



NEMZETI MÉDIA- ÉS
HÍRKÖZLÉSI HATÓSÁG

Auction announced in the subject of
rights of use of frequency
related to the provision of
mobile telecommunications services
in the 900 MHz band

QUESTIONS AND ANSWERS

25 NOVEMBER 2011

QUESTIONS AND ANSWERS

This document contains the questions submitted in writing by the organisations having purchased the documentation dated 4 August 2011 (“documentation”) to the Contracting Authority by the seventh (7th) day preceding the bidding phase as per Section 2.6 of the Documentation in the context of the Auction announced in the subject of rights of use of frequency related to the provision of mobile telecommunications service in the 900 MHz band (“Auction”) by the Office of the National Media and Infocommunications Authority (“Office” or “Contracting Authority”), and the answers given thereto by the Contracting Authority.

We have included the questions without revealing the identity of the organisations having submitted them. We have established the order of the questions based on the sections of the documentation to which they pertain.

In line with the auction documentation, for the purposes of this document:

- “incumbent mobile operator”: electronic communications operator operating a mobile telephone network and providing retail mobile telephone services on the territory of the Republic of Hungary on 4 August 2011;
- “new licensee”: new company entering the market having acquired rights arising from the current auction procedure, other than the incumbent mobile operator;
- “non-incumbent mobile operator”: person or organisation applying for and/or participating in the current auction procedure, other than the incumbent mobile operator defined above.

(Documentation Section 1.1, Subsections c;f;g)

In the absence of any other definition pertaining to the other terms used herein, the definitions set out in the Documentation and the relevant legislative provisions shall apply.

Notice:

- a) References previously made to the provisions of the *Decree on the rules of auction or tender* shall hereinafter be replaced with those of *NMHH Decree 4/2011 (X. 6.) on the rules of auction and of tender for the acquisition of the rights of use of frequency*.
- b) References made herein to the Documentation shall be applicable to the version published on 25 November 2011.

Contents

I.	General questions	9
	Question I.1.: Participating in the consultation.....	9
	Question I.2 a): Hungarian translation of documents submitted in languages other than Hungarian	9
	Question I.2 b): Hungarian translation of documents submitted in languages other than Hungarian	9
	Question I.3: payment of the Auction fee by foreign enterprises	9
	Question I.4.: Registration of applicants.....	10
	Question I.5: Amount of Value Added Tax applicable.....	10
	Question I.6: Payment in foreign currencies	10
II.	Questions regarding specific sections of the documentation	10
	Question II.1: Documentation, introductory section	10
	Question II.2.: Documentation Section 1.3 (planned agenda of the auction procedure)	11
	Question II.3 a): Documentation Section 2.1.2; Annex 1, Section 1.5.3. (service access coverage obligation for incumbent mobile operator).....	11
	Question II.3 b): Specifying question to Question II.2 a)	11
	Question II.4.: Documentation Section 2.2 (subject of the auction)	12
	Question II.5.: Documentation Section 2.3 (usability of the frequency acquired in the context of the auction).....	12
	Question II. 6 a): Documentation Section 2.9.7 b) (suitability criteria, conditions of participation and conflict of interest)	13
	Question II.6. b): Documentation Section 2.9.7 c) (suitability criteria, conditions of participation and conflict of interest)	13
	Question II.7. a): Documentation Section 2.9.2 (suitability criteria, conditions of participation and conflict of interest)	13
	Question II.7. b): Documentation Section 2.9.2 (suitability criteria, conditions of participation and conflict of interest)	14
	Question II.8. a): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)	15
	Question II.8. b): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)	15
	Question II.8. c): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)	15
	Question II.8. d): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)	16

Question II.9. a): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)	16
Question II.9. b): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)	17
Question II.9. c): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)	17
Question II.10. a): Documentation Section 2.9.7 (suitability criteria, conditions of participation and conflict of interest)	17
Question II.10. b): Documentation Section 2.9.7 (suitability criteria, conditions of participation and conflict of interest)	18
Question II.11 a): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application	18
Question II.11. b): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application	18
Question II.11. c): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application	19
Question II.12 a): Documentation 3.4 (protection of trade secrets)	19
Question II.12. b): Documentation 3.4 (protection of trade secrets)	19
Question II.12 c): Documentation 3.4 (protection of trade secrets).....	19
Question II.13 a): Documentation Section 3.10 (Joint application — consortium)	20
Question II.13. b): Documentation Section 3.10 (Joint application — consortium)	20
Question II.13. c): Documentation Section 3.10 (Joint application — consortium).....	20
Question II.13. d): Documentation Paragraphs 3.10. a) and b) (joint Application — consortium)	21
Question II.13. e): Documentation Section 3.10 c) (Joint application — consortium) 21	
Question II.13 f): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.1 d).....	21
Question II.13 g): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.6	22
Question II.13 h): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.7	23
Question II.14 a):. Documentation Section 3.11 (formal requirements for the Application).....	23
Question II.14. b): Documentation Section 3.11 (formal requirements for the Application).....	23
Question II.14. c): Documentation Section 3.11 a) (formal requirements for the Application).....	24
Question II.14. d): Documentation Section 3.11 a) (formal requirements for the Application).....	24

Question II.14. e): Documentation Section 3.11 a) (formal requirements for the Application).....	24
Question II.14 f): Documentation Section 3.11 a) (formal requirements for the Application).....	24
Question II.14 g): Documentation Section 3.11 b) (formal requirements for the Application).....	25
Question II.14 h): Documentation Section 3.11 c) (formal requirements for the Application).....	25
Question II.14 i): Documentation Section 3.11 e) (formal requirements for the Application).....	26
Question II.14 j): Documentation Section 3.11 f) (formal requirements for the Application).....	26
Question II.14 k): Documentation Section 3.11 f) (formal requirements for the Application).....	26
Question II.14 l): Documentation Section 3.11 g) (formal requirements for the Application).....	27
Question II.14 m): Documentation Section 3.11 g) (formal requirements for the Application).....	27
Question II.14 n): Documentation Section 3.11 h) (formal requirements for the Application).....	27
Question II.14 o): Documentation Section 3.11 h) (formal requirements for the Application).....	28
Question II.14 p): Documentation Section 3.11 h) (formal requirements for the Application).....	28
Question II.14 q): Documentation Section 3.11 i) (formal requirements for the Application).....	28
Question II.15 a): Documentation Section 3.12. c) (documents to be submitted for Application); Section 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	29
Question II.15. b): Documentation Section 3.12 c) (documents to be submitted for Application).....	29
Question II.15. c): Documentation Section 3.12 c) (documents to be submitted for Application).....	30
Question II.15. d): Documentation Section 3.12 c) (documents to be submitted for Application).....	30
Question II.15. e): Documentation Section 3.12 c) (documents to be submitted for Application).....	30
Question II.15 f): Documentation Section 3.12 c) (documents to be submitted for Application) and Section 2.9.2.....	31
Question II.16. a): Documentation Section 3.12. f) (documents to be submitted for Application); Section 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	32

Question II.16. b): Documentation Sections 3.12 f and 3.12. l) (documents to be submitted for Application)	32
Question II.17 a): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond).....	33
Question II.17. b): Documentation Section 3.13 (procedural security).....	33
Question II.17. c): Documentation Section 3.13 (procedural security)	33
Question II.17. d): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond).....	33
Question II.17. e): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond).....	34
Question II.18.: Documentation Section 3.14 (conditions of payment of the participation fee)	34
Question II.19. a): Documentation Section 3.15 (performance bond).....	34
Question II.19. b): Documentation Section 3.15 b) (performance bond).....	35
Question II.19. c): Documentation Section 3.15 (performance bond).....	35
Question II.20 a): Documentation 3.16 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round) 35	
Question II.20. b): Documentation 3.16 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round) 35	
Question II.21 a): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round) 36	
Question II.21. b): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	36
Question II.21. c): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	37
Question II.21. d): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	37
Question II.22. a): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	37
Question II.22. b): Documentation 3.16.2, second paragraph (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	37
Question II.22. c): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	38
Question II.22. d): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round).....	38

Question II.23: Documentation Section 3.17 (opening the auction Applications).....	39
Question II.24. a): Documentation Section 3.18 (examination and validity of Applications), Section 3.20 (substantive invalidity)	39
Question II.25: Documentation Chapter IV (Order for implementing the auction phase).....	39
Question II.26 a): Documentation Section 4.2 (the bidding phase of the Auction).....	40
Question II.26 b): Documentation Section 4.2 (the bidding phase of the Auction).....	40
Question II.27.: Documentation Section 4.2.1 (assessment of bidding sheets submitted for the first and second rounds for frequency block “A”).....	40
Question II.28 a): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)	41
Question II.28. b): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)	41
Question II.28. c): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)	42
Question II.29. a): Documentation Section 4.2.4.1 (equal bids in case of frequency block “A”)	42
Question II.29. b): Documentation Section 4.2.4.1 (equal bids in case of frequency block “A”)	42
Question II.30: Documentation Section 4.2.4.2 (equal bids in case of frequency blocks “B” and “C”).....	43
Question II.31: Documentation Section 4.3 (equal bids in case of frequency blocks “B” and “C”).....	44
Question II.32. a): Documentation Section 5.3 b) (conflict of interest rules governing new licensees following frequency assignment)	44
Question II.32. b): Documentation Section 5.3 b) (conflict of interest rules governing new licensees following frequency assignment)	45
Question II.33: Documentation Section 5.4 — factors alleviating the new licensee’s competitive disadvantage.....	45
Question II.34: Documentation Section 5.5 (conditions for the secondary trading of the rights of use)	46
Question II.35: Documentation Section 5.7 a) (amending the resolution on frequency usage rights)	46
Question II.36.: Documentation Section 5.11	46
Question II.37 a): Documentation Annex 1 Section 1.5.1.2 (service launch and coverage obligation of new licensees).....	47
Question II.37 b): Documentation Annex 1 Section 1.5.1.2 (service launch and coverage obligation of new licensees).....	47
Question II.37 c): Documentation Annex 1 Section 1.5.1.3 (service launch and coverage obligation of new licensees).....	48

Question II.38: Documentation Annex 1 Section 1.5.2.3 (service launch and coverage obligation of new licensees).....	48
Question II.39 a): Documentation Annex 1, Section 1.5.3 (service access coverage obligation for incumbent mobile operators)	48
Question II.39 b): Documentation Annex 1, Section 1.5.3 (service access coverage obligation for incumbent mobile operators)	49
Question II.39 c): Documentation Section 2.1.2; Annex 1 Section 1.5.3 (conditions for the secondary trading of the rights of use).....	49
Question II.40: Documentation Annex 1, Section 1.6.1.1 (GSM technology – 900 MHz band – use of radio frequencies in national border zones).....	49
Question II.41 a): Documentation Annex 1 Section 1.7 (Coordination between GSM-R and mobile telephone networks)	50
Question II.41 b): Documentation Annex 1 Section 1.7 (Coordination between GSM-R and mobile telephone networks)	51
III. Questions recorded in the consultation protocol but not or not fully answered in the consultation and questions not listed in Chapters I-II hereto	51
Question III.1: Amendment to Decree No. 35/2004 (XII. 28.) IHM of the Ministry of Informatics and Communications on the establishment of the rules relating to the usage of frequency bands.....	51
Question III.2: status of frequency blocks left unawarded	52
Question III.3: absence of agreement with incumbent operators.....	53
Question III.4: LTE technology	53

I. GENERAL QUESTIONS

Question I.1.: Participating in the consultation

Question: “Is it necessary to give advance notice of our intention to participate in the consultation and to submit the participants’ data? If so, where and in what form should this be done?”

Answer: The organisations and persons having purchased the Documentation will be sent an invitation containing all the information requested above.

Question I.2 a): Hungarian translation of documents submitted in languages other than Hungarian

Question: “As for non-Hungarian documents, are certified translations, produced by a qualified translator based in the applicant’s country of origin and certified in the same country, acceptable without resorting to the services of the competent Hungarian certification authority?”

Answer: Only translations fulfilling the conditions set out under Section 3.11 k) shall be accepted.

Question I.2 b): Hungarian translation of documents submitted in languages other than Hungarian

Question: “Do the translations of every document submitted by a foreign applicant require certification?”

Answer: As per Section 3.2, the official language of the auction procedure shall be Hungarian. If the applicant submits any document in a language other than Hungarian, a certified translation shall be appended. This obligation applies, also based on Section 3.11, to each and every document submitted in relation to an Application.

Question I.3: payment of the Auction fee by foreign enterprises

Question: “(company) as applicant, a corporation registered under the law of (country). The (company) is required under the law of (country) to acquire an Offshore Investment Certificate issued by the competent authority of (country), in order to be able to send the auction fee via international wire transfer. In this case, it takes at least three months for (company) to acquire said Certificate, which (company) only intends to do after having won the auction. Does the Authority allow for a deferred payment until (company) procures said Certificate?”

Answer: Pursuant to Section 5.1 of the Notice, the winning participant is required to transfer the full auction fee to the specified bank account, within 15 days following the resolution concluding the auction procedure. In the event of a delay, the Contracting Authority shall be entitled satisfy its claim for the full auction fee amount from the performance bond.

The Contracting Authority recommends that those seeking to apply acquire in due course all licenses and permits required.

Question I.4.: Registration of applicants

Question: “Do applicants need to register in order to be able to participate at the auction? How does one go about registering? Is it true that, provided that the applicant duly submits its Application, together with all other documents set out in the Documentation, by the application (submission) deadline, it shall be automatically entered in the register of the Contracting Authority as a participant?”

Answer: It is by “registration” that the Contracting Authority enters an applicant in its register as a participant, as defined in Section 3.21. As per Section 12(2) of the Decree on the rules of auction or tender, only parties submitting applications – after a possible rectification process – that meet all formal requirements, as set out in the documentation and in pertaining legislation, shall be registered.

Question I.5: Amount of Value Added Tax applicable

Question: “As regards value added tax, we would like to inquire as to what the applicable rate for VAT is, both in the area of communications in general and within the frames of this auction.”

Answer: Charges in connection with the auction (participation fee, full auction fee) shall be invoiced with the prevailing VAT added, which currently stands at 25%. The VAT applicable to frequency usage is also 25% at the moment.

Question I.6: Payment in foreign currencies

Question: “Would it be possible for us to make payment in another currency (e.g. euros, USD)? If this is possible, what is the applicable exchange rate? We would also like some information regarding the transfer (payment beneficiary, account number etc.)”

Answer: Pursuant to Section 2.4 of the Documentation, payment for the pertaining documentation fee, the participation fee as set out in Section 3.14, as well as the full auction fee as set out under Section 5.1 shall be made to the prescribed HUF account held with the Hungarian State Treasury.

II. QUESTIONS REGARDING SPECIFIC SECTIONS OF THE DOCUMENTATION

Question II.1: Documentation, introductory section

Reference: -

Question: “Will the President of the NMHH amend the Decree on the rules of auction or tender in the near future (with entry into force prior to 20 October 2011)?”

Answer: The National Media and Infocommunications Authority plans to amend the Decree on the rules of auction or tender and the Decree on the establishment of the rules relating to the usage of frequency bands according to the legislation amendment plan also affecting this auction procedure. The amendment of the two pieces of legislation is available on the Authority’s website. The Authority does not plan to amend Government Decree 346/2004 (XII 22) during the period affecting the auction. (see *Question II.5*)

Question II.2.: Documentation Section 1.3 (planned agenda of the auction procedure)

Reference: “The Contracting Authority plans to conduct this auction procedure along the following schedule. The dates are only indicative in the Documentation.”

Question: “Can we expect any change in the dates indicated; when will the dates of “indicative” nature become final?”

Answer: The Contracting Authority has drawn up the planned agenda specified under Section 1.3 of the Documentation taking into account the estimated time required for the procedures defined in the relevant legislation and the Documentation, in a manner ensuring that they are realistic and feasible. By issuing the Auction Notice, the Contracting Authority has expressed its intention to adhere to the deadlines set out in the Documentation agenda in the course of the procedure.

The Contracting Authority will amend the planned agenda if any circumstance warranting such amendment arises following the publication of the Notice, in compliance with the conditions set out in legislation and the Documentation.

Question II.3 a): Documentation Section 2.1.2; Annex 1, Section 1.5.3. (service access coverage obligation for incumbent mobile operator)

Reference: Section 2.1.2 of the Documentation and Section 1.5.3 of Annex 1 both mention “broadband (other than GSM) service access coverage”, without specifying any further data transmission speed.

Question: based on the above, can incumbent mobile operators participating in the auction procedure regard the service access coverage obligation as one with no specifically defined data transmission speed, and assume that the only obligation is to provide access using a broadband technology (UMTS, LTE or WIMAX)?

Answer: Yes, any of the above-listed technologies is sufficient to meet the access coverage obligation.

Question II.3 b): Specifying question to Question II.2 a)

Reference: Section 2.1.2 of the Documentation and Section 1.5.3 of Annex 1 both mention “broadband (other than GSM) service access coverage”, without specifying any further data transmission speed.

Specifying question: based on the above, can incumbent mobile operators participating in the auction procedure regard the service access coverage obligation as one with no specific criterion on data transmission speed or signal strength? Because in the case of WCDMA systems for instance, network access can be ensured even with a weak, near-noise level pilot (CPICH) signal.

Answer: Section 1.5.3 of Annex 1 defines a requirement for “broadband (other than GSM) service access coverage”, which requires that a client be able to conclude a subscription contract for the service provided using the technology implemented by the operator, and that the latter can ensure the service with the quality parameters defined in the subscription contract or the general contract terms and conditions.

Question II.4.: Documentation Section 2.2 (subject of the auction)

Reference: Section 2.2 of the Documentation contains the following: “*The subject of the frequency auction related to mobile telecommunications services is the acquisition of rights of use for the frequency blocks in the 900 MHz band and, in the event that a non-incumbent mobile operator acquires rights for frequency block “A”, for the rights of use of the frequency blocks in the 1800 MHz and 2100 MHz bands.*”

Question: please specify mobile telecommunications services, because the term does not appear in this form in either the Electronic Communications Act or the Classification of Services of the Central Statistical Office. The question bears particular importance to us because the auction documentation frequently refers to the “service”.

Answer: The term is in fact not defined specifically in the Act, but — given the fact that mobile networks can be used for more than telephone services (and the related supplementary services listed in the Electronic Communications Act) using the frequency band, such as broadband data transmission services as well — it refers better to the services that can be provided on the frequency up for auction. Broken down in greater detail, the subject of the auction is the rights of use of the frequency related to electronic communications services provided with the radio systems that can be used in the 900 MHz frequency band (specific radio communications applications defined in the Decree of the Minister of Informatics and Communications 35/2004 (XII. on the establishment of the rules relating to the usage of frequency bands: GSM system, UMTS system, LTE system and WiMAX).

The services that can be provided using these radio systems are defined by the international and national documents listed among the rules on band usage (Commission decisions, Commission implementing Decisions, CEPT ECC decisions, recommendations, European (at times transposed) standards).

“Service” can take on many different meanings, therefore for the purposes of the Documentation, the term “service” shall refer to relevant definition based on the section at issue. We did not encounter any confusing use of the term, nor has the inquirer mentioned any such use.

Question II.5.: Documentation Section 2.3 (usability of the frequency acquired in the context of the auction)

Reference: -

Question: “Will the President of the NMHH amend Government Decree 346/2004 (XII 22) in the near future (with entry into force prior to 20 October 2011)?”

Will the President of the NMHH amend the Decree on the establishment of the rules relating to the usage of frequency bands in the near future (with entry into force prior to 20 October 2011)?”

Answer: The National Media and Infocommunications Authority plans to amend the Decree on the rules of auction or tender and the Decree on the establishment of the rules relating to the usage of frequency bands according to the legislation amendment plan also affecting this auction procedure. The amendment of the two pieces of legislation is available on the

Authority's website. The Authority does not plan to amend Government Decree 346/2004 (XII 22) during the period affecting the auction.

Question II. 6 a): Documentation Section 2.9.7 b) (suitability criteria, conditions of participation and conflict of interest)

Reference: Pursuant to Section 2.9.1 b) of the Documentation, only parties having no "other obligations of payment to a dedicated state fund ... may participate ... in the Auction procedure"

Question: "Given that no authority can issue a comprehensive certificate on existing payment obligations to a dedicated state fund, would the Contracting Authority accept a statement made by the Applicant in this regard?"

Answer: The Contracting Authority shall accept such statements by applicants.

Question II.6. b): Documentation Section 2.9.7 c) (suitability criteria, conditions of participation and conflict of interest)

Reference: Pursuant to Section 2.9.1 c) of the Documentation, only parties that are "not subject to bankruptcy procedure, liquidation or voluntary dissolution ... may participate ... in the Auction procedure"

Question: "Would the Contracting Authority find it acceptable that an Applicant submits, in order to verify its compliance with Section 2.9.1 c), an effective certificate of incorporation issued following the publication date of the auction notice?"

Answer: The Contracting Authority shall accept verification by certificates of incorporation.

Question II.7. a): Documentation Section 2.9.2 (suitability criteria, conditions of participation and conflict of interest)

Reference: Pursuant to Section 2.9.2 of the Documentation: "Only persons that comply with the following conflict of interest rules may participate in the auction procedure, either individually or as part of a consortium:

a) Natural or legal persons, business organisation with no legal personality, other registered organisations or sole entrepreneurs/sole proprietorships holding a controlling stake in each other.

c) Natural persons and legal entities, business organisations no legal personality, other registered organisations, sole entrepreneurs or sole proprietorships with controlling stakes in each other or in an incumbent mobile service provider may not participate simultaneously in the Auction, neither individually nor as part of a consortium."

Pursuant to Article 9 (2) of the Decree on the rules of auction or tender: "Legal persons, business associations without legal personality and other organisations holding a controlling share as defined in Section 3 (2) of Act I of 1996 on Radio and Television Services in each other or one in the other or in which the same third party holds a controlling share may not simultaneously participate at the auction or tender."

Question: “Is the conclusion, drawn from the above rules, that the applicant cannot submit a bid jointly with its parent company even if it has concluded a consortium agreement — if the parent company holds a controlling share in the applying business association and/or there is a relationship of control between them correct? Moreover, is our interpretation of the Decree on the rules of auction or tender, whereby an applicant consortium cannot apply jointly with its affiliated companies, even if it has concluded a consortium agreement if the same third party holds a controlling share over the applicant and its affiliated company?”

Answer: Yes, this interpretation is correct. Section 2.9.2 of the Documentation excludes on general principle the joint application of participants failing to meet the requirements on controlling relationship and interest, as set out under items a) and c) therein, whether in a consortium (each as members of a given consortium) or separately as individual applicants. Neither does Section 2.9.2 permit that, while one enterprise participates as a consortium member, the other does so as an individual applicant. In consideration of the fact that, as far as the issue of conflict of interest is concerned, NMHH Decree 4/2011 (X. 6.) on the rules of auction and of tender for the acquisition of the rights of use of frequency does not contain any provision similar to its previously effective Section 9(2), compliance with those set out in the Documentation is required.

Question II.7. b): Documentation Section 2.9.2 (suitability criteria, conditions of participation and conflict of interest)

Reference: According to Documentation Section 2.9.2: *Only persons that comply with the following conflict of interest rules may participate in the auction procedure, either individually or as part of a consortium:*

a) Natural or legal persons, business organisations with no legal personality, other registered organisations or sole entrepreneurs/sole proprietorships holding a controlling stake in each other [may not participate in the Auction simultaneously].

A controlling share is:

a direct and indirect stake in a company providing control in excess of twenty-five percent of the company’s assets or voting rights; as per Article 685 b) of the Civil Code, direct and indirect stakes held by close relatives shall also be included;

any situation which makes a controlling influence in the company possible by way of a contract, deed of foundation (bylaws) or preferred stock, through the appointment (removal) of the decision-making or supervisory bodies or otherwise.”

Question: “Taking into account the above provision of the Documentation,

- please confirm that our interpretation of the expression “may not participate in the Auction simultaneously” found in Section 2.9.2. a) as the prohibition of parent/subsidiary companies from participating as a consortium in the auction procedure is correct.*
- In other words, a subsidiary and parent company — whether individually or as part of a consortium — cannot participate in the auction procedure as competitors?” That is, either may participate individually, thereby excluding*

the other from participation, or together as a consortium submitting a joint application.

In summary, does the prohibition of participants fulfilling the criteria defined under Section 2.9.2. a) and c) mean that they are barred from participating as a consortium, or only barred from participating as competitors?”

Answer: This interpretation is partially correct. Enterprises subject to exclusionary provisions set forth in Section 2.9.2 a) and c) may participate in the procedure neither in a consortium (as members thereof) nor as individual applicants/participants. Section 2.9.2, also excludes the possibility of one enterprise participating in the procedure as a consortium member while the other does so as an individual applicant. Enterprises falling under the scope of exclusionary provisions set forth in Sections 2.9.2 a) and c) may participate neither as a consortium nor as competitors to one another.

Question II.8. a): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)

Reference: The following sentence appears in Sections 2.9.3 and 5.4: “ *provides domestic roaming services to the new licensee – in the event that the licensee requests such services – in line with Section 5.4*”.

Question: Does domestic roaming pertain only to GSM (2G) technology?

Answer: Domestic roaming **does not** only pertain to GSM (2G) technology. Pursuant to Chapter 5.4 of the Documentation: “The new licensee shall send its initiation to conclude an agreement on roaming services to the incumbent mobile operator, defining the type and quantity of the services it wishes to use”. The licensee’s request to conclude a roaming agreement may apply to technologies other than GSM.

Question II.8. b): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)

Reference: Section 2.9.3; Section 5.4. — factors alleviating the new licensee’s competitive disadvantage

Question: “The Notice does not define a period for which the obligation to provide roaming services applies to the incumbent mobile operator. For how long do incumbent mobile operators have to provide roaming services to the new licensee?”

Answer: As per Section 5.4, the roaming agreement to be made based upon the new licensee’s initiative shall be concluded with an expiration date of 31 December 2014 at the earliest. Additional rules are stipulated under Section 5.4.

Question II.8. c): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee’s competitive disadvantage)

Reference: Section 2.9.3 Section 5.4. — factors alleviating the new licensee’s competitive disadvantage

Question: “The notice does not contain any express restrictions on the secondary trading of the roaming service by the new licensee to third parties. We deem the

express statement thereof important because the possibility of secondary trading allows room for substantial abuse. Are we to interpret, then, that the new licensee cannot resell the roaming service provided by an incumbent mobile operator to other operators?

Answer: Section 5.4 of the Documentation fundamentally leaves the main parameters of the roaming agreement open to accord between the incumbent mobile operator and the new licensee. The above interpretation is therefore **incorrect**, as the **Documentation does not prohibit** the new licensee from secondary trading the roaming service.

In European mobile communications markets, it is a common competitive strategy to acquire users through virtual operators, so stemming from the objective of the provision (alleviating the new licensee's competitive disadvantage), this strategy is not restricted in any way.

Although not specifically related to this particular question, it is important to stress that it is a fundamental misunderstanding of telecommunications regulation to assume that profiting on regulated price products constitutes abuse.

Question II.8. d): Documentation Section 2.9.3; Section 5.4. (factors alleviating the new licensee's competitive disadvantage)

Reference: Section 2.9.3 Section 5.4. — factors alleviating the new licensee's competitive disadvantage

Question: "The incumbent operator undertakes to provide the new entrant with nationwide roaming services. Years ago, in relation to the tendering of the 1800 MHz band, a three-year limit was being used; this is a limitation in time that we would consider acceptable this time around as well.

A question in this subject has already been raised to the Authority, which in its reply acknowledged that domestic roaming services ought to remain in effect for a period of three years.

With this question, we would only like to have a solid confirmation that the obligation of domestic roaming is to last no more than three years."

Answer: As per Section 5.4, the roaming agreement to be made based upon the new licensee's initiative shall be concluded with an expiration date of 31 December 2014 at the earliest. Additional rules pertaining to the extension of the agreement are stipulated under Section 5.4.

Question II.9. a): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)

Reference: Documentation Section 2.9.6;

Question: "Under Section 2.9.6 of the Documentation, is the applicant required to submit, as part of its Application, a pledge of commitment on the establishment of a business organisation having a legal personality and headquartered in Hungary? While Section 3.12 does not call for the applicant to submit said document, according to Section 2.9.6 submission of the above declaration (pledge of commitment) is mandatory. Please advise."

Answer: Yes, applicants are indeed required to submit the declaration set out in Section 2.9.6. Failure to do so shall result in the application being rejected.

Question II.9. b): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)

Reference: Documentation Section 2.9.6;

Question: “Under Section 2.9.6 of the Documentation, should the auction be won by a non-Hungarian applicant, can it establish, following the announcement of results, a partner company to which to transfer the frequency usage right it has acquired? In this case, the partner company is a Hungarian legal person, controlled by an applicant by way of possessing over 50% of the shares of and/or voting rights in said partner company.”

Answer: The partner company described above does not meet the provisions of Section 2.9.6. The winning participant is required to establish an enterprise as per Section 2.9.6.

Question II.9. c): Documentation Section 2.9.6 (suitability criteria, conditions of participation and conflict of interest)

Reference: “Non-Hungarian applicants may only participate in this auction procedure if, in their statement, they undertake an irrevocable and unconditional obligation to establish, in the event of a winning bid, a business organisation with legal personality or an organisation, branch office or agency without legal personality in its exclusive ownership and headquartered in Hungary within ten days of the binding, substantive resolution concluding the auction procedure and to transfer the frequency usage rights acquired in this auction procedure within fifteen days of the binding, substantive resolution concluding the auction procedure to such company [...] or to a resident business organisation, association or alliance that is in its exclusive ownership (hereinafter as: controlled entity).”

Question: Should the applicant decide for option number two (and therefore it transfers its newly acquired rights to an enterprise that is in its exclusive ownership and is headquartered in Hungary), is the requirement of full ownership to be met already at the submission of the application, or would it be sufficient for this to be realised within 15 days following the binding, substantive resolution concluding the procedure – that is, by the scheduled transfer date?

Answer: If, in the event of a winning bid, a non-Hungarian applicant chooses not to establish a new enterprise and transfers its newly acquired rights to an existing enterprise in its exclusive ownership, said enterprise must be declared already in a pertaining statement submitted during application, that is, this enterprise must be in the applicant’s exclusive ownership already when the application is submitted.

Question II.10. a): Documentation Section 2.9.7 (suitability criteria, conditions of participation and conflict of interest)

Reference: -

Question: “What does the expression ‘modifications, changes in the person of the applicant/participant’ refer to? Can this requirement be construed as a prohibition

only pertaining to changes affecting the validity of the application/participation, not including minor changes to the company registration.

Answer: Yes, the Contracting Authority has the same interpretation.

Question II.10. b): Documentation Section 2.9.7 (suitability criteria, conditions of participation and conflict of interest)

Reference: Pursuant to Section 2.9.7 of the Documentation, “No modifications, changes or legal succession in the person of the applicant/participant shall be allowed during the auction procedure.”

Question: “What instances do modifications or changes in the person of the applicant/participant refer to? Does the sale of business share between owners or the exercising of an option to purchase, or any change in ownership structure qualify as a change violating Section 2.9.7 of the Documentation?”

Answer: Reiterating our earlier response, the prohibition defined under Section 2.9.7 of the Documentation only pertains to changes affecting the validity of the application/participation, obviously not including minor changes such as those affecting the company’s scope of activity or its authorised representatives.

Question II.11 a): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application

Reference: Section 3.2: “The official language of the auction procedure shall be Hungarian” and Section 3.11 k): “The Application shall be prepared in Hungarian.”

Question: “Is it possible for applicants to submit required statements as bilingual documents (featuring the text in both languages on the same page, with the Hungarian being the prevailing one)?”

Answer: Pursuant to Section 3.2 of the Documentation, the procedure and all communication between the applicants/participants and the Contracting Authority shall be conducted in Hungarian. Applicants are not restricted from submitting translations for any document made in Hungarian by themselves (also in bilingual format); however, in such cases the Hungarian version shall prevail.

Question II.11. b): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application

Reference: Section 3.2: “The official language of the auction procedure shall be Hungarian” and Section 3.11 k): “The Application shall be prepared in Hungarian.”

Question: “Given that the definition of what constitutes a certified Hungarian translation has been removed from the Documentation and the Decree on the rules of auction or tender does not contain any provisions in this regard, we are now requesting a definition.”

Answer: Pursuant to Section 3.2 and in accordance with pertaining legislation, non-Hungarian applicants are required to submit the certified Hungarian translations for all documents written in languages other than Hungarian.

Question II.11. c): Documentation Section 3.2 (language of the procedure), Section 3.11 k) (formal requirements for the Application)

Reference: Section 3.2: “The official language of the auction procedure shall be Hungarian” and Section 3.11 k): “The Application shall be prepared in Hungarian.”

Question: “The Documentation does not contain any information whether foreign public documents or private documents undersigned abroad must be endorsed by the diplomatic entity operating at the country of issue, or whether such documents are to be authenticated with an Apostille prepared under the terms of The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. We are kindly requesting clarification in this matter.”

Answer: Pursuant to Section 3.2 and in accordance with pertaining legislation, non-Hungarian applicants are required to submit the certified Hungarian translations for all documents written in languages other than Hungarian.

Question II.12 a): Documentation 3.4 (protection of trade secrets)

Reference: -

Question: Pursuant to Documentation 3.4, the bid amount does not qualify as a trade secret. Is our interpretation correct in that, despite the above, according to Paragraphs l) and n) of Annex 1 to the Decree on the rules of auction or tender, the closing protocol only contains the winning bid, and not those of all the participants?”

Answer: Neither the currently effective version of the Decree on the rules of auction or tender nor the Documentation prescribes an obligation for keeping a protocol.

Question II.12. b): Documentation 3.4 (protection of trade secrets)

Reference: Pursuant to Section 3.4. of the Documentation, “applicants/participants may request the restriction of document inspection rights specifying the data in question (e.g. the documents of the Application or other data or document delivered to the Contracting Authority) on the grounds of protecting their business and other legitimate interests. Any data, document, information or notification delivered to the Contracting Authority by the applicant/participant in the context of the auction procedure shall only be deemed as a trade secret when qualified as such by the applicant/participant in line with the relevant legislation.

Question: “Can the entire documentation submitted be qualified as a trade secret?”

Answer: An entire document may be qualified as a trade secret within reasonable limits, in line with the qualification defined in the relevant legislation, avoiding unwarranted excessive qualification.

Question II.12 c): Documentation 3.4 (protection of trade secrets)

Reference: Documentation Section 3.4;

“Applicants/participants may request the restriction of document inspection rights, specifying the data in question (e.g. the documents of the Application or other data or

document delivered to the Contracting Authority), on the grounds of the protection of its business and other valid interests.”

Question: “How exactly does information to be handled as business secret have to be marked? Can documents (e.g. business plan) submitted alongside those considered mandatory attachments be designated as business secrets in their entirety?”

Answer: On the first page of each document to be submitted as part of their application, applicants are required to include a binding statement as to whether the given document or its unambiguously marked section(s) contain business secrets.

Question II.13 a): Documentation Section 3.10 (Joint application — consortium)

Reference: Section 3.10 (Joint application — consortium)

Question: Is an incumbent mobile operator entitled to form a consortium in order to participate in the auction?

Answer: Yes; account should nevertheless be taken of the following provision under Section 3.10 of the Documentation: *“When an applicant submits an Application entirely on its own, it may not submit a subsequent Application as member of a consortium.” “Following a Joint Application, consortium members may not validly submit Applications or other Joint Applications.”*

Question II.13. b): Documentation Section 3.10 (Joint application — consortium)

Reference: Section 3.10 (Joint application — consortium)

Question: If an incumbent mobile operator is entitled to form a consortium, does the consortium created with the participation of the incumbent mobile operator qualify as a person/organisation distinct from the incumbent mobile operator in the definition of “non-incumbent mobile operator” in Chapter I? (Is the consortium created with the participation of the incumbent mobile operator to be regarded as a “non-incumbent mobile operator”, i.e. can it participate in the first round for the acquisition of frequency block A, and for blocks D and E in the event of a successful bid for block A?)

Answer: Section 2.9.8 clearly stipulates that the following parties are restricted from entering the first round of the auction – whether individually or as members of a consortium: incumbent mobile operators and/or companies (non-incumbent operators) having a controlling stake in or engaged, whether directly or indirectly, in a controlling or any other actual relationship with the incumbent mobile operator or any other enterprise exercising control over it, based on which it could be possible for said entities to influence each others’ decisions, as well as enterprises sharing the same founder enterprise with an incumbent mobile operator.

Question II.13. c): Documentation Section 3.10 (Joint application — consortium)

Reference: Section 3.10 (Joint application — consortium)

Question: Can a consortium created with the participation of an incumbent mobile operator bid for blocks B and C?

Answer: Yes, but Section 3.10 of the Documentation should again be taken into consideration, whereby “*When an applicant submits an Application entirely on its own, it may not submit a subsequent Application as member of a consortium.*” “*Following a Joint Application, consortium members may not validly submit Applications or other Joint Applications.*”

Question II.13. d): Documentation Paragraphs 3.10. a) and b) (joint Application — consortium)

Reference: Pursuant to Paragraph 3.10. a) of the Documentation, the consortium agreement must contain the specification of the form of the applicants’ Joint Application, and pursuant to Paragraph 3.10. b), it must contain the specification of the method of signature of the Application.

Question: “Does the form of the applicants’ Joint Application refer to the corporate form of the business association to be established? What does the Contracting Authority refer to by method of signature of the Application?”

Answer: Section 3.10. a) of the Documentation prescribes the presentation of the consortium agreement, while Paragraphs c) and d) prescribe the presentation of information about the business entity to be established. Pursuant to Paragraph d), the corporate form of the business entity to be established, the extent of participation therein, and the related rights must be specified. Paragraph b) is closely tied to Paragraph a); on the joint basis thereof, the applicant must also define the method of signature of the Application and the persons authorised to sign the Application as per the consortium agreement.

Question II.13. e): Documentation Section 3.10 c) (Joint application — consortium)

Reference:

Question: “Having regard to the fact that Section 2.9.6 referenced in Section 3.10. c) does not apply to Hungarian applicants, is our interpretation correct in that consortia only comprising Hungarian members need not establish a new business entity and transfer the frequency usage rights to such entity?”

Answer: Section 3.10. sets out obligations valid for all consortium applicants. The reference in Section 3.10 c) to Section 2.9.6 is applicable only and exclusively to the organisation defined therein “*...to establish [...] a business organisation with legal personality or an organisation, branch office or agency without legal personality in its exclusive ownership and headquartered in Hungary...*”. Upon a joint interpretation of all provisions of Section 3.10, it becomes clear that, in the event of a winning bid, consortia only comprising Hungarian members, too, are required to establish a business entity as specified in the Documentation.

Question II.13 f): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.1 d)

Reference: Documentation Sections 3.10.4 and 2.9.1 d)

As per Section 3.10 of the Documentation, in case of Joint Applications, each member of the consortium shall fulfil the conditions set out under Sections 2.9.1., 2.9.2., and 3.16.1. Furthermore, pursuant to Section 2.9.1 d), only parties having “...acquired the Documentation and paid the participation fee as per Section 2.5 herein” may be

entitled to participate at the auction. This however is contradicted by a requirement, set out under Section 3.10, according to which “in the event of a Joint Application, only one member of the consortium is required to purchase the Documentation”.

Question: Of the above provisions, is Section 3.10 to prevail? In other words, is it sufficient for only one member to purchase the Documentation? As for the second condition under Section 2.9.1 d), we therefore assume that, in the event of a joint application, one-time payment of the participation fee would also suffice. Is this interpretation correct?

Answer: The inquirer’s interpretation is correct under the following conditions: according to the second sentence of Section 3.10, in the event of a joint application, it is sufficient for only one consortium member to purchase the Documentation. Given that joint applicants (members of a consortium) in this regard constitute a single applicant, their consortium is required to pay a one-time participation fee, which may be completed by either member.

Question II.13 g): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.6

Reference: Section 3.10 c): “members undertake an irrevocable and unconditional obligation to establish, in the event of a winning bid, an organisation as defined under Section 2.9.6. in the exclusive ownership of consortium members and headquartered in Hungary within ten days of the binding, substantive resolution concluding the auction procedure and to transfer the frequency usage rights acquired in this auction procedure within fifteen days of the binding, substantive resolution concluding the auction procedure to such company, taking into consideration the provisions set out in this Documentation, Decree on the rules of auction or tender and Decree 6/2004 (IV. 13.); Section 2.9.6: “Non-Hungarian applicants may only participate in this auction procedure if, in their statement, they undertake an irrevocable and unconditional obligation to establish, in the event of a winning bid, a business organisation with legal personality or an organisation, branch office or agency without legal personality in its exclusive ownership and headquartered in Hungary within ten days of the binding, substantive resolution concluding the auction procedure and to transfer the frequency usage rights acquired in this auction procedure within fifteen days of the binding, substantive resolution concluding the auction procedure to such company [...] or to a resident business organisation, association or alliance that is in its exclusive ownership (hereinafter as: controlled entity). ”

Question: Since consortium members are also to comply with the provisions of Section 2.9.6 (see Section 3.10.4 2)), does this mean that, in the event of a winning bid, a non-Hungarian member may transfer its newly awarded frequency usage right to the controlled entity even if the latter is also a member of the consortium? Is it still necessary to establish a separate business organisation, even though the Hungarian consortium member otherwise fulfils the conditions set out under Section 2.9.6, that is, it functions as a controlled entity?

Answer: As per Section 3.10 c), a consortium applying for the auction is required to establish, within 10 days following the entry into force of the substantive resolution concluding the auction procedure, a new business organisation as defined under Section 2.9.6, to which to transfer its frequency usage rights as specified in the Documentation. In the event of an application by a consortium, therefore, Section 3.10 c) prohibits said consortium from

transferring its frequency usage right to another consortium member or a company held under the exclusive ownership of any applicant defined under Section 2.9.6. In the event of a winning bid, the consortium may only transfer its frequency usage right to a company duly established by members of the given consortium.

Question II.13 h): Documentation Section 3.10 (Joint application — consortium) and Section 2.9.7

*Reference: Section 2.9.7: “No modifications, changes or legal succession in the person of the applicant/participant shall be allowed during the auction procedure.”
Section 3.10 (paragraph 4, second sentence): “It is sufficient for consortium members to comply jointly with the conditions set out under Sections 2.9.3. through 2.9.7.”*

Question (in relation to Question 2.9.6): Should the ownership structure of a consortium member change during the procedure (including another member gaining exclusive ownership in it), does the restriction set forth under Section 2.9.7 still apply? Is it also applicable if said change in ownership structure takes place within 15 days following a binding decision concluding the procedure?

Are we to interpret Section 3.10.4 2) that changes in ownership structure during the auction procedure may be permitted for one consortium member?

Answer: Should the ownership structure of any consortium member change during the procedure or within 15 days following the entry into force of the substantive resolution concluding the auction procedure (until the frequency usage right is transferred to the newly established business organisation), this shall constitute a violation of Section 2.9.7 of the Documentation.

Question II.14 a): Documentation Section 3.11 (formal requirements for the Application)

Reference: Documentation Section 3.11;

Question: “For the statements prescribed under Section 3.11 (e.g. applicant’s acknowledgment of the provisions of the Decree and of Section 3.11 a) as binding), are there specimen forms available, or are the applicants to prepare these documents on their own?”

Answer: There are no formal requirements or specimen forms available for such statements. Their content, however, must meet all pertaining requirements.

Question II.14. b): Documentation Section 3.11 (formal requirements for the Application)

Reference: Documentation Section 3.11;

Question: “Are there any limitations as to the length of the Application or regarding the documents deemed necessary (e.g. business plan) to support the Application, in addition to those considered mandatory attachments?”

Answer: Such restrictions are contained neither in the Documentation nor in pertaining legislation.

Question II.14. c): Documentation Section 3.11 a) (formal requirements for the Application)

Reference: Documentation Section 3.11 a);

a) The Application

– shall be submitted in two (2) hardcopies – one (1) original counterpart and one copy, furthermore

– in one (1) electronic copy – exclusively in MS Word, MS Excel and/or PDF files on a CD, in two clearly separated dossiers.”

Question: “The Documentation only mentions CDs; can we extend this to also include DVDs, since the latter is a storage media of higher capacity.”

Answer: Yes, saving data onto DVDs is also acceptable.

Question II.14. d): Documentation Section 3.11 a) (formal requirements for the Application)

Reference: Documentation Section 3.11 a);

“...to be submitted in two clearly separated dossiers.”

Question: “Are we to interpret this as a requirement for having the original and duplicate copies separated?”

Answer: An application is to be submitted in three, clearly separate units. These three units are the original and duplicate hardcopies, and an electronic copy on a CD. Each of these units shall also include, respectively, the original, duplicate and electronic versions of all material listed as annexes under Section 3.11 f).

Question II.14. e): Documentation Section 3.11 a) (formal requirements for the Application)

Reference: Documentation Section 3.11 a);

“...to be submitted in two clearly separated dossiers.”

Question: “In light of the answer to Question II.13 e) listed in the Q&A document dated 10 October 2011, are we to interpret that, for the submission of serial-numbered CDs marked as “Bid” and “Inclusion Statement”, would it be sufficient to have these submitted in separately sealed envelopes placed in the dossier for electronic copy, rather than placing them in bid envelopes containing, respectively, the bidding sheets and the inclusion statement? In this case, an unnecessary duplicate of CDs could be avoided and the envelopes of original and duplicate copies would only contain paper documents.”

Answer: Yes, the Contracting Party shall accept placement in the dossier for electronic copy as well.

Question II.14 f): Documentation Section 3.11 a) (formal requirements for the Application)

Reference: Documentation Section 3.11 a);

“Applications shall be submitted in two (2) hardcopies – one (1) original counterpart and one copy.”

Question: “Would it be sufficient for applicants to submit, together with the pertaining certified Hungarian translation, only duplicate copies of documents issued by foreign authorities (e.g. certificate of incorporation) in the “original” dossier as well?”

Answer: No. As per the provisions of Section 3.11 a), the “original” dossier may only contain original copies of documents and statements.

Question II.14 g): Documentation Section 3.11 b) (formal requirements for the Application)

Reference: Documentation Section 3.11 b);

“The cover sheet of the original copy shall bear a clear inscription of the word “ORIGINAL”, while the duplicate shall bear a “DUPLICATE” inscription.”

Question: “Can the applicant’s name be included here? Are rules of branding/corporate identity to be adhered to? Can CDs bear company logos?”

Answer: The applicant’s name may be inscribed both on and inside dossiers defined under Section 3.11 b). Additionally, the use of branding elements within the dossier is also permitted.

Question II.14 h): Documentation Section 3.11 c) (formal requirements for the Application)

Reference: Documentation Section 3.11 c);

“ In the event that an Application comprises several separate parts, it should be clearly indicated as to whether these sections constitute the original or the duplicate copy.”

Question: “Is our interpretation of the Documentation correct in that the original, duplicate and electronic copies of the Application need not be packaged individually within the external packaging, as putting them in separate dossiers is sufficient?”

Moreover, do we understand it correctly that an applicant is to submit to the Contracting Authority a single unopened package containing the following:

- original hardcopy*
- one duplicate hardcopy*
- one electronic copy on a CD*
- for incumbent mobile operators: sealed envelopes as per Sections 2.2 through 2.4 of Annex 2, each containing individual bidding sheets and pertaining performance bonds, as well as a CD labelled as “Bid”.*
- If the Applicant requests the inclusion of the performance bond as per Section 3.15, a sealed envelope with the inscription “Statement on the inclusion of the performance bond” as per Section 3.15 b) shall also be submitted as an annex to the Application.*

Answer: Yes, this interpretation is correct. The original, duplicate and electronic copies of the Application need not be packaged individually within the external packaging, as putting them in separate dossiers is sufficient.

An applicant is to submit a single unopened package containing the following:

- the original copy of the application, also enclosing the original copy of the bid envelope, envelopes and the statement for the inclusion of the performance bond, should the latter option be desired;
- a duplicate copy, also enclosing the duplicate bid envelope, envelopes and the statement for the inclusion of the performance bond;
- an electronic copy on a CD and the CDs marked as “Bid” – provided the latter were placed in separate envelopes (see [Section II.14 j](#)). Electronic copies may also be stored on DVDs.

Question II.14 i): Documentation Section 3.11 e) (formal requirements for the Application)

Reference: Documentation Section 3.11 e);

“The packaging of the Application shall bear the following data and inscriptions:

– the name and address of the Contracting Authority;”

Question: “Given that, in the Documentation, both the introductory part and Section 2.10 use two separate names and addresses for the Contracting Authority, is our interpretation correct in that the packaging of the Application shall bear its name and address (“Office of the National Media and Infocommunication Authority, 1015 Budapest, Ostrom u. 23-25.”) as it appears in the introduction?

Answer: Name of the Contracting Authority: “Office of the National Media and Infocommunications Authority”. Either of “1015 Budapest, Ostrom u. 23-25” and “1133 Budapest, Visegrádi u. 106.” may be used as the Contracting Authority’s address.

Question II.14 j): Documentation Section 3.11 f) (formal requirements for the Application)

Reference: Documentation Section 3.11 f);

Question: “Does the CD marked as “Bid” have to contain the contents of all three envelopes, or do three separate CDs have to be submitted pursuant to Section 1.1 of Annex 2? Does the CD, or do the CDs have to be inserted into a separate envelope, or placed in the envelopes containing the hardcopy bids?”

Answer: The applicant may insert the CD marked as “Bid” in the relevant separate bid envelopes, or may insert them in separate envelopes clearly allocated to each bid envelope.

Question II.14 k): Documentation Section 3.11 f) (formal requirements for the Application)

Reference: Documentation Section 3.11 f);

“Bidding sheets, the performance bond, and the inclusion statement — is submitted by the applicant — shall be submitted on a separate CD marked “Bid”, alongside the CD defined under Section 3.11. a).”

Question: “Is the information prescribed herein and in Annex 2 for the outside of the envelope to be inscribed on the CD, or is it to bear the marking “Bid” only?”

Answer: In order to ensure an unambiguous match with the pertaining bid envelope, additional information – e.g. the mandatory text to be inscribed on the outside surface of the bid envelope – may be added on the label area of the “Bid” CD.

Question II.14 l): Documentation Section 3.11 g) (formal requirements for the Application)

Reference: Documentation Section 3.11 g);
“The pages of the Application shall be bound or otherwise attached in an indivisible manner.”

Question: “Since the Contracting Authority requires that pages of an Application be bound in an inseparable manner, meanwhile bidding sheets are to be placed in separate envelopes, how is the referenced requirement to be interpreted? Would it be sufficient to place these envelopes in perforated, open-top poly file jackets?”

Answer: Yes, that is sufficient. The serial number shall be written on the envelope.

Question II.14 m): Documentation Section 3.11 g) (formal requirements for the Application)

Reference: Documentation Section 3.11 g);
“The pages of the Application shall be bound or otherwise attached in an indivisible manner.”

Question: “Is our interpretation correct in that the above criterion does not apply to the contents (bidding sheets, performance bonds) of bid envelopes submitted as an annex to the Application? That is, these need not be bound together in an indivisible manner but placed in a sealed, serial-numbered bid envelope inscribed with the text as defined in Annex 2 of the Documentation, only to have these envelopes bound together with the rest of the sheets of the application in an inseparable manner.”

Answer: Yes, the above interpretation is correct.

Question II.14 n): Documentation Section 3.11 h) (formal requirements for the Application)

Reference: Documentation Section 3.11 h);
“Each page of the Application shall be consecutively numbered and signed by the applicant’s representative.”

Question: “When using separator pages, are these to be numbered under the same continuous page numbering scheme as other pages are? How can we go about numbering officially issued certificates? (theoretically, it is illegal to write on official documents)”

Answer: Blank separator pages need not be numbered. Documents lacking page numbering may be assigned a cover sheet containing its own actual page number, the name of the document in question, as well as the number of pages it contains.

Question II.14 o): Documentation Section 3.11 h) (formal requirements for the Application)

Reference: Documentation Section 3.11 h);

“Each page of the Application shall be consecutively numbered and signed by the applicant’s representative.”

Question: “In light of the answer to Question II.13 e) listed in the Q&A document dated 10 October 2011, is our interpretation correct in that, as far as continuous page numbering on cover sheets is concerned, the number of the first page following the affected (not numbered) document is to be established taking into account the page count of the document in question? To illustrate this with an example: let us say that, under the continuous numbering scheme, page 10 would be the first in a 10-page official document, which is to be left without numbering. Thus we use a cover sheet to be included as page no. 10. As for the next page that must contain a page number, will it be 11 or 21?”

Answer: The requirement of continuous page numbering means that each sheet of a document – regardless of whether it contains any text, illustration, symbol or is left blank – is assigned with the next actual page number even if it does not get inscribed. In the above example, the cover sheet would have to read page no. 10, with its other side – provided it is left blank – not requiring any numbering, even though it counts as page no. 11. The following 10-page document will therefore occupy pages 12 through 21 and the next page that must contain a page number will read page no. 22.

Question II.14 p): Documentation Section 3.11 h) (formal requirements for the Application)

Reference: Documentation Section 3.11 h);

“Each page of the Application shall be consecutively numbered and signed by the applicant’s representative.”

Question: “Is our interpretation correct in that, as far as the Annex is concerned, the requirement of continuous page numbering only applies to the outside of envelopes and does not affect the documents (bidding sheets, performance bonds) contained therein? Are we to conclude that, by numbering the annexes (envelopes) starting with 1 (and ending with 4 at most), the requirement of continuous numbering will be met?”

Answer: Yes, both interpretations are correct.

Question II.14 q): Documentation Section 3.11 i) (formal requirements for the Application)

“Documents and certificates pertaining to applicants shall be included in distinct individual blocks in the Application.”

Question: “Is our interpretation correct that the certificates and declarations pertaining to the applicant must be included in the order specified in Section 3.12 of the Documentation in the Application, one after the other, separated by dividing sheets?”

Answer: Yes, this interpretation is correct.

Question II.15 a): Documentation Section 3.12. c) (documents to be submitted for Application); Section 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Section 3.12. c) of the Documentation states the following: “*The documents certifying the ownership composition and the documents needed for verification of the undertakings which hold a controlling share in the applicant’s undertaking, the undertakings in which the applicant holds a controlling share, and a statement on the absence of any conflict of interest as per Section 2.9.2. The applicant shall append a statement of completeness in which the applicant assumes liability for all the documents and information made available for certification of controlling shares.*”

Section 3.16.1 of the Documentation states the following: “*evidence that no incumbent mobile operator possesses a controlling influence in or exercises control over the undertaking – or any member of the consortium in the case of a Joint Application – intent on participating in the first round of the Auction.*”

Question: “*Exactly what documents are required for presenting ownership composition and for establishing controlling influence? Does submission of the articles of association of the participant suffice?*”

Answer: The applicant may fulfil its obligations pertaining to the presentation of ownership composition, controlling influence or a controlling relationship defined in the Documentation in either of the following ways:

- in a form defined in other Sections of the Documentation, appending official documents along with a translation;
- by issuing a declaration (e.g. a letter of representation) in cases where the applicant is unable to submit an official certificate or document.

Given the differences in the characteristics of legal persons, business organisations with no legal personality and in the requirements set out in the relevant legislation, the Contracting Authority cannot give an exhaustive list of the methods of certification and of the documents to be submitted. Certain conditions can be certified by submitting the deed of foundation, the register of members, the articles of association, the bylaws, the share register, etc.

Question II.15. b): Documentation Section 3.12 c) (documents to be submitted for Application)

Reference: Documentation Section 3.12 c);
„..... the undertakings in which the applicant holds a controlling share ”

Question: “*Is the Applicant’s pertaining declaration suitable for the Contracting Authority?*”

Answer: The declaration is only sufficient in and of itself if it states the absence of a controlling relationship. If there is a controlling relationship, the document establishing and determine the controlling relationship shall also be appended to the declaration.

Question II.15. c): Documentation Section 3.12 c) (documents to be submitted for Application)

Reference: Documentation Section 3.12 c);

In the abovespecified Section of the Documentation, the Contracting Authority requests the presentation of ownership composition, controlling share and controlling influence.

Question: “What is the Contracting Authority referring to when requesting documents presenting ownership composition, controlling share and controlling influence; specifically what documents are to be presented?”

Answer: The applicant shall submit all documents that clearly demonstrate its ownership composition, and the relationships and shares of control over the applicant, and the types of these relationships. Referring to the nearly identical question concerning Section 3.12.c), the Contracting Authority will not issue a list specify the types of documents requested.

Question II.15. d): Documentation Section 3.12 c) (documents to be submitted for Application)

Reference: Documentation Section 3.12 c);

„The documents certifying the ownership composition and the documents needed for verification of the undertakings which hold a controlling share in the applicant’s undertaking, the undertakings in which the applicant holds a controlling share.”

Question: “In case of a private limited company, this information is listed in the Certificate of Incorporation, however, the {Inquirer} operates as a publicly traded company. What document is needed to certify the required information; is a share register excerpt and an appended declaration sufficient?”

Answer: If no other documents are available, the share register excerpt and a declaration on the above is sufficient.

Question II.15. e): Documentation Section 3.12 c) (documents to be submitted for Application)

Reference: Documentation Section 3.12 c);

„The documents certifying the ownership composition and the documents needed for verification of the undertakings which hold a controlling share in the applicant’s undertaking, the undertakings in which the applicant holds a controlling share.”

Question: “Could the Contracting Authority confirm that pursuant to Section 3.12. c) of the Documentation, documents only need to be submitted regarding undertakings that hold a controlling share in the applicant or have control over it (alone or jointly with other undertakings), with no need to submit the documents pertaining to undertakings in which the applicant holds a controlling share or which the applicant controls (alone or jointly with other undertakings).”

Answer: Section 3.12. c) expressly states that the applicant must submit the documents that demonstrate “...the undertaking that hold a controlling share in the applicant...”, with no requirement in the Documentation specifying the submission of documents demonstrating the applicant’s controlling share in other undertakings.

Section 3.12. c) also states that the applicant must (also) submit the documents that demonstrate “...the undertakings that the applicant is in a controlling relationship with...”. Controlling relationship refers to both controlled and controlling entities. The requirement therefore refers to the documentation of the applicant’s controlling relationship, either in a controlling or a controlled position.

Question II.15 f): Documentation Section 3.12 c) (documents to be submitted for Application) and Section 2.9.2

Reference: Documentation Sections 3.12 c) and 2.9.2;

Documents to be submitted for Application: „The documents certifying the ownership composition and the documents needed for verification of the undertakings which hold a controlling share in the applicant’s undertaking, the undertakings in which the applicant holds a controlling share.”

Question: “Is it sufficient to demonstrate the ownership composition of the applicant and the undertakings with which the applicant has a controlling relationship, with the applicant being in a controlling position? For example, is it enough to identify the owners and subsidiaries of the applicant with Certificates of Incorporation and share registers (which also show the respective stakes), or does the ownership chain need to be further elaborated (for instance demonstrating the stakes held by subsidiaries in other undertakings)? If yes, how many degrees of the ownership chain need to be presented? What documents are necessary for certifying controlling rights, given that based on the letter of representation, the applicant must make all documents certifying ownership structure available? (In the event that the applicant is a member of a larger corporate group and therefore has a wider corporate structure, this requirement would entail the acquisition of a substantial amount of paperwork.)”

Answer: The inquirer’s interpretation is partially correct: pursuant to Section 3.12. c), all information regarding controlling relationships in which the applicant demonstrates the undertakings controlled by it and the undertaking controlling it must be presented to the Contracting Authority.

The applicant must submit all documents and present controlling relationships up to the level allowing the Contracting Authority to clearly assess its compliance with conflict of interest rules.

The applicant may fulfil its obligations pertaining a controlling relationship defined in the Documentation in either of the following ways:

- in a form defined in other Sections of the Documentation – including the translation for any non-Hungarian official document–, appending all official documents as necessary
- by issuing a declaration (e.g. a letter of representation) in cases where the applicant is unable to submit an official certificate or document.

Given the differences in the characteristics of legal persons, business organisations with no legal personality and in the requirements set out in the relevant legislation, the Contracting Authority cannot give an exhaustive list of the methods of certification and of the documents to be submitted. Certain conditions can be certified by submitting the deed of foundation, the register of members, the articles of association, the bylaws, the share register, etc.

Question II.16. a): Documentation Section 3.12. f) (documents to be submitted for Application); Section 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: “According to Section 3.12. f) of the Documentation, ‘the certificates and statements specified under Section 2.9.1. b)-c) on economic suitability: a) negative tax certificate or reference to the database of taxpayers with no public debt’ shall be submitted.”

Question: “What tax types do the negative tax certificate or reference to the database of taxpayers with no public debt cover? Is the tax certificate for the local business tax per service area (3200 local municipalities) introduced in 2010 necessary for application, or is the negative tax certificate issued by the National Tax and Customs Administration sufficient? Does this also apply to the negative tax certificate for the special telecommunications tax?”

Answer: The Contracting Authority has set out the requirement of complying with the conditions defined under Section 178 (32) of Act XCII of 2003 on the Rules of Taxation for applicants, including the special telecommunications tax.

Question II.16. b): Documentation Sections 3.12 f and 3.12. 1) (documents to be submitted for Application)

Reference: Section 3.12 f) contains the following: “a) negative tax certificate or reference to the database of taxpayers with no public debt’ shall be submitted.” Meanwhile Section 3.12. 1) refers to documents certifying professional and technical suitability as per Section 3.16. As per Section 3.16.1, “a certificate issued by the National Tax and Customs Administration confirming that the applicant has no overdue public dues in Hungary (including the telecommunications special tax)” is to be submitted as well;

Question: “How many certificates in total have to be submitted to certify the absence of overdue public dues? Do the two certificates specified above refer to the same thing? In case of Hungarian applicants, is a certificate issued by the National Tax and Customs Administration as per Section 3.16.1 sufficient? In case of non-Hungarian applicants, is a certificate issued by a foreign tax authority as per Section 3.12. f) also necessary, or is a certificate issued by the National Tax and Customs Administration as per Section 3.16.1 sufficient?”

Answer: Every applicant must submit the certificates (and declarations, as required, see our answer pertaining to Section 2.9.1. b)) specified under Section 2.9.1. b) regarding the issues specified therein, pursuant to Section 3.12. f). When providing certification pursuant to Section 3.12. f), non-resident applicants must also submit a certificate issued by the competent foreign tax authority. If an applicant intends to take part in the first round, it must also comply with the requirements set out under Section 3.16.1.

Question II.17 a): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond)

Reference: Section 3.13 — procedural security; Section 3.15 — performance bond

Question: Can procedural and performance security be provided in any way other than by a bank guarantee, for example by the freezing of funds on a separate bank account or provision of a guarantee by the parent company? In case of a bank guarantee, is there a template model prescribed by the Authority to be used for submission?

Answer: Pursuant to the provisions of the Decree on the rules of auction or tender and the Documentation, only a bank guarantee may be submitted. No formal requirements apply to the bank guarantee or bond, therefore the Documentation contains no required sample form. The Contracting Authority will accept security with the content and in compliance with the conditions defined in the Decree on the rules of auction or tender.

Question II.17. b): Documentation Section 3.13 (procedural security)

Reference: As per Section 3.13 on procedural security: “the applicant shall submit, as part of its Application, a security of HUF 100,000,000 issued in favour of the Contracting Authority, irrevocable or only revocable subject to the Contracting Authority’s authorisation.”

Question: Is the procedural security amount exempt of VAT? As the performance security is not exempt of VAT, please clarify whether the bank guarantee serving as procedural security should be issued on an amount inclusive or exclusive of VAT.

Answer: The provision of procedural security does not give rise to a VAT payment obligation, thus the bank guarantee should be provided for an amount of HUF 100 000 000.

Question II.17. c): Documentation Section 3.13 (procedural security)

Reference: Section 3.13

The third paragraph of this Section prescribes that “the issuer of the security undertakes to notify the Contracting Authority of any changes in the data included in the bond in writing within two (2) business days of the occurrence of such change.”

Question: “What data may be subject to change in the Contracting Authority’s view?”

Answer: Changes in the data may occur on the part of the issuer of the security (change in name or registered office), or on the applicant’s/participant’s part (of the type allowed by the Documentation and the Decree on the rules of auction or tender).

Question II.17. d): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond)

Reference: Section 3.13 — procedural security; Section 3.15 — performance bond

Question: “Is there any format or form that the Procedural Security of the Performance Security must comply with?”

Answer: None.

Question II.17. e): Documentation Section 3.13 (procedural security); Section 3.15 (performance bond)

Reference: Section 3.13 — procedural security; Section 3.15 — performance bond

Question: “In the event of joint application, who shall provide the security? Can the security be provided in a manner that the procedural security is provided by one member of the consortium, while the performance security is provided by another member, or can both the procedural and performance security be provided by the same member?”

Answer: The procedural and performance security may be provided by any member, as the members are considered as one single applicant in this respect.

Question II.18.: Documentation Section 3.14 (conditions of payment of the participation fee)

Reference: Under Section 3.14 – conditions of payment of the participation fee, it is prescribed that “Applicants to the auction procedure shall pay, via an irrevocable transfer, a participation fee of HUF 40,000,000, that is forty million forints + VAT to the Contracting Authority’s account number 10032000-00300939-00000017 held at the Hungarian State Treasury.” The Section does not contain any reference as to when the Authority will issue an invoice for the payment of the participation fee, which is necessary for the applicant’s bookkeeping of the participation fee and for reclaiming VAT.

Question: When will the Authority issue the invoice for the payment of the participation fee?

Answer: The Authority will issue an invoice within seven (7) days of the crediting of the participation fee to its bank account.

Question II.19. a): Documentation Section 3.15 (performance bond)

Reference: Section 3.15 - performance bond, “the applicant shall submit, as part of its Application, a bond amounting to or exceeding the highest offered prices (bids) defined on the bidding sheets for the frequency block up to the spectrum maximum, issued in favour of the Contracting Authority in line with the relevant provision of the Decree on the rules of auction or tender and this Section (hereinafter as: bond), irrevocable or only revocable subject to the Contracting Authority’s authorisation.”

Question: Is our interpretation correct that the applicant can fulfil the obligations set out under Section 3.15 by appending a single security/bank guarantee for the blocks it is bidding for — placing a copy thereof in the envelopes next to the bidding sheets — for an amount equal to or greater than the offered price (bids) of the blocks to be acquired?

Answer: This interpretation is correct. Placing copies of the security in the bidding envelopes defined by the inclusion statement is not necessary.

Question II.19. b): Documentation Section 3.15 b) (performance bond)

Reference: Section 3.15 b) (performance bond)

Question: “Regarding Section 3.15 b) concerning the performance bond required for the second round of frequency block “A”, if the amount of the performance bond submitted by the applicant exceeds the bids submitted for the first and second round, does the bond have to be supplemented/a new bond provided to the Contracting Authority by the applicant?”

Answer: The performance bond may not be less than the bid submitted. The question of supplementing the bond cannot be interpreted in the event of a higher performance bond.

Section 3.15 b) contains a provision regarding the option of inclusion, and does not address the amount of the bond. If the applicant does not emerge as the winner, it may — based on a preliminary statement — allocated the performance bond to a subsequent bid.

Question II.19. c): Documentation Section 3.15 (performance bond)

Reference: Section 3.15 b) (performance bond)

“The applicant shall submit, as part of its Application, a bond amounting to or exceeding the highest offered prices (bids) defined on the bidding sheets for the frequency block up to the spectrum maximum, [...] in line with the relevant provision of the Decree on the rules of auction or tender and this Section (hereinafter as: bond).”

Question: “Is the minimum amount for the security bond determined based on the bid amount inclusive or exclusive of VAT?”

Answer: The performance bond must be submitted for a bid amount inclusive of value added tax.

Question II.20 a): Documentation 3.16 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference:

Question: “Is our interpretation correct in that the obligations pertaining to all the certificates, declarations and conditions listed herein only apply to new entrants?”

Answer: Yes; as indicated in the title of Section 3.16., the above criteria only apply to participants intending to take part in the first round.

Question II.20. b): Documentation 3.16 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: “...a statement confirming that the applicant has no overdue market surveillance fee payment obligations for 2011 towards the Contracting Authority.”

Question: “Does the above proviso only apply to the market surveillance fees due in 2011 (i.e. the first three quarters of 2011), or do overdue payments of over 30 days due in 2010 but only paid in 2011 also entail substantive invalidity? Is our

interpretation correct that the objective of this provision is to demonstrate whether the applicant has paid its market surveillance fees for 2011 on time, or with a delinquency of 30 days at most?”

Answer: The above interpretation is incorrect. Pursuant to the third paragraph of Section 3.16.1, the application shall be invalid if the applicant had to has overdue market surveillance fee payment obligations for 2011, irrespective of the year in which the obligation arose. Overdue payments shall mean any payment not made by the payment deadline specified on the invoice for the market surveillance fee.

Question II.21 a): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Pursuant to Section 3.16.1 of the Documentation, “*the validity of the Application is conditional upon the statement "confirming that the applicant is not under any competition council administrative procedure launched by the Hungarian Competition Authority in the subject of the prohibition of agreements aimed at restricting economic competition, the prohibition of abuse of a dominant market position or of concentrations between undertakings."*

Question: *Is our interpretation correct in that the Contracting Authority requests the applicant’s statement in relation to the rule set out under Section 67 (3) of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, according to which: "the competition supervision proceedings may also be commenced ex officio provided it is established that, in the cases defined by Section (2), the initiation of a competition supervision proceeding should have been, but was not, applied for."*

Answer: Pursuant to the second bullet point of Section 3.16.1., the Contracting Authority requires the submission of a statement stating whether there is any administrative procedure currently in progress with the Competition Council against the applicant in relation to any of the three enumerated forms of prohibited conduct. In the context of this requirement, a procedure underway shall by any report accepted by the Competition Council as per Section 71 (1) of the Prohibition of Unfair and Restrictive Market Practices Act and not assessed at the time of the statement.

Question II.21. b): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Documentation Section 3.16.1;

Question: “*Regarding the certificate issued by the National Tax and Customs Administration specified in Section 3.16.1 of the Documentation, if the applicant is a non-resident legal entity that has not concluded any prior transactions in Hungary, does not have any overdue public dues in Hungary, does the applicant still have to acquire a certificate confirming that it does not have any overdue public dues in Hungary pursuant to Government Decree 78/2006 (IV. 4.) on the rules of auction or tender for obtaining frequency usage right and the above Documentation.*

If every applicant is under the obligation to acquire the above certificate, what procedure must be carried out by the applicant?”

Answer: Yes, applicants must acquire the certificate specified in the first indent of Section 3.16.1 of the Documentation from the National Tax and Customs Administration.

An application for the issuance of the certificate must be submitted to the National Tax and Customs Administration, according to its rules of procedure.

Question II.21. c): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Documentation Section 3.16.1;

Question: “Regarding the declaration specified in Section 3.16.1 of the Documentation (in which the applicant confirms the absence of any overdue market surveillance fee payment obligations to the Authority), do non-resident applicants also have to submit such a declaration?”

Answer: Yes, non-resident applicants must also issue a declaration.

Question II.21. d): Documentation 3.16.1 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Documentation Section 3.16.1;

Question: “Regarding the certification mentioned in Section 3.16.1 of the Auction Documentation (based on which the applicant certifies that no incumbent mobile operator holds a controlling share in the undertaking intending to take part in the first round of the Auction), please specify how the applicant can acquire the certification, and which authority is competent in issuing the above certification.”

Answer: The applicant shall certify compliance with the requirements by submitting the documents listed in Section 3.12. c) of the Documentation.

Question II.22. a): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: -

Question: “Do the two conditions linked with the term “and” in the second bullet point have to be fulfilled simultaneously?”

Answer: Yes, this is the correct interpretation. Both of the conditions set out in the second bullet point have to be fulfilled simultaneously by the applicant.

Question II.22. b): Documentation 3.16.2, second paragraph (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Pursuant to the second paragraph of Section 3.16.2 of the Documentation, the applicant must submit a statement “confirming that they operate their own customer service in the communications sector and serve at least two million customers in the retail segment of communications”.

Question: Pursuant to this requirement — taking into account the exclusion applying to incumbent mobile operators in the first round — none of the players on the Hungarian electronic communications market can participate in the auction as individual applicants.

Is this interpretation correct, or do we only need to certify that the company(ies) in a parent/affiliated company relationship with the applicant — in other words any of the member companies of the applicant corporate group or the corporate group as a whole — fulfil the requirement of serving at least two million customers? Is the condition of serving at least two million customers fulfilled if the applicant provides service based on two million subscriptions, but to a fewer number of actual people?

Answer: Section 3.16.2 clearly states that in the event of a non-consortium application, the applicant must fulfil the requirements set out under Section 3.16.2, and in case of a consortium application, any of the consortium members may fulfil the requirements set out under Section 3.16.2, however, consortium members may not fulfil the criterion jointly (this rule is also addressed separately under Section 3.10). E.g.: If consortium member “A” has 150 000 subscribers and consortium member “B” has 500 000, the applicants do not fulfil the requirements set out in the second portion of the second paragraph of Section 3.16.2. Only the applicant or consortium member may fulfil satisfy these criteria. Undertakings that are not consortium members or applicants may not satisfy the criteria irrespective of their legal relationship with the applicant or any consortium member.

The Contracting Authority accepts the certification of the existence of two million subscriber contracts as fulfilment of the criterion of serving two million customers set out under Section 3.16.2.

Question II.22. c): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: Pursuant to Section 3.16.2 of the Documentation, the applicant must submit a statement:

- *“confirming that they operate their own customer service in the communications sector and serve at least two million customers in the retail segment of communications”, and*
- *“confirming that they have the capability to install and operate broadband data transmission technology.”*

Question: Does compliance with the above referenced section of the Documentation have to certified, and if so, in what manner?

Answer: The applicant shall issue a **declaration** on the fulfilment of the conditions defined under the second indent of Section 3.16.2. The accuracy of the contents of the declaration does not have to be corroborated by an independent third party. The declaration shall include the data and circumstances certifying the participant’s compliance with the conditions, in a verifiable manner.

Question II.22. d): Documentation 3.16.2 (requirements underpinning the professional competence and reasonableness of the Application for applicants in the first round)

Reference: As per the second paragraph under Section 3.16.2 of the Documentation, “a statement confirming that they operate their own customer service in the

communications sector and serve at least two million customers in the retail segment of communications”

Question: Does an undertaking holding a 49% stake in a mobile operator with its own customer service in the communications sector and serves at least 8 million customers in the retail segment of communications satisfy the above criterion?”

Answer: The applicant in the scheme described by the inquirer does not satisfy the criterion set out under Section 3.16.2, as the applicant itself must comply with the criterion. Pursuant to Section 3.16.2 of the Documentation, performance that does not originate from the applicant itself cannot be accepted, irrespective of its legal relationship with the undertaking at issue.

Question II.23: Documentation Section 3.17 (opening the auction Applications)

Reference: -

Question: “What data and circumstances are recorded in the protocol? Is our view correct that the protocol must contain at least the name of applicants and the establishment of the facts confirming the presence or absence of the main elements of formal and substantive validity?”

Answer: The name of the applicant, the date of submission and opening and the presence or absence of the documents listed under Section 3.12 of the Documentation are recorded in the protocol, however, the Contracting Authority will not examine the application’s and the applicant’s fulfilment of the formal and substantive validity criteria during the opening procedure and accordingly, it will not decide on validity at the time of opening, proceeding instead in the manner set out in the Documentation.

Question II.24. a): Documentation Section 3.18 (examination and validity of Applications), Section 3.20 (substantive invalidity)

Reference: According to the second paragraph of Section 3.20, the Contracting Authority will examine the substantive validity of — amongst others — the bidding sheets and the performance securities for the purpose of registration prior thereto, while according to the last paragraph of Section 3.18, the contents of the envelope containing the bidding sheet and the performance security will only be examined during the bidding phase, following registration.

Question: “Please confirm that the Contracting Authority will not open the envelopes containing the bidding sheets and the performance securities, nor will it examine their contents to verify validity prior to registration.

Answer: Section 3.20 specifies general rules, while the specific rules governing the opening of the envelopes containing the bidding sheets and the performance securities are defined in Sections 3.18 and 4.2. Bid envelopes (including the separate envelopes containing the CDs) will be opened by the Auction Committee during the bidding phase.

Question II.25: Documentation Chapter IV (Order for implementing the auction phase)

Reference: Documentation Chapter IV (ORDER FOR IMPLEMENTING THE AUCTION PHASE) does not address the issue of bids submitted by consortia.

Question: “How will consortium bids submitted by a consortium in a member of which an incumbent mobile operator holds a share that does not qualify as a controlling share in the consortium member business organisation, and does not constitute a controlling relationship between the consortium member and the incumbent mobile operator be assessed?”

Answer: Section 2.9.8 of the Documentation prohibits the participation in the first round — individually or as a consortium member — of incumbent mobile operators and undertakings (non-incumbent mobile operators) in any direct or indirect ownership or controlling relationship, or in any contractual or other beneficial relationship with the incumbent mobile operator or an undertaking controlling or holding a controlling share in the incumbent mobile operator based on which they are in a position to effectively influence each other’s decisions in any manner, or of any undertaking the founder of which is the same entity as the founder of an incumbent mobile operator. Pursuant to the provisions of Section 2.9.8, all consortium applications in which any member is in a beneficial relationship with any incumbent mobile operator based on which they are in a position to effectively influence each other’s decisions in any manner are barred from participation.

Question II.26 a): Documentation Section 4.2 (the bidding phase of the Auction)

Reference: -

Question: “Are we right in assuming that the specification stating that the envelopes containing the bids also takes place in the presence of a notary public, similarly to the procedure set out under Section 3.17, was omitted from the Documentation by mistake? If so, please amend the Documentation accordingly.”

Answer: The Contracting Authority does not deem the presence of a notary public at the opening of the envelopes containing the bids necessary. The Contracting Authority will open the envelopes containing the bids in the presence of the Auction Committee, which, in the Contracting Authority’s opinion, is a sufficient guarantee against all forms of abuse.

Question II.26 b): Documentation Section 4.2 (the bidding phase of the Auction)

Reference: -

Question: “Could the Honourable Authority make the opening of bidding sheets and the envelopes containing the performance security public as well, allowing all participants to be present?”

Answer: The implementation of the bidding phase of the auction procedure as per the Documentation does not allow the opening of bidding sheets and the envelopes containing the performance security to be made public.

Question II.27.: Documentation Section 4.2.1 (assessment of bidding sheets submitted for the first and second rounds for frequency block “A”)

Reference: Sections 4.2.1 and 4.2.2. — bidding phase of the Auction — assessment of bidding sheets

When two or more applicants submit bidding sheets for frequency block “A” in the first round, the Contracting Authority shall call on the two highest bidders in writing

*to place another bid, indicating the amount of the highest bid in the call for the subsequent bid, without naming the specific bidder. Participants shall have five (5) days from the receipt of the Contracting Authority’s call to make their next bid. The deadline defined for placing a new bid shall lose effect; after expiry of the deadline, no request for certification may be submitted. **When a participant fails to make a new bid upon the Contracting Authority’s call, or when it makes a bid lower than in the first round, the Contracting Authority shall consider the participant’s first bid as final. The Contracting Authority shall pronounce the participant with the highest bid as the winner of the auction procedure for frequency block A.***

Question: “The procedure rule highlighted above is not included in the cases of Section 4.2.4.1 a) and b). Does the rule highlighted above, set out under Sections 4.2.1 and 4.2.2, apply to the case specified under Section 4.2.4.1.?”

Answer: Yes.

Question II.28 a): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)

Reference: Section 4.2.3 - Assessment of the bidding sheets submitted for frequency blocks "B" and "C"

“...The Contracting Authority shall arrange the bids submitted for frequency block “B” starting from the highest value in a decreasing order. Participants having submitted the five highest bids for the number of frequency blocks “B” equivalent to the frequency blocks “B” put up for auction, and participants having submitted the five highest bids for frequency blocks “C” shall be entitled to take part in the phase of selecting the block location.”

Question: “Regarding the above points, is the order established based on the amount of the bids submitted for each megahertz in frequency block “B”, or on the sum of the amounts submitted for frequency block “B”?”

Answer: The order is established based on the amount of the bids submitted for each 1 MHz block, as five separate blocks of 1 MHz are up for offer.

Question II.28. b): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)

Reference: Section 4.2.3 - Assessment of the bidding sheets submitted for frequency blocks "B" and "C"

“...The Contracting Authority shall arrange the bids submitted for frequency block “B” starting from the highest value in a decreasing order. Participants having submitted the five highest bids for the number of frequency blocks “B” equivalent to the frequency blocks “B” put up for auction, and participants having submitted the five highest bids for frequency blocks “C” shall be entitled to take part in the phase of selecting the block location.”

Question: “The quoted part of the Documentation can be interpreted as the submitters of the highest bids for frequency blocks “B” and “C” being the winners, however, this is not explicitly stated in the text. Is our interpretation correct?”

Answer: Yes, the submitters of the five highest bids in case of frequency block “B”, and the submitter of the highest bid in case of frequency block “C” do qualify as winners acquiring the block(s) as per Section 4.3.

Question II.28. c): Documentation Section 4.2.3 (assessment of bidding sheets submitted for frequency blocks “B” and “C”)

Reference: Section 4.2.3 - Assessment of the bidding sheets submitted for frequency blocks "B" and "C"

“The Contracting Authority shall arrange the bids submitted for frequency block “B” starting from the highest value in a decreasing order. Participants having submitted the five highest bids for the number of frequency blocks “B” equivalent to the frequency blocks “B” put up for auction, and participants having submitted the five highest bids for frequency blocks “C” shall be authorised to take part in the block selection phase. 4.2.5. Following conclusion of the entire bidding phase, the Contracting Authority shall notify the participant(s) in the bidding phase in an order of the outcome of the bidding phase for each frequency block forming the object of this auction procedure at least five days prior to the block selection phase, and shall call upon the winner(s) for participation in the block selection phase, indicating the place and time thereof. This order shall not qualify as the substantive resolution concluding the auction procedure.”

Question: “In the order specified under Section 4.2.5, are the participants of the block selection phase notified of the order of block selection as part of the notification on the “outcome of the bidding phase” (i.e. the exact number of blocks to be selected, and the order of selection among participants)?”

Answer: The Contracting Authority will notify every participant of the bidding phase of the outcome of the bidding phase. The notification will include the established order, in other words, it will clearly determine the participant’s position within the order, and block selection will take place according to this position.

Question II.29. a): Documentation Section 4.2.4.1 (equal bids in case of frequency block “A”)

Reference: Documentation Section 4.2.4.1 a) and b) — procedural rules applied in case of equal bids

Question: “Are the highest bid amounts revealed during the procedure in the notice for the second round, similarly to the method described under Section 4.2.2 of the Documentation.”

Answer: Yes.

Question II.29. b): Documentation Section 4.2.4.1 (equal bids in case of frequency block “A”)

Reference: Documentation Section 4.2.4.1 a) and b) — procedural rules applied in case of equal bids

Question: “...in its announcement of the second round, does the Contracting Authority give any information to the stakeholders about whether there are more than two equal bids, and whether it is issuing a call for more than two bidders in the second round?”

Answer: No.

Question II.30: Documentation Section 4.2.4.2 (equal bids in case of frequency blocks “B” and “C”)

Reference: Section 4.2.4.2 c) ; “Equal bids in case of frequency blocks “B” and “C”

“In the event that the order of bids cannot be determined using the advance ranking procedure specified under Point b), the Contracting Authority shall place first the bid the submitter of which would otherwise acquire, in the case of an advancement procedure, rights to participate in the block selection phase for more frequency blocks “B” and “C” overall.

Question: “In order to interpret the above question, please illustrate its application with an example.”

Answer: According to the example presented in the table below four applicants (Squirrel, Mole, Porcupine and Carp) submit the following bids (in HUF million):

Squirrel	Mole	Porcupine	Carp
Winner of the block			
B: 1201 (1st place) *	B:1000	B:1100 (3rd place)	B:1200 (2th place)
B: 1000 (5th place)	B:1000	B:1000 (6th place)	B:701
C: 561	B:801	C:700	B:701
			B:701
			C: 801 (4th place)

See [Question II.31](#)

* The value of the ranking presented in the table represents the selection order in the block selection phase.

In the example, Squirrel won block A (the price of the block is irrelevant from the perspective of the question). The bids for the first three blocks B can be clearly selected.

For the fourth and fifth blocks B, four identical bids were submitted (at HUF 1000 million each): One from Squirrel, two from Mole and one from Porcupine.

Pursuant to Section 4.2.4.2 a) of the Documentation, the order cannot be established, as all three applicants submitted valid bids for the same number of blocks B-C. Therefore, according to Section 4.2.4.2 b), the winner of the fourth block is Squirrel, as it had won block A and is ranked first based on Section 4.2.4.2 b).

Regarding block 5, bids by Porcupine and Mole are still neck to neck. Pursuant to Section 4.2.4.2 a) of the Documentation, the order cannot be established, as all three applicants submitted valid bids for the same number of blocks B-C, and neither has been selected as the winner of block A, therefore Section 4.2.4.2 b) of the Documentation cannot be applied. As per Section 4.2.4.2 c) of the Documentation, Porcupine wins the fifth block, as it acquired 2 MHz based on advance ranking (if Mole were ranked higher, there would only be one MHz which is less than 2.)

There is also a neck to neck race for block 5: between Mole and Carp. Pursuant to Section 4.2.4.2 a) of the Documentation, Carp's bid should be ranked higher, as it submitted more valid bids for blocks B-C (five in total, while Mole only submitted valid bids for three).

Question II.31: Documentation Section 4.3 (equal bids in case of frequency blocks “B” and “C”)

Reference: Section 4.3- block selection phase

“...The appointed member of the Auction Committee (hereinafter as: presiding member) shall, in the order of the bids submitted, call on the representative(s) of the winner(s) to indicate the frequency block(s) they have chosen from among the available frequency blocks. ...”

Question: “Regarding the above, is the winner to choose, for purposes of continuous spectrum allocation, the position of all blocks it has acquired in one sitting, or is selection performed block by block (per each MHz) in the order of the winning bids?”

Answer: Selection is performed block by block in the order of the winning bids.

In case of the example presented under *Section II.30*, block selection takes place in the following order:

1. Squirrel chooses one block B (from three options: directly above or below those of the incumbent operators, or adjacent to block A)
2. Carp chooses one block B (options not chosen by Squirrel, or next to the one selected by Squirrel)
3. Porcupine chooses one block B
4. Carp chooses the position of block C (bid 801 multiplied by 1.25 is 1001.25, representing fourth place)
5. Squirrel chooses one block B
6. Porcupine gets the remaining block B

Question II.32. a): Documentation Section 5.3 b) (conflict of interest rules governing new licensees following frequency assignment)

Reference: Section 5.3/b of the Documentation contains the following: “the usage or other rights of disposal over the entire or a substantial part of the mobile telecommunications network operated using the frequencies affected by the rights of use of frequency”.

Question: Exactly what percentage does a “substantial part” refer to?

Answer: The term “*substantial*” has different meanings depending on the share and coverage of, and the competition created by the service on the affected network operated by the licensee, therefore a generally valid percentage threshold cannot be determined. A network portion may – but not exclusively – qualify as substantial if relinquishing it would exert a significant impact on the competition between market players; if its loss by the original licensee would be detrimental to the promotion of competition defined as the objective of the auction procedure by the Authority.

Question II.32. b): Documentation Section 5.3 b) (conflict of interest rules governing new licensees following frequency assignment)

Reference: -

Question: “If our interpretation is correct, one of the purposes of the auction, also defined under Section 2.1 of the Documentation, is to stimulate competition in a manner preventing an incumbent mobile operator from acquiring block “A” and the related rights and business opportunities, either directly or indirectly prior to 31 December 2014, in the event that a new licensee acquires block “A”. The reply given to question II.10 (editor’s note: Question II.10 originally appearing in the Q&A document of 13 September 2011 is currently listed as II.32 a)) already clearly states the prohibition of the transfer of any part of the network as per Section 5.3 that may significantly affect competition. In our view, in the event of the acquisition of frequency block “A” by a new licensee, any transfer of the affected frequencies or of the part of the network operated using such frequencies based on which only an incumbent operator becomes capable of providing services (wholesale or retail) using such frequencies has a significant impact on market competition. Accordingly, is our interpretation correct that pursuant to Section 5.3 (and the previous pertaining response), any conduct or agreement, irrespective of the actual legal implementation technique thereof, resulting in an (but not every) incumbent mobile operator providing a service using frequency block “A” or a part thereof prior to 31 December 2014 in the event of the acquisition of frequency block “A” by a new licensee represents a conflict of interest and is prohibited?

Answer: The intentions of the Contracting Authority go beyond the above interpretation. If a new licensee acquires frequency block “A”, no incumbent operator shall provide services using frequency block “A” or the a substantial part of the network operated using frequency block “A”.

Question II.33: Documentation Section 5.4 — factors alleviating the new licensee’s competitive disadvantage

Reference: Documentation Section 5.4 — factors alleviating the new licensee’s competitive disadvantage Pursuant to Section 90 of the Electronic Communications Act, operators holding title or the right of use of electronic communications structures may be compelled to negotiate a contract for the sharing of facilities or property (including physical collocation) when it is required by an operator that is deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to meet town and country planning objectives.

Question: As the definition of network elements is not specified in either the Documentation or the Electronic Communications Act, please specify the term as used in Section 90 of the Electronic Communications Act. Moreover, on what level, using what sort of equipment can operators (owners or holders of rights of use) satisfy the requirement of sharing network elements? For instance, does the sharing of slots satisfy this obligation?

Answer: The cited Section of the Auction Notice does not grant any additional rights to the new licensee, as Section 90 of the Electronic Communications Act applies to all operators,

irrespective of this Notice. This may thus refer to the sharing of any equipment needed by any operator for providing the service.

Question II.34: Documentation Section 5.5 (conditions for the secondary trading of the rights of use)

Reference: According to the first sentence of the second paragraph of Section 5.5, if a new licensee acquires frequency block “A”, it is prohibited from transferring rights until 31 December 2014.

Question: Does the restriction for the period following 31 December, only apply to new licencees? “Have we understood correctly that the following sentence of the same paragraph, setting out a restriction for the period following 31 December 2014 also only applies to the new licensee?”

Answer: The prohibition and restriction pertaining to frequency blocks “A”, “D” and “E” in the second paragraph of Section 5.5 only applies to the new licensee.

Question II.35: Documentation Section 5.7 a) (amending the resolution on frequency usage rights)

Reference: Section 5.7 a) — amending the resolution on frequency usage rights

“The Contracting Authority shall be entitled to amend its resolution on the rights of frequency usage, in particular to review the limits of frequency bands forming the subject of the rights of use of frequency, the size and configuration of the block formed within the frequency band, as well as to withdraw or amend the conditions of band usage (...)” if “a situation has emerged on the Hungarian electronic communications market that impedes broader access affecting a wide range of consumers and fostering the development of information society, the appearance and development of technologies or services allowing greater choice and/or more accessible and higher standard opportunities at a competitive price, that cannot be resolved among rational conditions without applying the above measures.”

Question: “Please specify the causes that may warrant the amendment of the right, and illustrate the above “situation” with an example.”

Answer: The conditions specified under 5.7 a) may be warranted in particular by:

- the emergence of an obligation under EU law during the term of the frequency usage right,
- changes in international coordination procedures regarding new technologies or
- the resolution of compatibility issues of the technologies used in the given band.

Question II.36.: Documentation Section 5.11

Reference: -

Question: “What is the deadline for the band reshuffling specified under Section 5.11 following the conclusion of the auction procedure, with regard to the relevant provisions of the effective partially extended agreements concluded with incumbent mobile operators?”

Answer: Paragraphs four and six of Section 5.11 of the Documentation specifically define the requirements pertaining to the conclusion and reporting deadlines for the band reshuffling agreements. In other words, following the entry into force of the decision effectively concluding the Auction procedure, the stakeholders have a deadline of two months for concluding an agreement, following which — if the amendment of the concession agreement is called for — the amendment shall immediately be initiated and a licence modification application submitted to the Authority within ten (10) days following conclusion of the agreement or amendment of the concession agreement.

Question II.37 a): Documentation Annex 1 Section 1.5.1.2 (service launch and coverage obligation of new licensees)

Reference: Section 1.5.1.2 of Annex 1 contains the following: “A minimum of 50 % of base stations specified herein are to be established as own investments by 31 December 2014.”

Question: What exactly does own investment refer to? Does the installation of one’s own radio equipment on the existing stations of the incumbent operator qualify as an own investment or a partial own investment? Could the other 50% also constitute sharing (use of the radio equipment of other operators)?

Answer: The above interpretation is correct. Own radio equipment installed by a new licensee on the existing station of an incumbent operator qualifies as an own investment. There is no (such) restriction on the other 50%.

Question II.37 b): Documentation Annex 1 Section 1.5.1.2 (service launch and coverage obligation of new licensees)

Reference: Section 1.5.1.2 of Annex 1 contains the following: “For purposes of the service, an area may be considered under coverage provided the signal level made available by base stations – measured at an altitude of 2 m above sea level and with an antenna gain of 0 dB – reaches the following minimum: –80 dBm throughout Budapest and across the municipal boundaries of communities as per Subsection 1.5.1.2 b) herein, applicable to the channel spacing of the technology used; b) –90 dBm for motorways, carriageways and primary roads running outside the municipal boundaries of communities (incl. Budapest) listed under Subsection 1.5.1.2 b), applicable to the channel spacing of the technology used.”

Question: In relation to the channel spacing of the applied technology does this mean that the following signal levels shall be ensured: 200 kHz in the case of GSM technology; -80 and -90dBm in the case of UMTS technology on 5 MHz for the pilot channel (RSCP); and the Reference Signal Received Power on the bandwidth used in the case of LTE technology? Does the antenna gain of 0 dB refer to isotropic (dBi) or dipole (dBd) antennae?

Answer: 200 kHz in case of GSM technology; in case of UMTS technology, -80, and -90dBm shall be ensured in respect of the pilot channel (RSCP). In case of LTE technology, the required signal level shall be ensured for the Reference Signal Received Power.

The antenna gain of 0 dB refers to isotrope (dBi) antennae.

Question II.37 c): Documentation Annex 1 Section 1.5.1.3 (service launch and coverage obligation of new licensees)

Reference: Annex 1, Section 1.5.1.3;

Question: Regarding Section 1.5.1.3, where are the -80dBm and -90dBm signal levels measured? Outdoors (outside houses) or indoors (inside houses)? Walls and doors substantially diminish signal levels. In basement areas, there is “no coverage”.

Answer: Section 1.5.2 of Annex 1 to the Documentation contains the requirements for measurement in detail. Subsection 1.5.2.1 states that “...the Authority will be conducting location registration tests on an arbitrary basis...”. Therefore indoor signal strength measurements will not take place (thus neither inside houses or in basement areas).

Question II.38: Documentation Annex 1 Section 1.5.2.3 (service launch and coverage obligation of new licensees)

Reference: Annex 1, Section 1.5.2.3;

“The Authority shall enter all measurements and pertaining statistical calculations in a protocol.”

Question: ‘What protocol is this referring to?’ Could the Contracting Authority present the method of calculation?’

Answer: There is presumably an error in the question, as there is no such sentence in Section 1.5.1.3., while Section 1.5.2.3 contains the sentence exactly as it is cited.

Alternatively, the translation of Section 1.5.2.3, the use of the term “protocol” and ignorance of the context could have led to an erroneous translation of the sentence, and thus an erroneous interpretation.

The following translation of the sentence in Section 1.5.2.3 may better reflect the contents of the original Hungarian text:

“The Authority will prepare reports of values of the measured field strength and, based on this, of the results of pertaining statistical calculations.”

Question II.39 a): Documentation Annex 1, Section 1.5.3 (service access coverage obligation for incumbent mobile operators)

Reference: Annex 1, Section 1.5.3 — service access coverage obligation for incumbent mobile operators

“The incumbent mobile operator having been awarded with frequency block “A” is required to ensure access to broadband services other than GSM with a minimum coverage of 90 % of the country within the first year and 95 % in the second year, on which it shall make an announcement and provide reliable evidence as appropriate.”

Question: ‘Is our interpretation correct in that, for purposes of the above referenced Section 1.5.3, EDGE is considered a technology different from GSM?’

Answer: In this Auction Documentation, the term broadband technologies other than GSM refer to the systems (UMTS, LTE and WiMAX) defined in the Annex to Commission Implementing Decision 2011/251/EU amending Decision 2009/766/EC; reference to the

above is mentioned in Section 5.11 of the Documentation. Accordingly, **EDGE technology does not comply** with the service access coverage requirement.

Question II.39 b): Documentation Annex 1, Section 1.5.3 (service access coverage obligation for incumbent mobile operators)

Reference: Annex 1, Section 1.5.3 — service access coverage obligation for incumbent mobile operators

“The incumbent mobile operator having been awarded with frequency block “A” is required to ensure access to broadband services other than GSM with a minimum coverage of 90 % of the country within the first year and 95 % in the second year, on which it shall make an announcement and provide reliable evidence as appropriate.”

Question: “In the fringe areas within the 900MHz band — based on the international coordination documents concluded with neighbouring countries — GSM is the technology of choice in relation to alternative technologies. Accordingly, within a 5-10 kilometre zone from national borders, UMTS900 coverage cannot be ensured in order to protect GSM service. It is assumed that geographic coverage values used in the Documentation have been defined without taking this into account, as compliance with them represents a far more challenging task in cases where technology protection applies. In order to resolve the issue, we recommend that

- *the published geographic coverage values be reviewed, taking into consideration the conditions for fulfilling the obligations defined in the international coordination documents for border zones, or*
- *instead of a geographic coverage requirement, one that is based on demographic coverage be established.”*

Answer: Maintaining the original regulatory objective, i.e. the geographic coverage requirement, while also taking into account the obligations defined in the international coordination documents for border zones, the 90% and 95% criteria defined in the Notice are to be fulfilled only in areas where service access can theoretically be ensured.

Question II.39 c): Documentation Section 2.1.2; Annex 1 Section 1.5.3 (conditions for the secondary trading of the rights of use)

Reference: Section 5.5 of the Documentation contains the following: “Frequency blocks “B” and “C” may be resold or leased out individually.”

Question: “Does this mean that the entire 5.8 MHz can be resold immediately after acquisition, that is, before 31 December 2014?”

Answer: Yes, above interpretation is correct.

Question II.40: Documentation Annex 1, Section 1.6.1.1 (GSM technology – 900 MHz band – use of radio frequencies in national border zones)

Reference: Section 1.6.1.1;

“a) This table contains the preferential frequency agreements to be taken into account when planning the use of frequencies along the border zones of Hungary, in view of amendments and clarifications listed below.

b) As for the use of preferential channels (with the exception of block edge masks), the signal strength of serving base stations cannot exceed, at more than 50% of the area and in 90% of the time, 19 dB μ V/m/200 kHz in the neighbouring country outside a 15-kilometre zone from the border line, when measured at a height of 3 metres above ground level.

c) Regarding the use of non-preferential channels, the signal strength of serving base stations cannot exceed, at more than 50% of the area and in 90% of the time, 19 dB μ V/m/200 kHz along the border line, when measured at a height of 3 metres above ground level.

d) There is no uniform management of block edge masks, and they may be regulated differently in various international agreements in terms of their preferential or non-preferential use.

e) Division of the 913.9-915/958.9-960 MHz band into preferential frequencies is only regulated in the Ukraine — see agreement 7 in the table of Subsection a) above. As for other countries, frequencies falling within this band shall be considered non-preferential frequencies.

f) Frequencies, whether preferential or non-preferential, require no co-ordination. ”

Question: “Please clarify the definition of Point f), with regard to the fact that it contradicts Points a), b), c) and e) in our interpretation.”

Answer: The passages indicated by the inquirer are not erroneous and do not contradict the other points of the Section for the following reason.

Preferential and non-preferential frequency usage are based on equal access to the frequency spectrum. This means that every administration has the same number of preferential and non-preferential frequencies, to which clearly defined threshold signal strength values apply, the parameters of which are set out in the preliminary agreements signed by the parties. In case of agreements pertaining to the use of preferential frequencies, the administrations shall not initiate coordination as this would constitute a deviation from the agreement.

Coordination requests mean that one administration wishes to acquire a greater portion of the previously distributed frequency spectrum, because it wishes to exceed the threshold value (crowding the other administration out of frequency usage). However, this violates the principle set out in the first paragraph, therefore the threshold value cannot be exceeded from an administrative side.

If, however, operators come to an agreement, a so-called **operator agreement** may be concluded, configuring access to the spectrum in a different manner. For instance, one operator may exceed the threshold value in a given location, while the other operator may exceed the value in another part of the border line. The bilateral and multilateral border line frequency coordination agreements regulate this in detail.

Question II.41 a): Documentation Annex 1 Section 1.7 (Coordination between GSM-R and mobile telephone networks)

Reference: Section 1. of Annex 1

Question: If a GSM-R network is created in the future, will the operator acquiring block “A” have to restrict its UMTS service in order to protect GSM-R?

Answer: Interference should be avoided on the basis of a mutual agreement, which in no way represents a restriction of the UMTS service, but may affect the possible implementation solutions of the network, which can be minimised if the licensee takes this criteria and obligation into account early in the planning phase (for example by creating a denser base station structure and selecting adequate sites, antennae directions and emitted performance, in consultation with the GSM-R network licensee).

Question II.41 b): Documentation Annex 1 Section 1.7 (Coordination between GSM-R and mobile telephone networks)

Reference: Documentation Annex 1 Section 1.7 — Coordination between GSM-R and mobile telephone networks

“...The operator of mobile telephone network must take all necessary measures in order to avoid or minimise interference to GSM-R networks along and in the proximity of railroad lines. To this end, the operator of mobile telephone network shall take steps including, in particular, the limitation of radiated power, the application of filters and separation distances, as well as the careful selection of antenna characteristics, the direction of emission and frequency reuse.”

Question: “Please specify the technical measures to be taken by the mobile operator, and elaborate as to what this represents in practice.”

Answer: Section 1.7 referenced above mentions six technical measures as examples. Each of these may individually be applied to avoid detrimental interference. Naturally, other measures may also be used in order to avoid interference. Operators are free to decide which of these solutions to apply.

The essence of the regulation is that harmonisation is necessary to allow establishment of the GSM-R system without generating detrimental interference. Said harmonisation ought to take place between design engineers of the networks, with stations being deployed in line with such harmonisation. Thereafter, based on practical experience, continuous fine-tuning of the procedure and feedback on practical experience is recommended.

III. QUESTIONS RECORDED IN THE CONSULTATION PROTOCOL BUT NOT OR NOT FULLY ANSWERED IN THE CONSULTATION AND QUESTIONS NOT LISTED IN CHAPTERS I-II HERETO

(The following section lists the questions in the chronological order in which they were asked. We have edited the questions for the sake of clarity.)

Question III.1: Amendment to Decree No. 35/2004 (XII. 28.) IHM of the Ministry of Informatics and Communications on the establishment of the rules relating to the usage of frequency bands

Question: The draft for the Decree on the establishment of the rules relating to the usage of frequency bands was published on the NMHH’s website on 16 September for the purposes of social consultation. The draft allows state-owned actors to take part in bidding for frequency block “A”, which substantially alters the business value of the

frequency up for auction — in particular with regard to the issue of national roaming —, and in the course of the preparatory work carried out thus far, the operator was counting on a situation where state-owned actors would be excluded from participation.

Does the Authority deem the entry into force of this amendment prior to the conclusion of the process probable, and will it have an impact on this process? What is the Authority's view on the timing of this?

Answer: Neither the Decree on the establishment of the rules relating to the usage of frequency bands nor the Documentation contain any express exclusion of state-owned actors from participating in the auction, as Section 7.3 of Annex 2 of the Decree on the establishment of the rules relating to the usage of frequency bands — presumably references by the inquirer — transfers competence in the matter to the Auction Documentation, with the proviso that the “listed undertakings shall be barred from participation”. Given that among the undertakings mentioned in Section 7.3 of Annex 2 of the Decree on the establishment of the rules relating to the usage of frequency bands, the Auction Documentation only contains an exclusionary criteria for incumbent operators in respect of “block A”, state-owned actors are allowed to participate in the current legislative environment. The Decree on the establishment of the rules relating to the usage of frequency bands is primarily being amended because it regulated certain issues related to frequency usage that do not fall within the category of the technical or regulatory issues of frequency usage. The rules of the Decree on the rules of auction or tender, to be issued as a new Presidential Decree clearly state the conditions to be regulated in the Auction Documentation. As Section 4 (1) of the Decree on the rules of auction or tender transforms the provisions governing the contents of the Auction Documentation — transferring the regulation of the conditions of participation, the personal (participation) and other conditions pertaining to the applicants/participants to the scope of competence of the Auction Documentation, amongst other things —, all elements that regulated issues within the competence of the Auction Documentation had to be deleted from the Decree on the establishment of the rules relating to the usage of frequency bands. The Decree on the establishment of the rules relating to the usage of frequency bands, issued as a Presidential Decree, does therefore not affect the issue of the participation of state-owned actors, as neither the effective legislative provisions, nor the Auction Documentation, nor the Decree on the rules of auction or tender or the Decree on the establishment of the rules relating to the usage of frequency bands issued as Presidential Decrees prohibit state-owned undertakings from participating in the Auction.

Question III.2: status of frequency blocks left unawarded

Question: In the unexpected scenario that there is no fourth actor and the state-owned actor does not participate in the Auction, and blocks 1800 and 2100 would remain free, we have heard that they may be put up for sale shortly or within a short period. Please clarify what “within a short period” refers to over the time horizon, and this question not only applies to blocks 1800 and 2100, but to the other available frequencies with relevance from the perspective of broadband Internet provision as well.

Answer: “Our response will be very short — over and above the fact that it was clearly stated that the subject of this consultation would be the 900 MHz frequency band, and that we do not wish to address other frequency bands — it is clear from the Auction Notice that the 1800 and 2100 MHz bands may only be acquired by new participants. No decision has yet

*been made, but we can confirm that the Authority has no intention of keeping an empty frequency band in reserve. No decision has yet been made, but one can be expected in some form.” (see **protocol**)*

Question III.3: absence of agreement with incumbent operators

Question: Regarding band reconfiguration or reallocation — also in the unexpected scenario where incumbents cannot come to an agreement — what is the planned timetable for the amendment of permits and of concession agreements?

Answer: *“The two-month deadline refers to a voluntary negotiated agreement in which the Authority offers to play the role of moderator and assume monitoring tasks. The Authority also has the option of reconfiguring bands itself if no agreement is reached, but there is currently no intention or set timetable for this. So from every perspective, we would like to spur operators to take the initiative on a voluntary basis and not wait for a government solution.” (see **protocol**)*

Question III.4: LTE technology

Question: In October of last year, the National Media and Infocommunications Authority concluded an international frequency coordination agreement with the authorities of the surrounding countries, allowing the deployment of a UMTS system on GSM bands. What timetable has the NMHH set for the extension of this agreement to LTE technology?

Answer: *“All we can say is that a meeting will be held in the near future in Vienna in the context of the Vienna agreement, focusing primarily on the 800 and the 2.6 GHz frequency bands, but we will inquire as to the above issue. So in the 900 MHz band, the deviation, in other words we will play an initiating role in the issue.” (see **protocol**)*