with reference “Pojasnila v zvezi z javnim razpisom za zagotavljanje javnih komunikacijskih storitev – ne odpiraj” (which means: Explanations in regard to public invitation to tender for the provision of public communication services – do not open). The requests for clarification must be submitted to APEK not later than dd.mm.yyyy.

APEK will publish all questions and responses in anonymised form on its website.

4.2.1 Annulment of the public invitation to tender

APEK may issue a decision to annul the tender procedure at any time before issuing a decision based on this public tender. The decision of the annulment of the public invitation to tender must be published in the Official Gazette of the Republic of Slovenia. According to the case law of the Administrative Court of the Republic of Slovenia a public invitation to tender is not an administrative act, and the decision to cancel such an invitation cannot therefore be challenged in administrative disputes before the Administrative Court.

If APEK decides to cancel the tender procedure, it will return to bidders all already paid deposits and administrative costs no later than 30 days after announcement of annulment in the Official Gazette of the Republic of Slovenia.

Transfer commissions and all other costs or taxes incurred in transferring funds to the account have to be paid by the bidder. No interest will be paid for any down payments or deposits.

4.2.2 Non-participation in the auction

Any bidder who has submitted an application and fulfilled the conditions for admission to the public auction and who does not participate in the auction will be formally excluded from the list of bidders. In this event, the already paid administrative costs of conducting the public auction will not be reimbursed to the bidder.

4.2.3 Complaints

All decisions issued by APEK during the public tender procedure may be challenged in an administrative dispute against the the decision on allocating radio frequencies. That does not apply to the decision on annulment of public tender procedure, which cannot be challenged in an administrative dispute.

4.3 Entitlement to participate in the tender procedure

All natural persons and legal entities, which

- are financially, organizationally and technically capable of planning, deploying, operating mobile communication networks and
- are not excluded from participating in a public tender in the Republic of Slovenia (see Section 4.4.1.2: Information on the applicant's ownership structure)

may apply for participation in this tender procedure.

Corporate enterprises, joint ventures, associations and consortia will be considered as legal entities. Joint ventures, associations and consortia will be termed as "groups" throughout the Information Memorandum.

In addition to these general conditions, all applicants have to act as independent entities and have to abstain from any kind of cooperation and collusion, which might have the potential to distort competition for radio frequencies.

Applicants are not allowed to be related to any other applicant by cross-ownership, if they command a share exceeding a controlling share in the other applicant. Share of over one quarter of ownership of a particular company accounts as a controlling share.

4.4 Submission of tender applications

Interested natural persons or legal entities that are entitled to participate and are interested in taking part in this public tender must submit to APEK their application file within the deadline specified in the Tender Documentation.

Applicant remains applicant until it receives the decision on selection of bidders or until it is informed that it does not meet the conditions required in the tender procedure.

4.4.1 Information contained in the application file

The application file must contain the following information:

- general information on the applicant,
- Information about the applicant's ownership structure,
- authorisation for signing the application, where needed, and nomination of three persons, who will be authorized to submit bids during the public auction,
- the frequency allocation application (the initial bid),
- confirmation of payment of the administrative costs,
- statements of the applicant.

4.4.1.1 *General information on applicant*

The applicant must submit the following information:

- company name, business address, registered seat of a company, registration number, tax number, statutory representative, other authorised persons to represent the legal entity (clearly mentioning the duration of the mandate), their signatures for legal entities; and full name, permanent/temporary address, signature, and tax number for natural persons,
- information about a nominated bank account for any refund of deposits and other monies.

Applicants which are not registered in the Republic of Slovenia (hereinafter: foreign applicants) have to provide a copy of their statutes. A foreign applicant shall also provide a correspondence address in Slovenia (in accordance with General Administrative Procedure Act¹⁰) to which all correspondence, particularly communications, summonses and decisions relating to the tender procedure, may be addressed with legal force, and the details of a person or persons authorized to confirm receipt of such documents. Foreign applicants also have to provide a certified extract from judicial records (or an equivalent document, in a form recognized in Slovenia, of the country in which the company is based).

4.4.1.2 *Information on the applicant's ownership structure*

Applicants must provide information about the value and structure of the proprietary capital including the complete hierarchy of ownership to the ultimate owners. This information must enable APEK to establish the ultimate owner of the applicant, and to identify the extent to which different applicants may be under common ownership or connected through common shareholdings.

¹⁰ General Administrative Procedure Act (Official Gazette of the Republic of Slovenia No. 24/2006 – UPB2, 105/2006 – ZUS-1, 126/2007, 65/2008, 8/2010)

In the event that superordinate stakeholders (e.g. shareholders, bearers of options, of debt capital or of other securities issued by the applicant) hold more than one-quarter of the share of the owner of the applicant without holding a direct stake in the applicant, these interests must be described in the application.

In cases where a stake in the applicant is held for a third party by persons acting as trustees or in other similar functions, these circumstances are to be noted in the application, and details are to be provided for the actual owner.

In the case of consortia or joint ventures, the type of relationship among the members as well as detailed information on following is required:

- consortium agreements,
- joint venture agreements,
- letters of intent,
- stakeholder agreements.

The information on the ownership of all consortium members is to be included in the application.

4.4.1.3 Authorisation for signing the application and nomination of three persons authorised for submitting bids during the public auction

If the application is not signed by the statutory representative of the applicant, the application must be accompanied by a written and notarized authorization, with which the statutory representative authorizes a natural person for signing the application (see form in Annex 7: Forms (AUTHORISATION)). The application file must also contain a nomination of three persons, who will be authorized to submit bids during the public auction (Annex 7: Forms (A.3 NOMINATION OF THREE PERSONS, WHO WILL BE AUTHORIZED TO SUBMIT BIDS DURING THE PUBLIC AUCTION)).

4.4.1.4 Frequency allocation application (the initial bid)

In the frequency allocation application, the applicant must specify the lots it wishes to acquire at the reserve price (the initial bid). The initial bid constitutes a binding commitment to acquire these lots at the reserve price in the case that no bidding process will be required, as set out in the Auction Rules (see Section 6: AUCTION RULES). As such, the initial bid needs to comply with all the bidding restrictions. The initial bid also defines the bidder's initial eligibility as specified in the section on auction rules.

The frequency allocation application will have to be completed and signed by the applicant's legal representative or a person authorized to sign the application (see Annex 7: Forms: (FREQUENCY ALLOCATION APPLICATION (THE INITIAL BID))), without deletions and/or additions, except for those imposed by the form of the document. This bid is the bidder's initial bid when the public auction begins.

4.4.1.5 Confirmation of payment of the Administrative Cost

The cost incurred by APEK for holding the public auction (administrative costs) consists also of all costs in relation to preparation of whole documentation for holding the public auction. Administrative costs will be recovered from all bidders in equal proportion. As the actual cost of the process and the number of bidders at the time of the publication of the decision on initiation of the public invitation to tender will not be known, the applicants will be required to pay an amount of one third of the total

estimated costs. Confirmation of such payment has to be provided as part of the tender application.

APEK will refund such payments to applicant that fail to qualify as bidders within 30 days of issuing the decision on the selection of bidders.

Any difference between the payment made by successful applicants that will become bidders and their share of the actual costs will be refunded within 30 days from the issuing of the decision provided in Art. 45 of ZEKom-1. No interest will be due on such refunds.

4.4.1.6 Statements of the applicant

Application has to include the following statements of the applicant (see Annex 7: Forms, A.6: DECLARATIONS):

- statement that he is familiar with the content of the Tender Documentation and that he accepts its conditions and requirements,
- statement that the information provided in application is complete and accurate,
- statement that the applicant is solvent and not involved in any bankruptcy, compulsory settlement, or compulsory dissolution proceedings, or deletion from the register of companies without dissolution, and that there is no just cause for such procedure to begin, due to current business, or potential court or other proceedings in which the applicant might be involved,
- statement that the applicant has not entered into any agreements and will not engage in behavior, that could have the effect of compromising the integrity of the tender procedure (collusion) and that he is aware of the fact, that if such behavior becomes known after the completion of the tender procedure, APEK may revoke licences granted without refunding the paid fees for efficient use of a natural resource.

4.4.2 Formal requirements for the application file

4.4.2.1 Language of the documents

An applicant's application, all correspondence and all documents that refer to the application must be submitted in Slovenian language. The only exception can be supporting materials and explanations which complement the required information as specified above. These documents can be submitted in English language.

If during the review of the applications APEK believes that a part of the application which was not submitted in the Slovenian language should be translated into Slovenian, it may require the applicant to provide the translation at its own expense, and sets the deadline. If the applicant does not provide the translation, the application is rendered as incomplete.

4.4.2.2 Form of the application file

The application file will have to be prepared in a form that complies with the requirement set out in the Tender Documentation.

4.4.3 Shipping and reception of the application file

Regardless of the method of shipping, the applications must be sent to the headquarters APEK (APEK, Stegne 7, 1000 Ljubljana). APEK must receive the applications within the deadline set out in the Tender Documentation.

Applicant must seal the original and the copy of the application file in separate envelopes marking the envelopes with the wordings "ORIGINAL" and, respectively, "COPY". The envelopes have to be inserted together into one envelope, which must be marked with the reference "Ponudba na javni razpis za dodelitev radijskih frekvenc za zagotavljanje javnih komunikacijskih storitev v radiofrekvenčnih pasovih 800 MHz, 900 MHz 1800 MHz, 2100 MHz in 2600 MHz, z javno dražbo – NE ODPIRAJ" (which means: Application file for public tender for public tender for the award of radio frequencies for the provision of public communications services in radio frequencies frequency bands 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz, with public auction – DO NOT OPEN) and addressed to APEK, Stegne 7, 1000 Ljubljana. The applicant has to put name and his full address on the exterior envelope. The exterior envelope has to be sealed and closed in a way that will allow the tender commission to confirm that the application file had not been opened before the public opening of the applications.

Files received by APEK after the deadline will not be taken into consideration and are to be returned unopened to the sender's address on the envelope. Applicant must take all measures in order to make sure that its application is received by APEK no later than the deadline set for receiving the applications, and will assume all the risks related to the transmission of the application, including force majeure.

APEK reserves the right to extend the deadline set for receiving the applications and, correspondingly, the date set for opening the envelopes containing the application files. In this case it will communicate the new deadline set for receiving the applications and, respectively, the new date set for opening the envelopes containing the application files, on its website (www.appek.si), at least 10 days before the initial deadline.

4.4.4 Modification of the application file

Any applicant has the right to modify, complete, substitute or withdraw its application file prior to the deadline set for receiving the applications by sending a written notification to APEK.

Notice to modify or complete the application must be properly marked on the envelope with "**Ponudba na javni razpis za radiofrekvenčne pasove 800 MHz, 900 MHz, 1800 MHz, 2100 MHz in 2600 MHz – sprememba/dopolnitev ponudbe**" (which means: Application file for the public tender procedure for the award of radio frequencies in radio frequencies bands 800MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz – modification/completion).

In case that the applicant replaces his application with a new application, he has to formally withdraw former application from the public tender procedure. The withdrawal of an application must be received by the Agency by the deadline for submission of application and it must be given in writing. Written withdrawal of the application must be properly marked with "**Umik ponudbe na javni razpis za radiofrekvenčne pasove 800 MHz, 900 MHz, 1800 MHz, 2100 MHz in 2600 MHz**" (which means: Withdrawal of the application file for the public tender procedure for

the award of radio frequencies in radio frequencies bands 800MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz) and must be sent to address of Agency with registered letter or personally submitted at mailroom of the Agency (Stegne 7, Ljubljana, first floor).

Before the public opening of the applications, withdrawn application will be unopened sent to their senders.

4.5 Review of tender applications and issue of the decision on the selection of bidders

4.5.1 Public opening of the applications

The envelopes containing the application files will be opened by the Tender Commission in a public session.

4.5.2 Clarification requests by the Tender Commission

According to Par. 4 Art. 43 ZEKom-1, the Tender Commission may request clarifications of the applications from applicants. Such clarification must not change the content of application. The Tender Commission may set a limit of no more than 5 days for the clarifications to be submitted to APEK.

4.5.3 Review of applications

The Tender Commission will prepare a summary document (for which the provisions of the Section on Confidentiality apply), setting out whether individual applicants meet the following qualification conditions:

- general information on the applicant, Information about the applicant's ownership structure, authorisation for signing the application, where needed and nomination of three persons, who will be authorized to submit bids during the public auction, statements of the applicant in accordance with form A.6: DECLARATIONS,
- the frequency allocation application (the initial bid),
- confirmation of payment of the administrative costs.

The report will also indicate instances where applicants have been in breach of the general obligations regarding Confidentiality, Prohibition of collusive behavior, and providing the Information on the applicant's ownership structure.

If the Tender Commission establishes that there is a connection between two or more applicants of the type envisaged see Section 4.4.1.2: Information on the applicant's ownership structure, APEK will inform all the involved applicants on the situation found, requesting them to express in writing, within a certain term, which of these applications should be kept in the tender procedure. The non-expression of an option or the expression of several different options will lead to the rejection of all envisaged applications. In case a connection of the type described in see Section 4.4.1.2: Information on the applicant's ownership structure between two or more bidders is discovered subsequently to the qualification stage, all the involved bidders will be excluded from the procedure.

4.5.4 Issue of the decision on the selection of bidders

On the basis of the summary document from the Tender Commission, applicants which will meet all the conditions will be issued the decisions on the selection of

bidders, in which APEK will determine the time, place and method of implementation of the public auction. Applicants that will not meet one or more conditions of this public tender procedure will be informed that they are eliminated from the procedure, specifying at the same time the reasons for that.

Applicants not admitted as bidders are further subject to the rules on information confidentiality provided for in Section 4.2.1: Confidentiality until the licences have been awarded.

APEK will communicate the result of its decision regarding the fulfilment of tender conditions to each applicant separately.

APEK will not communicate to bidder the identity of other bidders or the identity of the applicants that did not qualify as bidders, nor will APEK communicate number and identity of applicants and bidders to the public.

Following its obligation of Par. 4 Art. 44 ZEKom-1, APEK will publish the time and place of the public auction on its website and in the Official Gazette of the Republic of Slovenia.

4.6 Public auction

4.6.1 Deposit requirements

In order to take part in the public auction, bidders are required to transfer a deposit into the special budget account of the Republic of Slovenia as set out in the Tender Documentation at least one working day before the start of the public auction. Bidders have to provide confirmation on payment of the deposit to APEK.

The initial deposit value must be at least the total value of the lots in the bidder's initial bid (see Annex 7: Forms, FREQUENCY ALLOCATION APPLICATION (THE INITIAL BID) at their reserve prices. APEK may ask for additional deposits in the course of the public auction, as set out in the Section 6: AUCTION RULES.

Deposits of successful bidders will be taken into account at payment of the licence fee. Deposits of unsuccessful bidders will be refunded within 30 days of the end of the public auction.

Bidders who are in breach of any of the general obligations or of specific auction rules will forfeit their deposit.

If the tender procedure is cancelled the deposits will be returned to all bidders no more than 30 days from the issue of the decision on the cancellation of the tender procedure.

No interest will be due on deposits.

Transfer commissions and all other costs or taxes incurred in transferring funds to the account have to be paid by the bidder.

Deposits will be returned (transferred) to the bank account stated by the bidders.

4.6.2 Rules of the public auction

The detailed procedures and rules for the public auction are described in Section 6: AUCTION RULES below.

4.7 Licence award

Upon conclusion of the public auction, the Tender Commission will produce a summary document setting out the allocation of frequencies resulting from the auction and the resulting prices. In accordance with the auction rules (see Section 6: AUCTION RULES) and Par. 6 Art. 45 ZEKom-1, the decision will be issued to successful bidders in which they will be informed about the frequency blocks won by the bidder, their location in the frequency bands, the fee for efficient use of a limited natural resources for the frequency blocks, and any additional payments due to cover the difference between the above mentioned fee and the bidder's deposit.

Bidders will be notified of the auction results no earlier than one full working day and no more than 10 working days after the end of the public auction.

Bidder or bidders who have been successful at the public auction and who have paid the fee for the efficient use for the limited natural resource will be selected in this public tender procedure (Par. 9 Art. 45 ZEKom-1). Deadlines for payment and payment method will be determined by APEK in collaboration with the relevant Ministry.

According to Par. 2 Art. 47 ZEKom-1 the administrative procedure of issuing of a license shall be commenced only after the successful bidder or bidders have paid the fee for the efficient use of a limited natural resource. Successful bidders are therefore required to make any outstanding payments within 5 working days of receiving the decision in accordance with Par. 6 Art. 45 ZEKom-1. Abovementioned bidders shall provide payment confirmation (with budget account and reference number) to APEK. After that APEK will issue licences to these bidders. A draft licence is provided in Annex 4: Draft LicenceAnnex 4: .

5 SPECIAL CONDITIONS AND OBLIGATIONS

5.1 Frequency caps and reservations

5.1.1 Reservations

In light of the objectives of tender procedure and the competition concerns set out in Section 2: OBJECTIVES AND GENERAL PROVISIONS, APEK will reserve up to two 2 x 5 MHz blocks of 800 MHz spectrum that only new entrants or existing operators with a market share of active end users of at most 15% can acquire.

The amount of reserved spectrum will be determined as follows:

1. If in the initial bids there is no demand for these blocks from bidders qualified to bid on reserved spectrum, there will be no reservation, and the size of the lot subject to the special coverage obligations of Section 5.2.2: Special coverage obligations in the 800 MHz band, will be increased to 2 x 20 MHz,
2. If in the initial bids there is total demand for only one 2 x 5 MHz block from bidders qualified to bid on reserved spectrum, one 2 x 5 MHz block will be included in the reservation, and the size of the lot subject to the special coverage obligations of Section 5.2.2: Special coverage obligations in the 800 MHz band, will be increased to 2 x 15 MHz,
3. If in the initial bids there is total demand for 2 blocks from bidders qualified to bid on the reserved spectrum, two 2 x 5 MHz blocks will be included in the reservation.

5.1.2 Spectrum caps

All bids in the public tender will be subject to the following spectrum caps:

- 2 x 30 MHz across the 800 and 900 MHz bands,
- 2 x 15 MHz in the 900 MHz band,
- 2 x 30 MHz in the 1800 MHz band,
- 2 x 105 MHz FDD across 800, 900, 1800, 2100 and 2600 MHz bands, including existing holdings of 2100 MHz FDD spectrum.

5.2 Coverage obligations and network deployment

5.2.1 General coverage and rollout obligations

The licences will specify the following coverage and rollout obligations:

- Winners of spectrum below 1 GHz are required to offer commercially available wireless electronic communications services to:
 - 40% of the population within 3 years,
 - 70% of the population within 5 years.
- Winners of spectrum only above 1 GHz are required to offer commercially available wireless electronic communications services to:
 - 25% of the population within 3 years,
 - 40% of the population within 5 years.

Assessment of compliance with these obligations is detailed in Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band.

If the winner of a spectrum licence fails to meet the applicable obligations, the frequencies awarded to that license holder will be revoked without a refund of the fee for the efficient use of a limited natural resource.

5.2.2 Special coverage obligations in the 800 MHz band

In addition to the general coverage and roll-out obligations, and according to the RSPB 2012, APEK requires that the winner of the block with special coverage obligation provides mobile broadband services at a speed of at least 10 Mbit/sec downlink (outdoor) measured at end user's mobile terminal to at least 95% of the population of Slovenia within 3 years of issuing the licences. This obligation can be achieved by using any of the frequencies available to that operator.

Additionally, the coverage must include at least 75% of all of the settlements or groups of settlements specified in Annex 6: The list of settlements.

For details regarding how compliance with these obligations will be determined, see Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band.

If the winner of a spectrum licence fails to meet the applicable obligations, the frequencies awarded to that license holder will be revoked without a refund of the fee for the efficient use of a limited natural resource.

6 AUCTION RULES

Will be published later.

Annex 1: General usage conditions

Conditions of use and compatibility with other services

APEK will award frequencies for Terrestrial radio applications capable of providing electronic communications services (TRA-ECS) in accordance with valid Frequency Allocation Table (Uredba o načrtu razporeditve radiofrekvenčnih pasov) and valid Frequency Usage Table (Splošni akt o načrtu uporabe radijskih frekvenc – NURF). The conditions of use listed below shall apply to the licensees (documents can be found at <http://www.erodocdb.dk/default.aspx>).

Frequency band 800 MHz

For frequency band 800 MHz the provisions of bellow mentioned CEPT decisions, recommendations and reports apply:

- EC Decision 2010/267/EU: Harmonised technical conditions of use in the 790-862 MHz for terrestrial systems capable of providing ECS,
- ECC/DEC/(09)03: Harmonised conditions for MFCN operating in the band 790-862 MHz,
- CEPT Report 030: The identification of common and minimal (least restrictive) technical conditions for 790-862 MHz for the digital dividend in the European Union,
- CEPT Report 031: Frequency (channelling) arrangements for the 790-862 MHz band,
- CEPT Report 019: Least restrictive technical conditions for WAPECS frequency bands,
- ECC/REC/(11)04: Frequency planning and frequency coordination for terrestrial systems for Mobile/Fixed Communication Networks (MFCN) capable of providing electronic communications services in the frequency band 790-862 MHz.

It has to be emphasised that any amendments or new versions of the above-mentioned CEPT provisions have to be applied.

The block edge masks (BEM) are defined in EC Decision 2010/267/EU. In particular, the following conditions of use are listed:

- Duplex mode: FDD,
- The maximum mean in-block EIRP of base stations complying with first paragraph (In-block limits) of section B. Technical conditions for FDD or TDD base stations (BS) of annex of EC Decision 2010/267/EU and is specified as follows: +64dBm/5 MHz for all blocks,
- Maximum mean out-of-block EIRP of base stations has to comply with limits in Table 4 (Baseline requirements — BS BEM out-of-block EIRP limits over frequencies below 790 MHz), Case A (For TV channels where broadcasting is protected), of section B of annex of EC Decision 2010/267/EU
- The block edge masks (BEM) must be complied with section B of annex of EC Decision 2010/267/EU.

Other provisions that has to be taken into account at usage of frequency band 800 MHz are:

- Frequencies shall be used as well in accordance with the other technical requirements defined in valid NURF,
- In border regions, cross border coordination has to be done in accordance with relevant CEPT documents (<http://www.ecodocdb.dk>), and international agreements (<http://www.apek.si/direktive,-priporocila-in-mednarodni-sporazumi>).

Measures concerning the coexistence of mobile communications and broadcasting services at the edge of the 800 MHz band (791 MHz)

In order to protect radio applications in the frequency bands below 791 MHz, both in Slovenia as well as in bordering countries, APEK may ex officio change the decisions on allocating radio frequencies, if there is no other way of avoiding harmful interferences or the radio frequency protection ratio is not achieved (Point 4 Par. 2 Art. 57 ZEKom-1).

If there is interference APEK could apply the following measures, amongst others:

- Installation of input filters on the DVB-T receiver (vapors of channels > 60),
- Reducing spurious emissions in the LTE base station transmitters (filter at the transmitter side),
- Changing the orientation of the DVB-T receiving antenna,
- Change in the polarisation of the LTE transmitting antenna at the base station,
- Reduce the LTE base station transmission power.

The broadcast channels actually used are listed in the RA and TV frequencies register on the APEK website¹¹. We note that channels 59 and 60 are not currently used for TV in Slovenia.

Measures enabling coexistence with other applications in 800 MHz band (EMC)

With reference to the Point 3 Art. 52 ZEKom-1 in order to avoid harmful interference between wireless mobile communications and other wire-bound applications (cable TV networks and other home installations), the standards representing the state of the equipment (EN 50529-1, EN 50529-2) are to be considered in the evaluation of other cable-linked applications. In the case of interference to other cable-linked applications caused by mobile communications, this interference of other cable-linked applications must be accepted if unavoidable due to the state of the equipment. In the case that cable-linked applications within the frequency range of 791-821/832-862 MHz correspond to the state of the equipment in the above mentioned standards and are disturbed by mobile communications, the following measures may remedy the interference:

¹¹ http://www.apek.si/ra-in-tv-frekvence?search=search&page=1&vrsta_postaje=dvb_t&imetnik=-1&ime_programa_radio=-1&mrezni_program_radio=-1&oddajne_tocke_radio=-1×tharing_radio=-1&ime_programa_sr_val=-1×tharing_sr_val=-1&obmocje_pokrivanja_dvb_t=-1&mux=&sort=kanal&direction=DESC#obroba

- Reduction of the transmitting power of a LTE base station sector,
- Increase of the effective power by the cable-TV operator,
- Use of DVB-C receivers (set-top boxes, cable modems) with adequate EMC immunity,
- Avoiding the use of DVB-C receivers that pass the cable TV signal through a broadband amplifier,
- Use of coaxial cables with adequate EMC immunity,
- Information and recommendation to users regarding the mutual effects of mobile communications in the 800 MHz frequency range and cable TV reception.

Mobile operators and cable operators' should cooperate to take measures to solve any interference and in finding a solution for any impacted cable customer.

Frequency bands 900 MHz/1800 MHz

For frequency bands 900/1800 MHz the provisions of bellow mentioned CEPT decisions, recommendations and reports apply:

- EC Decision 2011/251/EU: The harmonisation of the 900 MHz and 1800 MHz frequency bands for terrestrial systems capable of providing pan-European electronic communications services in the Community,
- ECC/DEC/(02)05 amended: Frequency bands for railway purposes 876-880 / 921-925 MHz,
- ECC/DEC/(06)13: Designation of GSM-900/1800 bands for terrestrial IMT-2000/UMTS,
- ECC/REC/(08)02: Frequency planning and frequency coordination for the GSM 900 (including E-GSM)/UMTS 900, GSM 1800/UMTS 1800 Land Mobile Systems,
- ECC/REC/(05)08: Frequency planning and frequency coordination for the GSM 900, GSM 1800, E-GSM and GSM-R Land Mobile Systems,
- ECC Report 082: Compatibility study for UMTS operating within the GSM 900/1800,
- ECC Report 096: Compatibility between UMTS 900/1800 and systems operating in adjacent bands,
- CEPT Report 040: Compatibility between LTE and WiMAX operating within the bands 880-915 MHz / 925-960 MHz and 1710-1785 MHz / 1805-1880 MHz (900/1800 MHz bands) and systems operating in adjacent bands,
- CEPT Report 041: Compatibility between LTE and WiMAX operating within the bands 880-915 MHz / 925-960 MHz and 1710-1785 MHz / 1805-1880 MHz (900/1800 MHz bands) and systems operating in adjacent bands,
- CEPT Report 042: Compatibility between UMTS and existing and planned aeronautical systems above 960 MHz,
- ECC Report 146: Compatibility between GSM MCBTS and other services (TRR, RSBN/PRMG, HC-SDMA, GSM-R, DME, MIDS, DECT) operating in the 900 and 1800 MHz frequency bands,
- ECC/DEC/(06)07 amended: GSM on board aircraft,
- ECC/DEC/(08)08: GSM on board vessels,
- ECC Report 082: Compatibility study for UMTS operating within the GSM 900/1800,

- ECC Report 096: Compatibility between UMTS 900/1800 and systems operating in adjacent bands,
- CEPT Report 019: Least restrictive technical conditions for WAPECS frequency bands,
- ERC Report 100: Compatibility between certain radio communications systems operating in adjacent bands. Evaluation of DECT/GSM 1800 compatibility.

It has to be emphasised that any amendments or new versions of the above-mentioned CEPT provisions has to be applied.

No block edge masks are defined for the 900 MHz and 1800 MHz bands. The transmission technologies are limited to GSM and the members of the IMT family (see ITU-R Rec. M.1457), in particular IMT-2000/UMTS and LTE.

General conditions of use for frequency bands 900/1800 MHz:

- In frequency block BB01, in order to protect potential future GSM-R construction, the expansion and operation of mobile radio systems in the 900 MHz band up to a distance of 4 km from the railway route must be coordinated with potential GSM-R operators and/or interference prevention techniques must be applied,
- In the case of operation of systems in the 960 MHz to 1215 MHz frequency band (e.g. DME), techniques to prevent interference may be necessary in frequency block BB07,

Conditions of use for GSM:

- In the 1878 – 1880 MHz range, interference due to DECT systems may occur (see ERC Report 100). It is recommended that the upper 2 MHz (1878 - 1880 MHz) are not used to transmit pilot channels (BCCH) otherwise appropriate measures have to be taken (see ERC Report 100).

Preferential frequencies for GSM

The blocks for the 900 MHz and 1800 MHz frequency bands each consist of different number of preferential frequencies for GSM (Table 0-1: GSM 900 Preferential channels and Table 0-2: GSM 1800 Preferential channels). The blank cells mean that there is no agreement in place.

Frequency Block		Border Region						
		BB 01	BB 02	BB 03	BB 04	BB 05	BB 06	BB 07
Slovenia	Austria	13	12	5	25	9	1	19
Slovenia	Austria - Hungary	8	8	12	2	14	7	6
Slovenia	Hungary	13	11	19	1	20	14	6
Slovenia	Hungary - Croatia			13	1	14	7	6
Slovenia	Croatia			4	24	9	0	19
Slovenia	Austria - Croatia			12	2	13	7	6
Slovenia	Croatia - Italy							
Slovenia	Italy							
Slovenia	Italy - Austria							

Table 0-1: GSM 900 Preferential channels

Frequency Block		Border Region														
		BC 01	BC 02	BC 03	BC 04	BC 05	BC 06	BC 07	BC 08	BC 09	BC 10	BC 11	BC 12	BC 13	BC 14	BC 15
Slovenia	Austria	0	25	14	0	24	25	1	24	14	0	25	14	0	25	1
Slovenia	Austria-Hungary	4	21	0	0	15	0	4	25	1	8	25	1	0	13	1
Slovenia	Hungary	9	17	0	8	16	0	14	25	1	15	25	1	9	25	1
Slovenia	Hungary - Croatia	4	17	0	0	13	0	4	25	1	8	25	1	0	13	1
Slovenia	Croatia	0	25	11	0	24	25	1	24	11	0	24	11	0	24	1
Slovenia	Croatia - Italy															
Slovenia	Italy															
Slovenia	Italy - Austria	4	17	0	0	13	0	4	25	1	8	25	1	0	13	1

Table 0-2: GSM 1800 Preferential channels

Other provisions that have to be taken into account at usage of frequency band 900/1800 MHz are:

- Frequencies shall be used as well in accordance with the other technical requirements defined in valid NURF,
- In border regions, cross border coordination has to be done in accordance with relevant CEPT documents (<http://www.ecodocdb.dk>), and international agreements (<http://www.apek.si/direktive,-priporocila-in-mednarodni-sporazumi>).

Frequency band 2100 MHz

For frequency band 2100 MHz the provisions of bellow mentioned CEPT decisions, recommendations and reports apply:

- EC Decision 2012/688/EU: Harmonisation of the bands 1920-1980/2110-2170 MHz for terrestrial systems capable of providing electronic communications services,
- ECC/DEC/(06)01: on the harmonised utilisation of spectrum for terrestrial IMT-2000/UMTS systems operating within the bands 1900-1980 MHz, 2010-2025 MHz and 2110-2170 MHz,
- ERC Report 065: Adjacent band compatibility between UMTS and other 2 GHz services,
- CEPT Report 039: Report from CEPT to the European Commission in response to the mandate to develop least restrictive technical conditions for 2 GHz bands,
- CEPT Report 019: Least restrictive technical conditions for WAPECS frequency bands.

It has to be emphasised that any amendments or new versions of the above-mentioned CEPT provisions has to be applied.

The block edge masks are defined in CEPT Report 039.

In the case of use of the 1920-1980 MHz FDD band paired with 2110-2170 MHz or 2010-2025 MHz TDD band, interference prevention techniques may be necessary due to the use of services in the 1980-2010 MHz/ 2170- 2200 MHz MSS bands.

Protection from interference in the 2010-2025 MHz band due to spurious emissions by systems above 2025 MHz is detailed in:

- CEPT Report 19, Annex IV, Table A 4.2,
- CEPT Report 19, Annex IV, Table A 4.4.

Other provisions that have to be taken into account at usage of frequency band 2100 MHz are:

- Frequencies shall be used as well in accordance with the other technical requirements defined in valid NURF,
- In border regions, cross border coordination has to be done in accordance with relevant CEPT documents (<http://www.ecodocdb.dk>), and international agreements (<http://www.apek.si/direktive,-priporocila-in-mednarodni-sporazumi>).

Frequency band 2600 MHz

For frequency band 2600 MHz the provisions of bellow mentioned CEPT decisions, recommendations and reports apply:

- EC Decision 2008/477/EC: Harmonisation of the 2500-2690 MHz band for terrestrial systems capable of providing ECS,
- ECC/DEC/(05)05: ECC Decision on harmonised utilisation of spectrum for IMT-2000/UMTS systems operating within the band 2500-2690 MHz,
- ECC/DEC/(02)06: ECC Decision of 15 November 2002 on the designation of frequency band 2500-2690 MHz for UMTS/IMT-2000,
- ECC Report 045: Sharing and adjacent band compatibility between UMTS/IMT-2000 in the band 2500-2690 MHz and other services,
- ECC Report 119: Coexistence between mobile systems in the 2.6 GHz frequency band at the FDD/TDD boundary,
- CEPT Report 019: Least restrictive technical conditions for WAPECS frequency bands,
- ECC/REC/(11)05: Frequency planning and frequency coordination for terrestrial systems for Mobile/Fixed Communication Networks (MFCN) capable of providing electronic communications services in the frequency band 2500-2690 MHz.

It has to be emphasised that any amendments or new versions of the abovementioned CEPT provisions has to be applied.

The conditions for using restricted and unrestricted blocks:

- The block edge masks for use of the 2500-2690 MHz band are defined in — EC Decision 2008/477/EC, Annex.
- A distinction is made between two types of conditions of use:
 - Unrestricted blocks: maximum EIRP = 61dBm/5 MHz¹²,
 - Restricted blocks: maximum EIRP = 25dBm/5 MHz¹³.

¹² Table1 of EC Decision 2008/477/EC, Annex

¹³ Table4 of EC Decision 2008/477/EC, Annex

Radar equipment for air traffic control is in operation in Slovenia at airports, especially at Jože Pučnik airport. It uses frequencies adjacent to the downlink frequency band (2690 MHz). These radar installations use pulsed signals and generate high field intensities which may locally interfere with mobile radio (which works in the upper segment of the frequency band).

Other provisions that have to be taken into account at usage of frequency band 2600 MHz are:

- Frequencies shall be used as well in accordance with the other technical requirements defined in valid NURF,
- In border regions, cross border coordination has to be done in accordance with relevant CEPT documents (<http://www.ecodocdb.dk>), and international agreements (<http://www.apek.si/direktive,-priporocila-in-mednarodni-sporazumi>).

Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band

The licence holder shall provide documentation on functioning of the network with chosen technical parameters proving that the coverage obligation is fulfilled by simulating the grade-of-service that it can deliver in the network.

Below we summarise how APEK will determine compliance with the special coverage obligation via two elements:

1. A prediction-based approach to determining coverage based on base stations information supplied to APEK by the licence holder,
2. Measurement of quality of service conducted at the end user's location to ensure the accuracy of the information supplied by the licence holder, conducted at random at APEK's discretion.

These two elements are described individually below in terms of their main features. Full details of the calculation process will be available after licence award in cooperation with each licence holder.

Calculation of coverage obligations

Coverage will be predicted using base station information supplied by the licence holder to APEK. The coverage prediction method above is based on a service provided by current LTE technology at 800 MHz. It is open to the license holder with special coverage obligations to meet this obligations using LTE technology with any spectrum he owns.

The information to be supplied by the licence holder must be provided to APEK on the first anniversary of the licence award and annually thereafter each 15 February for the previous year. The information must include:

- The locations of the base stations according to a specified geographical projection,
- Heights above ground level in meters,
- For each sector:
 - azimuth – direction (degrees),
 - horizontal 3 dB beamwidth (degrees),
 - combined mechanical and electrical downtilt (degrees),
 - vertical 3 dB beamwidth (degrees),
 - the effective isotropic radiated power EIRP,
 - an indication of the frequency blocks used in each cell (sector),
- a map of Slovenia with base station locations and covered areas (GIS format, vector graphics, defined by APEK in cooperation with each operator),
- a list of raster cells covered and the coverage level calculated on that basis,
- a list of covered populated addresses in defined settlements (Annex 6: The list of settlements) and total % of covered people for each defined settlement in accordance with APEK's database of populated addresses (publicly available on internet site of APEK).

APEK will use this data to predict the location and number of population points served incorporating the following assumptions:

- Median propagation loss based on ITU-R Recommendation P.1812¹⁴ with specified clutter parameters and a time percentage of 50%,
- Lognormal location variation with a specified standard deviation,
- A specified terrain database,
- A specified clutter database,
- Specified population locations¹⁵ and settlement identifiers¹⁶,
- Specified use equipment noise figure and antenna gain,
- Theoretical base station antenna azimuth and elevation radiation patterns taken from 3GPP TR36.814,
- Network loading of 15%.

At each population location, the associated population will be considered served at 10 Mbps downlink (outdoor) measured at end user's mobile terminal if the resulting predicted signal to interference plus noise ratio is greater than or equal to a specified value.

The coverage obligation will be considered satisfied if, based on the data supplied by the third anniversary of award of the licence:

- the total served population is at least 95% of the total population of Slovenia

AND

- at least 75% of the population within every one of the settlements or groups of settlements specified in Annex 6: The list of settlements is served.

Verification measurements

APEK will at its own discretion, conduct tests on the licence holder's network and measure the quality of service at times and places of its choosing in order to verify that the information regarding base stations and coverage provided to APEK are accurate representation of the actual state of the licence holder's network. These tests will be intended to verify the parameters of the base station information, level of field strength and quality of service at some end users locations to directly verify network performance in place of the prediction technique described above.

¹⁴ <http://www.itu.int/rec/R-REC-P.1812/en>

¹⁵ For % of Republic of Slovenia: The raster cells in the 100 × 100 m grid are to be used as population units. The actual population data are taken from the Database of the Statistical Office of the Republic Slovenia. A raster cell is considered to be covered if the geometrical centre of the cell is covered.

¹⁶ APEK's database of populated addresses is used (publicly available on internet site of APEK: <http://www.3gpp.org/ftp/Specs/html-info/36814.htm>)

Annex 3: Letter from Slovenian Competition Protection Authority (AVK)



JAVNA AGENCIJA REPUBLIKE SLOVENIJE
ZA VARSTVO KONKURENCE

Kotnikova 28, 1000 Ljubljana

T: 01 478 35 97

F: 01 478 36 00

E: gp.avk@gov.si

www.varstvo-konkurence.si

Agencija za pošto in elektronske
komunikacije RS
Stegne 7, p.p. 418
1001 Ljubljana

Številka: 306-79/2009-29

Datum: 13. 8. 2013

Zadeva: Mnenje glede konkurenčno pravnih vprašanj pri podeljevanju radijskih frekvenc

Zveza: Dopis št. 38105-18/2013/1 z dne 30. 05. 2013

Javna agencija Republike Slovenije za varstvo konkurence (v nadaljevanju: Agencija) je dne 30. 05. 2013 na podlagi protokola o sodelovanju z dne 1. 9. 2009 in v njegovem okviru ustanovljene posvetovalne skupine za podeljevanje radijskih frekvenc s strani Agencije za pošto in elektronske komunikacije (v nadaljevanju: APEK) prejela zaprosilo za podajo mnenja v zvezi s konkurenčno-pravnimi vprašanji pri javnem razpisu za podelitev radijskih frekvenc za zagotavljanje javnih mobilnih storitev. V njem je APEK navedel konkurenčno-pravna vprašanja oziroma potencialne kršitve, ki bi se na trgu mobilnih telekomunikacij lahko pojavile v luči napovedanega javnega razpisa za podelitev radijskih frekvenc za zagotavljanje javnih mobilnih storitev. APEK je zanimalo zlasti:

1. sodelovanje operaterjev pri prijavi na javni razpis (skupni podjem, konzorcij, polno delujoči skupni podjem in koncentracija);
2. kartelna dogovarjanja med operaterji v okviru javne dražbe;
3. souporaba aktivne infrastrukture operaterjev (problematika neodvisnosti omrežja in storitev) in
4. skupni podjemi operaterjev, oblikovani za potrebe izgradnje omrežij (za doseganje hitrejše pokritosti ozemlja);
5. globe, ki jih za kršitve predpisuje zakon.

Dne 20. 6. 2013 je Agencija na sestanku ustno predstavila naslednje mnenje:

Agencija pristojna za presojo dejanj omejevanja konkurence v skladu z določbami Zakonu o preprečevanju omejevanja konkurence (Uradni list RS, št. 36/09, 40/09, 87/11, 57/12, 39/2013 Odl.US in 63/13-ZS-K v nadaljevanju ZPOmK-1) to je omejevalnih sporazumov med podjetji, zlorabe prevladujočega položaja podjetja in presoje koncentracij.

Kot je bilo že pojasnjeno v Mnenju z dne 14. 12. 2012 št. 306-79/2009-27 je možnih več oblik sodelovanja dveh ali več operaterjev (pri čemer ostanejo operaterji ločeni subjekti) pri prijavi na

razpis. Za odgovor na vaša vprašanja so relevantne zlasti določbe o sporazumih in koncentracijah (6, 10. in 11. člen ZPOmK-1).

6. člen ZPOmK-1 določa, da so prepovedani in nični sporazumi med podjetji, sklepi podjetniških združenj in usklajena ravnanja podjetij (v nadaljnjem besedilu: sporazumi), katerih cilj ali učinek je preprečevati, omejevali ali izkrivljati konkurenco na ozemlju Republike Slovenije. Pojem sporazum je širok in zajema vse oblike dogovorov, kjer je med podjetji doseženo soglasje volj. Niso pa prepovedani sporazumi, ki prispevajo k izboljšanju proizvodnje ali razdelitve dobrin, ali ki pospešujejo tehnični in gospodarski razvoj, pri tem pa zagotavljajo potrošnikom pravičen delež doseženih koristi. Toda ti sporazumi ne smejo:

- nalagati udeležnim podjetjem omejitev, ki niso nujne za doseganje navedenih ciljev, in
- dajati udeležnim podjetjem možnosti, da bi izključila konkurenco glede znatnega dela proizvodov ali storitev, ki so predmet sporazuma (tretji odstavek 6. člena ZPOmK-1).

Ali sporazum spada pod izjemo iz tretjega odstavka, je treba presojati od primera do primera, dokazno breme pa nosijo podjetja, ki se na izjemo sklicujejo.

V okviru tega člena se presojajo vsi sporazumi ne glede na obliko: tako konzorcijske pogodbe, kot skupni podjemi v obliki ustanovitve ločenih pravnih oseb ali pa tudi zgolj pogodbe o sodelovanju pri izgradnji omrežja, o medsebojnem dostopu do omrežnih elementov ipd.

Po modernizaciji postopkov v konkurenčnopravnih zadevah (Uredba ES št. 1/2003) tudi ZPOmK-1 ne pozna predhodne presoje skladnosti sporazumov s pravili konkurence in t.i. negativnih izvidov. Predvidena je torej samocena članov sporazuma s pomočjo Smernic Komisije o uporabi člena 101 Pogodbe o delovanju Evropske unije za sporazume o horizontalnem sodelovanju.¹ Specifičnih smernic za sporazume o delitvi omrežij (network sharing agreements) trenutno na nivoju EU ni, vendar so organi za varstvo konkurence iz nekaterih držav članic izdali lastne smernice oziroma zavzeli stališča v konkretnih postopkih. Iz prakse teh organov izhaja, da imajo sporazumi o delitvi omrežij med operaterji tako pozitivne kot negativne učinke na konkurenco.

Positivni učinki so zlasti izogibanje podvajanju stroškov pri izgradnji omrežja in boljši izkoristek ekonomij obsega in ekonomij dosega. Dalje je zmanjšano investicijsko tveganje pri uvajanju novih proizvodov in storitev, doseže pa se hitrejša in obsežnejša geografska pokritost z omrežjem. Storitve so tako lahko potrošniki deležni tudi v krajih, kjer jih sicer posamezno podjetje ne bi zagotavljalo. Poleg dostopa do več in kvalitetnejših storitev in nižje cene za potrošnika, ima delitev določene omrežne infrastrukture lahko tudi pozitivne učinke na zdravje ljudi in varstvo okolja.

Po drugi strani pa se s sodelovanjem operaterjev zoži infrastrukturna konkurenca, ki je zgodovinsko veljala za glavno gonilo razvoja. Zmanjša se tudi možnost diferenciacije storitev. Večja je verjetnost koluzije (usklajenega ravnanja) tudi pri cenah in kakovosti storitev, saj je lažji nadzor nad odstopanjem od sporazuma, več je stikov in izmenjave informacij, podobne so stroškovne strukture itd. Stranke sporazuma zaradi zmanjšanja konkurence na veleprodajnem trgu lahko omejijo dostop do trga virtualnim mobilnim operaterjem skozi višje cene, slabše pogoje, diskriminacijo ipd. S trga so lahko izrinjeni tudi konkurenti, ki sami gradijo svoje omrežje.

Da bi bil sporazum dovoljen, morajo biti pozitivni učinki, ki so preneseni na potrošnika, večji od negativnih.

¹ Dostopno na: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011XC0114\(04\):SL:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011XC0114(04):SL:HTML), glej zlasti točko 2.3 in naslednje.

Glavna merila za presojo so stopnja sodelovanja, tržni položaj udeležencev in geografski obseg in trajanje sodelovanja.

Pri delitvi mobilnih omrežij je možno več stopenj delitve (od pasivne infrastrukture prek aktivne infrastrukture do delitve frekvenc in delitve jedrnega omrežja in poslovanja s strankami). Globlje kot je sodelovanje, večja je grožnja za konkurenco, vendar so večji tudi prihranki pri stroških. Deljenje pasivne infrastrukture bo redko spomo z vidika pravil konkurence, medtem ko je ostale oblike sodelovanja treba natančneje presojati.

Večja kot je tržna moč udeležencev, manjša je verjetnost, da bodo pozitivni učinki preneseni na potrošnika. Če se s sporazumom število omrežij zmanjša iz štirih na tri omrežja je manj sporno, kot če se število zmanjša iz tri na dve omrežji. Pomembno je tudi, kako tesna konkurenta sta stranki sporazuma. Če je ena izmed strank nov vstopnik, je večja verjetnost, da bo sodelovanje v omejenem trajanju skladno s pravili konkurence.

Večja verjetnost je, da bo sporazum spadal pod izjemo od uporabe 6. člena, če gre za delitev dela omrežja na geografskem območju, ki je manj poseljeno in s tem komercialno manj zanimivo (ruralna območja), saj bi brez sporazuma ta del lahko ostal slabše pokrit z omrežjem. Trajnější kot je sporazum, večji bo negativni vpliv na spodbude za nadaljnje inovacije in s tem verjetnost, da bo sporazum spadal pod izjemo. Obdobje 5 let po praksi držav članic ni predolgo, upoštevajoč seveda druga merila.

Poleg tega je mogoče v sporazum vnesti klavzule, ki bodo negativne učinke na konkurenco omilile (npr. ukrepi za omejitev pretoka informacij, poročanje organom ipd.) ali klavzule, ki bodo zagotovile prenos prihrankov na potrošnika (roki za zagotovitev pokritosti).

V splošnem je treba priznati, da je sektor telekomunikacij specifičen zaradi visoke stopnje inovacij in doseganja visokih učinkovitosti, zato je verjetnost, da sporazum spada pod izjemo, nekoliko višji kot v drugih sektorjih.

V nobenem primeru pa ne morejo spadati pod izjemo dogovarjanje med formalno neodvisnimi podjetji (dražitelji) o samem nastopu na javni dražbi (dogovor o višini ponudb, t.i. bid rigging) in dogovori o nesodelovanju na dražbi. O tem, kako prepoznati in kako preprečiti dogovarjanje pri oddajanju ponudb na javni dražbi, so na spletni strani Organizacije za gospodarsko sodelovanje in razvoj (OECD) objavljene Smernice za bojevanje proti dogovorjenemu oddajanju ponudb v javnih naročilih.²

Kadar Agencija izve za okoliščine, iz katerih izhaja verjetnost kršitve določb 6. člena izda sklep o uvedbi postopka po uradni dolžnosti. V tem postopku presoja ali je kršitev podana, podjetja pa lahko dokazujejo, da so izpolnjeni pogoji, da omejitev konkurence iz sporazuma spada pod izjemo iz tretjega odstavka. V kolikor Agencija ugotovi kršitev 6. člena (oz. 101 člena PDEU), v prekrškovnem postopku z globo do deset odstotkov letnega prometa podjetja v predhodnem poslovnem letu kaznuje za prekršek pravno osebo, samostojnega podjetnika posameznika ter posameznika, ki samostojno opravlja poklicno dejavnost ter z globo od 5.000 do 10.000 evrov (oziroma od 15.000 do 30.000 evrov za hujše kršitve) odgovorno osebo (73. člen ZPOmK-1).

Tekom postopka lahko podjetja predlagajo zaveze, s katerimi se odpravi stanje, iz katerega izhaja verjetnost kršitve 6. člena, ki jih Agencija lahko sprejme z odločbo. V kolikor podjetja potem ravnajo v nasprotju z izvršljivo odločbo o zavezah, je v prekrškovnem postopku mogoč izrek globe v zgoraj navedeni višini.

² <http://www.oecd.org/competition/cartels/fightingbidrigginginpublicprocurement.htm>.

Če bi se podjetja kartelno dogovarjala oziroma omejevala konkurenco v okviru javne dražbe z namenom izkrivljanja tržne cene frekvenc in/ali izrinjanjem konkurentov, bi bila ogrobljena za prekršek. Glede na to, da gre za najhujše oblike kršitev pravil konkurence in da je tovrstno kršitev težko odkriti, bi bile tudi globe v višjem delu razpona (upoštevajoč vse ostale okoliščine kršitve). Priporočljivo je, da se s pravili nastopanja na dražbi zagotovi čim večja negotovost dražiteljev in čim večje spodbude k neodvisnemu nastopanju na dražbi.

Drugače pa je v primeru koncentracij (10. člen ZPOmK-1):

Za koncentracijo gre pri trajnejših spremembah kontrole nad podjetjem, in sicer:

- pri združitvi dveh ali več predhodno neodvisnih podjetij ali delov podjetij ali
- kadar ena ali več fizičnih oseb, ki že obvladuje najmanj eno podjetje, ali kadar eno ali več podjetij z nakupom vrednostnih papirjev ali premoženja, s pogodbo ali kako drugače pridobi neposredno ali posredno kontrolo nad celoto ali deli enega ali več podjetij ali
- kadar dve ali več neodvisnih podjetij ustanovi skupno podjetje, ki opravlja vse funkcije samostojnega podjetja z daljšim trajanjem.

ZPOmK-1 v 1. odstavku 42. člena določa, v katerih primerih morajo udeleženci koncentracije leto prijaviti Agenciji. Prijava je potrebna, če je skupni letni promet v transakciji udeleženih podjetij skupaj z drugimi podjetji v skupini v predhodnem poslovnem letu na trgu Republike Slovenije presegel 35 milijonov EUR in če je letni promet prevzetega podjetja skupaj s podjetji v skupini presegel 1 milijon EUR.

V primeru, da sta izpolnjena oba zgoraj navedena pogoja (pravni in ekonomski), morajo podjetja koncentracijo prijaviti Agenciji, ki opravi ex ante presojo skladnosti s pravili konkurence, ta pa je ne smejo izvrševati do izdaje odločbe o skladnosti. Načeloma se presoja, ali bo koncentracija bistveno omejila učinkovito konkurenco na ozemlju Republike Slovenije ali njegovem znatnem delu, zlasti kot posledica ustvarjanja ali krepitev prevladujočega položaja.

V primeru ustanovitve skupnega podjetja gre skladno z določili ZPOmK-1 za koncentracijo, če to podjetje opravlja vse funkcije samostojnega podjetja z daljšim trajanjem (t.i. polno delujoča skupna podjetja). Samostojnost gospodarskega subjekta se izkazuje predvsem v tem, da novo podjetje ni aktivno na istih upoštevnih trgih kot družbe ustanoviteljice, ima lastno vodstveno strukturo, zadostna finančna, materialna sredstva in zaposlene za neodvisno delovanje na trgu, dalje opravlja dejavnosti, ki presegajo specifično funkcijo za matične družbe, novo podjetje mora stopati v poslovna razmerja (glede aktivnosti, ki jih izvaja na trgu) z družbami ustanoviteljicami pod enakimi pogoji, kot veljajo za poslovna razmerja s tretjimi. Pri tem pa cilj oziroma učinek ustanovitve skupnega podjetja ne sme biti usklajevanje konkurenčnega nastopa ustanoviteljic na upoštevnih trgih. Če ima ustanovitev skupnega podjetja za cilj ali učinek usklajevanje konkurenčnega ravnanja podjetij, ki ostanejo medsebojno neodvisna, se to usklajevanje presoja po merilih iz 6. člena ZPOmK-1. Če Agencija ugotovi, da niso izpolnjeni pogoji iz tretjega odstavka 6. člena, izda odločbo o neskladnosti koncentracije s pravili konkurence in jo prepove (11. člen ZPOmK-1). Če podjetja koncentracije ne bi prijavila v roku ali če bi jo začela izvrševati brez dovoljenja Agencije pred izdajo odločbe ali v nasprotju s predlaganimi korektivnimi ukrepi se pravna oseba in samostojni podjetnik posameznik kaznujeta za prekršek z globo do deset odstotkov letnega prometa v koncentraciji udeleženega podjetja skupaj z drugimi podjetji v skupini v predhodnem poslovnem letu (74. člen ZPOmK-1).

Agencija bo v primeru, da ima APEK dodatna vprašanja ali potrebuje pojasnila v zvezi s podanim mnenjem, le-to na zahtevo dopolnila.

Priloge:
mag. Marko Stožovič



Andrej Krstak
DIREKTOR



Vročiti:

- Agencija za pošto in elektronske komunikacije RS, Stegne 7, p.p. 418, 1001 Ljubljana po elektronski pošti.

Vložiti:

- zbirka dokumentarnega gradiva, tu.

Annex 4: Draft Licence

Številka/No.: 38115-xx/2014/2
Datum/Date: DD.MM.2014

Agencija za pošto in elektronske komunikacije Republike Slovenije izdaja na podlagi prvega odstavka 49. člena Zakona o elektronskih komunikacijah (Ur. l. RS, št. 109/2012) družbi XXXXX, v zadevi izdaje odločbe o dodelitvi radijskih frekvenc po opravljenem postopku javnega razpisa in dražbe, izdaja naslednjo
In accordance with paragraph 1 of Article 49 of the Electronic Communications Act (Ur. l. RS, št. 109/2012) the Post and Electronic Communications Agency of the Republic of Slovenia has after public tender and auction procedure issued the owner XXXXXXXX the following:

Odločbo/Decision

o dodelitvi radijskih frekvenc št./on the assignment of radio frequencies

Imetnik/Holder:

Naziv/ Organisation - Company name:			
Naslov/ Address:			
Matična številka/Registration No.:		Davčna številka/ VAT Identification No.:	

1) Čas veljavnosti in dodeljene radijske frekvence/ License period:

Čas veljavnosti/ Duration:	Od/from:	Do/to:
Dodeljene frekvence/ Assigned Frequencies:	oddaja/transmitter	sprejem/receiver
Frekvenčni pod pas za povezave v smeri proti terminalom/ Downlink Frequency sub band:	MHz	MHz R
Oznake dodeljenih frekvenčnih blokov/Frequency blocks labels		
Širina radio frekvenčnega pod pasu/assigned bandwidth:	MHz	MHz
Frekvenčni pod pas za povezave v smeri proti baznim postajam/ Uplink Frequency sub band:	MHz	MHz R
Oznake dodeljenih frekvenčnih blokov/Frequency blocks labels		
Širina radio frekvenčnega pod pasu/assigned bandwidth:	MHz	MHz

z naslednjimi omejitvami/ with the following limitations:

Vrsta radio komunikacije/ Type of radio communication service:	MZ				
Vrsta postaje/Class of station:	FB	Vrsta službe/ Nature of service:	CP	Premičnost/ Mobility:	FL
Območje pokrivanja/ Coverage area:	REPUBLIKA SLOVENIJA				
Vrsta oddaje/ Designation of emission:	5M00W7W				
Polarizacija/ Polarisation:	V				
Obratovalni čas/ Time of operation:	002450IA	Najdaljši obratovalni čas/ Max time of operation:		HX	

Posebni pogoji/ Special requirements:	Transfer of frequency usage rights, mergers, joint ventures and consortia Owner of frequency usage rights may transfer or lease these rights by legal transaction to another natural person or legal entity that fulfils the required conditions, but only with prior approval by APEK (Art. 55 ZEKom-1). For the period of 5 years, reserved spectrum (see Section 5.1.1 Reservations) can be traded only to operators with a market share of less or equal 15% of active end users at the time of the auction. For the full license period, all spectrum can be traded within the confines of the spectrum caps: — 800/900 MHz — 900 MHz — 1800 MHz
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	<p>— Paired 800/900/1800/2100/2600 MHz spectrum as described the Tender Documentation.</p> <p>Technical usage conditions: are part of the Decision on the assignment of radio frequencies as for each frequency band defines Annex 1: General usage conditions.</p> <p>General coverage and rollout obligations Owners of spectrum below 1 GHz are required to offer commercially available wireless electronic communications services to:</p> <ul style="list-style-type: none"> – 40% of the population of the Republic of Slovenia within 3 years – 70% of the population of the Republic of Slovenia within 5 years <p>Owners of spectrum only above 1 GHz are required to offer commercially available wireless electronic communications services to:</p> <ul style="list-style-type: none"> – 25% of the population of the Republic of Slovenia within 3 years – 40% of the population of the Republic of Slovenia within 5 years. <p>The decision will also contain details regarding the compliance with these obligations, see Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band. If licence holders fail to meet the applicable obligations, the frequencies awarded to that licence holders will be revoked without compensating the payment for the efficient use of a limited natural resource.</p> <p>Special coverage obligations in the 800 MHz band In addition to the general coverage and roll-out obligations, and according to the RSPP 2012, APEK requires the operator that acquires a block subject to special coverage obligations to provide mobile broadband services at a speed of at least 10 Mbit/sec downlink (outdoors) measured at end user's mobile terminal to at least 95% of the population of Slovenia within 3 years (the operator can fulfil this obligation using any frequencies it acquires) and cover at least 75% of all of the settlements or groups of settlements specified in Annex 6: The list of settlements.</p> <p>For details regarding how compliance with these obligations will be determined, see Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band. If the winner of a spectrum licence fails to meet the applicable obligations, the frequencies awarded to that license holder will be revoked without financial compensation.</p> <p>Breach of usage conditions and revocation of licenses In particular, APEK may abrogate a decision allocating radio frequencies ex officio in relation to this public tender if it finds:</p> <ul style="list-style-type: none"> — the application for the decision allocating radio frequencies contained false information, — the beneficiary no longer meets the prescribed conditions under the applicable legislation or it's decision on allocating radio frequencies (e.g. coverage obligations and roll-out conditions specified), — the beneficiary has not commenced using the radio frequency by the deadline set in the decision allocating radio frequencies or the undertaking's tender in the public invitation to tender or the allocated of radio frequency was not used over the period of six months ascertained by at least six random checks, unless the decision determines otherwise or the beneficiary proves the contrary by means of written evidence, — the fee for the use of radio frequencies or the fee for the efficient use of a limited natural resource have not been paid despite several warnings to do so, — the beneficiary has transferred the right to use radio frequencies to another natural person or legal entity by legal transaction in accordance with the Par. 1 Art. 55 ZEKom-1, — there are other serious recurring irregularities concerning compliance with the conditions for the use of radio frequencies referred to in Art. 52 ZEKom-1 and laid down in the decision allocating radio frequencies, unless these irregularities have been removed by more lenient measures in supervisory procedure, — that licence holder breached conditions of the Tender Documentation regarding collusion. <p>In case of revocation of decision allocating radio frequencies payment for the efficient use of a limited natural resource will not be refunded.</p> <p>Monitoring of license obligation fulfilment and obligation to provide information Licence holders have the obligation to provide to APEK, one year after the decisions on allocating radio frequencies are issued and then by 15 February every subsequent year (or upon request of APEK), the list and a technical description of the equipment used by the base stations currently in operation in a format suitable for the calculation/simulation of network coverage (in accordance with Annex 2: Assessment of compliance with special coverage obligations in the 800 MHz band).</p>
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Annex 5: Annual frequency usage fees

In accordance with Art. 60 ZEKom-1, usage fees for the use of frequencies are also to be paid by the network operators. These fees are defined in Art. 11 of the General act on the calculation method for payments for the use of radio frequencies¹⁷. A fee for the use of radio frequencies is based on number of points in accordance with the assigned radio frequency band (B), width of the assigned frequencies (C) and the area of coverage (E) and is precisely defined in Article 11 of the General act:

Frequency band	Value of factor B
above 470 MHz to 960 MHz	3
above 960 MHz to 2.300 MHz	1
above 2.300 MHz to 5.000 MHz	0,6

Table 0-1: Value of factor B

C = width of the assigned spectrum / 25 kHz

Area	Value of factor E
Slovenia	50

Table 0-2: Value of factor E

This means:

No. of points = B x C x E

Frequency band	Calculation of fee (points /per MHz)
800 MHz and 900 MHz	6000
1800 MHz and 2100 MHz	2000
2600 MHz	1200

Table 0-3: Calculation of fee (points/per MHz) for each frequency band

The level of payment is defined with a yearly tariff:

Tariff (1 point) = 1,09€ (value for year 2012).

¹⁷ General act on the calculation method for payments for the use of radio frequencies (Official Gazette, nb. 30/2013, as amended by 33/2013, 40/2013).

Annex 6: The list of settlements

Will be published later.

Annex 7: Forms

Application file for public tender for the award of radio frequencies for the provision of public communications services in radio frequencies bands 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz, with public auction, published in the Official Gazette of the Republic of Slovenia nb.....on dd.mm.2013.

A.1 GENERAL INFORMATION ON THE APPLICANT

Legal Entity:

Company name:	
Business address:	
Registered seat of a company:	
Registration number:	
Tax number:	
Telephone number:	
Fax number:	
E-mail address:	
Statutory representative:	
Signature of statutory representative:	
Authorized person:	
Signature of authorized person:	
Authorized person:	
Signature of authorized person:	
Authorized person:	
Signature of authorized person:	
Bank Account Number(IBAN No):	
Name of Bank:	
Address of relevant Branch:	
Bank Identity Code (BIC):	

Date:

Signature of statutory representative
or authorized person:

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Natural person:

Name and Surname:	
Permanent (or temporary) residence address:	
Registration number:	
Tax number:	
Telephone number:	
Fax number:	
E-mail address:	
Signature:	
Bank Account Number (IBAN No):	
Name of Bank:	
Address of relevant Branch:	
Bank Identity Code (BIC):	

Date:**Signature of statutory representative
or authorized person:**

.....

.....

A.2 AUTHORISATION FOR SIGNING THE APPLICATION

Signed
(name and surname of statutory representative)

Statutory representative. of
(name of an applicant)

authorise
(name and surname of authorized person)

number of identity document
(number of identity document)

for signing the application file for public tender for the award of radio frequencies for the provision of public communications services in radio frequencies bands 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz, with public auction, published in the Official Gazette of the Republic of Slovenia nb.....on dd.mm.2013..

Date:

Signature of statutory representative:

.....

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A.3 NOMINATION OF THREE PERSONS, WHO WILL BE AUTHORIZED TO SUBMIT BIDS DURING THE PUBLIC AUCTION

Signed
(name and surname of statutory representative)

Statutory representative of
(name of applicant)

1. nominate
(name and surname of authorized person)

number of identity document
(number of identity document)

phone number:

e-mail address:

2. nominate
(name and surname of authorized person)

number of identity document
(number of identity document)

phone number:

e-mail address:

3. nominate
(name and surname of authorized person)

number of identity document
(number of identity document)

phone number:

e-mail address:

for submitting bids on public tender for the award of radio frequencies for the provision of public communications services in radio frequencies bands 800 MHz, 900 MHz, 1800 MHz, 2100 MHz and 2600 MHz, with public auction, published in the Official Gazette of the Republic of Slovenia nb.....on dd.mm.2013.

Date:

Signature of statutory representative
or authorized person:

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A.4 CONFIRMATION OF PAYMENT OF THE ADMINISTRATIVE COSTS FOR HOLDING PUBLIC AUCTION

Applicants are required to pay an amount of one third of the total administrative costs for holding public auction. Confirmation of such payment has to be provided as part of the tender application.

Administrative costs must be paid on relevant bank account of Apek.

Signed
(name and surname of representative of the Bank)

Representative of the bank:
(name of the Bank, business address, registered seat of the Bank)

confirm, that the applicant
(name/name and surname of the applicant)

paid the administrative costs for holding the public auction in the amount of
.....
(the amount paid in words)

into the relevant bank account of APEK.

Date:

Signature of Bank representative:

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A.5 FREQUENCY ALLOCATION APPLICATION (THE INITIAL BID)

Name/name and surname of the applicant:	
Total amount of lots applied for:	

Lot category	Available lots	Lot size	Reserve Price per lot	Number of Lots in Lot Category applied for	Eligibility points per lot
A1	2	2 x 5 MHz	[TBD]		[TBD]
A2	1	2 x 10 MHz	[TBD]		[TBD]
A3 ¹⁸	2	2 x 5 MHz	[TBD]		[TBD]
B	7	2 x 5 MHz	[TBD]		[TBD]
C	15	2 x 5 MHz	[TBD]		[TBD]
D	1	2 x 5 MHz	[TBD]		[TBD]
T1	1	5 MHz	[TBD]		[TBD]
T2	3	5 MHz	[TBD]		[TBD]
E	14	2 x 5 MHz	[TBD]		[TBD]
F	9	5 MHz	[TBD]		[TBD]

Table 0-1: Applied number of lots have to be in accordance with Section: 5.1: Frequency caps and reservations

Amount of lots applied has to be in accordance with requirements in subchapter 4.4.1.4: Frequency allocation application (the initial bid).

Date:

Signature of statutory representative
or authorized person:

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¹⁸ Reserved for new entrants or existing operators with a market share of active end users of at most 15%

A.6 DECLARATIONS

I, the undersigned,
(name and surname)

Statutory representative or authorized person of the applicant:

.....
(name and address of the applicant)

- declare that the applicant is familiar with the content of the Tender Documentation and that the applicant accepts its conditions and requirements,
- declare that the information provided in application is complete and accurate,
- declare that the applicant is solvent and not involved in any bankruptcy, compulsory settlement, or compulsory dissolution proceedings, or deletion from the register of companies without dissolution, and that there is no just cause for such procedure to begin, due to current business, or potential court or other proceedings in which the applicant might be involved,
- declare that the applicant has not entered into any agreements and will not engage in any behavior that could have the effect of compromising the integrity of the tender procedure (collusion) and that he is aware of the fact, that if such behavior becomes known after the completion of the tender procedure, APEK may revoke licences granted without refunding fees for the efficient use of a limited natural resource paid by the licence holder.

Date:

Signature of statutory representative
or authorized person:

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A.7 Check list of submitted documents

- general information on the applicant (Form A.1: GENERAL INFORMATION ON THE APPLICANT),
- Information on applicant's ownership structure (see Section 4.4.1.2 Information on the applicant's ownership structure),
- Authorisation for signing the application (Form A.2: AUTHORISATION FOR SIGNING THE APPLICATION),
- Nomination of three persons, who will be authorized to submit bids during the public auction (Form A.3: NOMINATION OF THREE PERSONS, WHO WILL BE AUTHORIZED TO SUBMIT BIDS DURING THE PUBLIC AUCTION),
- Confirmation of payment of the administrative costs for holding the public auction (Form A.4: CONFIRMATION OF PAYMENT OF THE ADMINISTRATIVE COSTS FOR HOLDING PUBLIC AUCTION),
- The frequency allocation application (the initial bid) (Form A.5: FREQUENCY ALLOCATION APPLICATION (THE INITIAL BID)),
- Declarations (Form A.6: DECLARATIONS).

Date:

Signature of statutory representative
or authorized person:

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Annex 8: Timetable

Action item	Date
Deadline for comments on the draft Information Memorandum	4 November 2013
Publishing the consultation report	9 December 2013
Publishing the decision on initiating a public tender in the Official Gazette of the Republic of Slovenia and the Tender Documentation on APEK's website	13 December 2013
End of submission of applications	10 February 2014
Issue the decisions on the selection of bidders	25 February 2014
Start of the public auction	25 March 2014
Issue the decisions on allocating radio frequencies	Latest by end June 2014