



Documentation of the Tender announced in the
subject of rights of use of frequency in the 26
GHz band

QUESTIONS AND ANSWERS

12 DECEMBER 2011

QUESTIONS AND ANSWERS

This document contains the questions submitted in writing by the organisations having purchased the documentation dated 8 November 2011 (“Documentation”) to the Contracting Authority by the tenth (10th) day preceding the application deadline as per Section 2.6 of the Documentation in the context of the Auction announced in the subject of rights of use of frequency in the 26 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.

Section 8 of NMHH Decree 4/2011 (X. 6.) on the rules of auction and tender for the acquisition of the rights of use of frequency (“Decree on the rules of auction and of tender”) and Section 2.6 of the Documentation define the rules for answering the submitted questions.

We have included the questions without revealing the identity of the organisations having submitted them. We have grouped the questions into three categories (general questions, questions pertaining to specific sections of the Documentation, questions asked at the consultation). The answers within each group of questions are listed in chronological order, and in the order of the sections of the Documentation in group II.

As for the terms and definitions used herein, unless otherwise specified, the interpretations set out in the Documentation and the relevant legislative provisions shall apply.

The answers issued and sent by the Contracting Authority are for informational purposes only and bear no legal effect, nor are they legally binding compared to the Documentation regarding this tender procedure and the administrative decisions made in the context thereof.

I.	GENERAL QUESTIONS	4
	Question I.1: Definitions	Hiba! A könyvjelző nem létezik.
	Question I.2: Definitions	Hiba! A könyvjelző nem létezik.
II.	QUESTIONS REGARDING SPECIFIC SECTIONS OF THE DOCUMENTATION.....	4
	Question II.1: Documentation Section 1.1 (Definitions).....	4
	Question II.2: Documentation Section 1.2 (Liaising, notifications)	5
	Question II.2 a): Documentation Section 1.2 (Liaising, notifications)	5
	Question II.2 b): Documentation Section 1.2 (Liaising, notifications)	5
	Question II.2 c): Documentation Section 1.2 (Liaising, notifications)	5
	Question II.2 d): Documentation Section 1.2 (Liaising, notifications)	6
	Question II.2 e): Documentation Section 1.2 (Liaising, notifications)	6
	Question II.2 f): Documentation Section 1.2 (Liaising, notifications)	6
	Question II.3: Documentation Section 2.3 (Usability of the frequency obtained in the Tender)	6
	Question II.4: Documentation Section 3.15 (Performance bond)	7
	Question II.5: Documentation Chapter IV (Order for implementing the tender phase)....	7
	Question II.6: Documentation Section 4.2.1 (Assessment criteria and weighting)	8
	Question II.7: Documentation Annex 1, Figure 1 and Section 2.2	8
	Question II.8: Documentation Annex 1, Section 4 (International coordination)	9
	Question II.9: Documentation Annex 2	9
	Question II.9 a): Documentation Annex 2	9
	Question II.9 b): Documentation Annex 2	9
III.	QUESTIONS RECORDED IN THE CONSULTATION PROTOCOL, OR QUESTIONS NOT OR NOT FULLY ANSWERED IN THE CONSULTATION AND QUESTIONS NOT LISTED IN CHAPTERS I-II HERETO	10
	Question III.1: Band reconfiguration criteria	10
	Question III.2: Changes in regulation governing automotive radar equipment	10
	Question III.3: Identity of the organisations having purchased the tender documentation	10
	Question III.4: Usability of the frequency obtained in the Tender.....	11
	Question III.5: Can only basic block pairs be requested?	11
	Question III.5 a): Can only basic block pairs be requested?	11
	Question III.5 b): Can only basic block pairs be requested?	11
	Question III.5 c): Can basic block pairs be requested?	11
	Question III.6: Point value of tender prices	12
	Question III.7: Point value of existing basic blocks	12
	Question III.7 a): Point value of existing basic blocks.....	12

I. GENERAL QUESTIONS

Question I.1: Terms and Definitions

Reference: -

Question: There are various terms used in the Notice and the Documentation in reference to the subjects participating in the tender:

- applicant
- participant
- representative
- contact person

Their definitions are not always clear.

- a) Is a party having purchased the Documentation considered an applicant?
- b) Are applicants having submitted an Application by the Application deadline, or those declared as such by the Contracting Authority (Section 3.21 of the Documentation) to be considered participants?

Answer: The Contracting Authority applies the definition of applicant as per Section 2 d) of the Decree on the rules of auction or tender and the definition of participant as per Section 2 h) of the decree on the rules of auction or tender.

Question I.2: Terms and Definitions

Reference: -

Question: What qualifies as Application? Is it purchase of the Documentation or submission of an Application by the Application deadline?

Answer: An Application shall be made as per Section 2.9 of the Documentation. Purchase of the Documentation does not qualify as application.

II. QUESTIONS REGARDING SPECIFIC SECTIONS OF THE DOCUMENTATION

Question II.1: Documentation Section 1.1 (Terms and Definitions)

Reference:

Question:

- d) "user block" continuous cluster of basic blocks

The term of the right of use of frequency in case of the block forming the object of this Tender shall be fifteen (15) years from the effective date of the resolution on the right of use of frequency.

Licensees of user blocks "A" and "B" can make an offer for and can be declared winners of one basic block as well, provided they accept that the Contracting Authority is entitled to rearrange their existing basic blocks and the new basic block in the 26 GHz frequency range to create a new user block and to optimise frequency usage, taking into account the frequency stability characteristics of the equipment in question.

If the Contracting Authority creates a new user block from the incumbent 26 GHz frequency user's basic block acquired in 2009 and the one acquired in this tender, will it consider granting a uniform term of 15 years for both rights of use of frequency to the newly created user block? (The term of the rights of use of the basic frequency block acquired in 2009 was 10 years, extendable without the publication of a tender for an additional 5 years, thus expiring in 2024 at the latest, while the new basic block is set to expire only in 2027.)

Answer: Section 5.4 of the Documentation provides the answer to this question: the term of the use of right of frequency for the existing user block (acquired in 2009) is defined by the resolution issued at that time. Section 5.4 of the Documentation governs the newly acquired blocks (in the context of this tender): *"The term of the right of use of frequency in case of the block forming the object of this Tender shall be fifteen (15) years from the effective date of the resolution on the right of use of frequency."*

Question II.2: Documentation Section 1.2 (Liaising, notifications)

Question II.2 a): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: *If the applicant/participant expressly consents to liaising via fax, will the documents related to the procedure also be dispatched by postal mail? If yes, in the event of any discrepancy between the documents sent by fax and those sent by postal mail, which of the two shall prevail?*

Answer: Pursuant to Section 1.2, if the applicant/participant has consented to liaison via fax, any document sent to the fax number provided – with the exception of administrative decisions – shall qualify as legally effective delivery to the applicant/participant and all joint applicants/participants applying within the consortium in case of Joint Applications from the moment of confirmation of successful delivery, i.e. the Contracting Authority shall only dispatch administrative decisions by postal mail.

Question II.2 b): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: *Pursuant to Section 1.2, all statements and documents addressed to the Contracting Authority during the tender procedure, as well as any other documents related to the tender procedure shall be delivered to the Contracting Authority (.....) in writing, via postal mail, personal delivery **or** fax. To facilitate the faster processing of statements and documents, and to improve the tender procedure's efficiency, statements, documents and other forms may also be sent via email simultaneously to delivery by post, with such notification by email having no legal effect; **in case of any discrepancies, the contents of notification sent by postal mail shall prevail.** This latter does not apply to cases where the document/statement is delivered in person or by fax.*

Answer: Given that notification by email has no legal effect, the content of documents disclosed or sent in a legally effective manner shall prevail.

Question II.2 c): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: *Documentation Section 1.2 sets out the following regarding liaising by email:*

*For purposes of more efficient and faster communication, the Contracting Authority **may** simultaneously send the documents dispatched via mail and/or fax in email with unchanged content, provided that the applicant/participant has provided an email address and consented to the use of such address for liaison purposes.
In our opinion, use of the conditional is what creates uncertainty here.*

Answer: As notification via email is only optional, the Contracting Authority does not consider use of the conditional as a source of uncertainty.

Question II.2 d): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: Pursuant to Section 1.2: Unless provided otherwise by the Documentation, any document delivered to the Contracting Authority as set out in this Section shall only be considered delivered with legal effect in the tender procedure if it fully satisfies all substantive and formal requirements defined herein **and bears the signature of one of the following persons:**

- the contact person of the applicant/participant;
 - the person(s) authorised to sign on behalf of the applicant/participant, or the persons duly authorised by them, or
 - in case of Joint Application as per Section 3.10, the representative defined by the consortium agreement, or the person duly authorised by him/her.
- In case of notification via fax, the authenticity of the signature cannot be verified.*

Answer: Pursuant to Documentation Section 1.2, any document sent to the Contracting Authority in any phase of the tender procedure can only be deemed delivered with legal effect if the Contracting Authority has received the original copy of such document.

Question II.2 e): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: Can the mailing address indicated under Section 2.6 (1376 Budapest, Pf. 997.) also be considered a general contact address of the Contracting Authority as per Section 1.2?

Answer: Yes.

Question II.2 f): Documentation Section 1.2 (Liaising, notifications)

Reference: Documentation Section 1.2

Question: Can questions be submitted in email? If yes, what is the email address to be used, and how can the authenticity of signatures as per Paragraph e) be certified?

Answer: Pursuant to Section 2.6 of the Documentation, questions may only be submitted to the following mailing addresses: 1133 Budapest, Visegrádi u. 106. or 1376 Budapest, Pf. 997., or by fax to the following number: (+36-1) 468 0680; submission in email only is insufficient.

Question II.3: Documentation Section 2.3 (Usability of the frequency obtained in the Tender)

Reference: Documentation Section 2.3

Question: Can point-to-point digital radio links and/or radio telecommunications systems based on point-to-multipoint digital radio links installed and operated by the operating having obtained exclusive frequency rights be sold to other telecommunications operators in the context of a wholesale agreement? In other words, the question has to do not with direct frequency resale, but with the wholesale options for links already established. Section 2 of the Notice and Section 2.3 of the Documentation does not directly specify this:

Subject to meeting all statutory conditions, the applicant winning the frequency usage right may lawfully install and operate, based on the frequency usage licenses and in line with the contents thereof, point-to-point digital radio links and/or radio telecommunications systems based on point-to-multipoint digital radio links. The user block can be used for establishing and operating access systems (**direct service of terminals**), as well as internal operation networks serving **radio relay networks** and **mobile telecommunications base stations**.

Answer: Services created based on frequency use can be marketed on both wholesale and retail level. The main rule is that the winning licensee must satisfy the obligations arising from frequency use.

Question II.4: Documentation Section 3.15 (Performance bond)

Reference: Documentation Section 3.15

Question: Is the performance bond as per Section 3.15 of the Documentation exclusive or inclusive of VAT?

Answer: The performance bond must be submitted for an offered price inclusive of value added tax.

Question II.5: Documentation Chapter IV (Order for implementing the tender phase)

Reference: Documentation Chapter IV

Question: Documentation Chapter IV RULES OF IMPLEMENTING THE TENDER PHASE is not clear. This is one of the most important strategic elements of the tender; please clarify as to how the Contracting Authority will determine the winner.

As per the Documentation and based on the overall score for basic blocks, the Contracting Authority will establish a ranking for each basic block, with the first "x number of allocable basic blocks" ranked on top set to be awarded. It should be taken into account that in case of "new" participants (not yet holding rights of use of frequency in the 26 GHz band), a guard band with a bandwidth equivalent to a basic block will need to be included, which may decrease the final number of allocable basic blocks (the number of guard bands will equal the number of winning "new" participants).

Can the 26 basic blocks be allocated in a manner that one or more participants would potentially win only one basic block? Based on the Documentation, no user block could thus be created for the participant/for us. What procedure applies in such cases?

- such participant(s) will be excluded, and the remaining basic blocks (+ guard bands) left unallocated
- such participant(s) will be excluded, and the remaining basic blocks (+ guard bands) allocated among the remaining participants, if there is still demand for them (but what if there is no demand?)
- one of the participants will be excluded (which one?), and basic blocks allocated once again
- other solution

Answer: If the number of applications received cannot be satisfied, the Contracting Authority will reject the application with the lowest score. Should this lead to a situation where an applicant is only able to acquire one basic block, the Contracting Authority may reject its application for that one basic block, as only participants capable of creating a user block spanning at least two basic blocks may win.

Subsequently, the Contracting Authority will examine once again whether the remaining applications can be satisfied. If the applications still cannot be satisfied, the next lowest-scoring application will be rejected. The Contracting Authority will repeat this procedure until all applications can be satisfied.

Question II.6: Documentation Section 4.2.1 (Assessment criteria and weighting)

Reference: Documentation Section 4.2.1

Question: Pursuant to Section 4.2.1 of the Documentation:

The Contracting Authority shall aggregate, for Bids placed on each basic block, the scores awarded based on assessment criteria a)–c), and rank these Bids according to the aggregate scores. In the event of identical scores, the Contracting Authority shall establish the ranking through a public draw held in the presence of a notary.

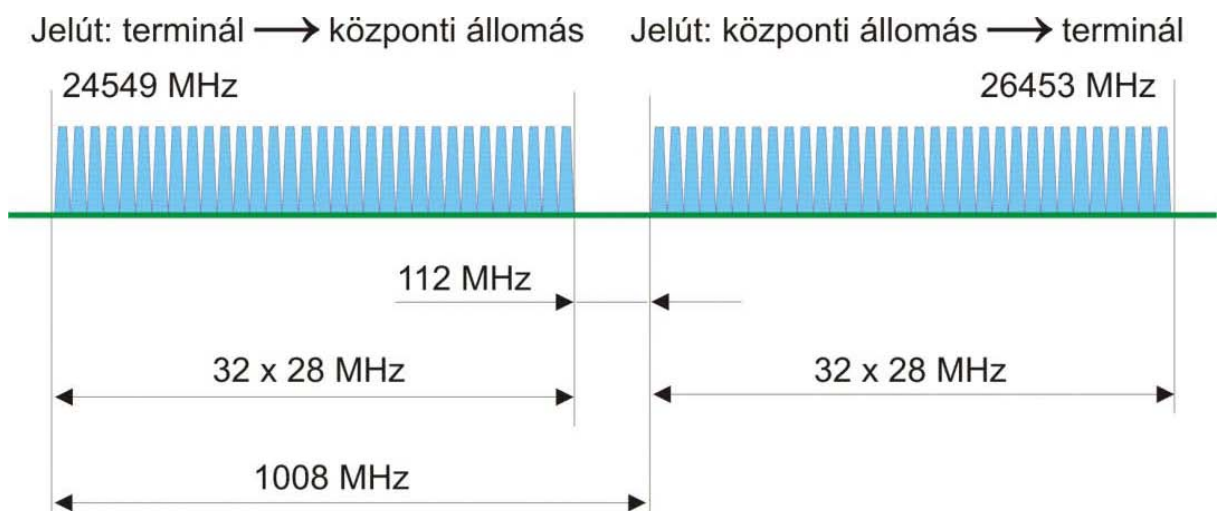
- When will the draw take place, and how and when will participants be notified of the outcome?
- In the event of identical scores, can either of the affected parties withdraw or put the other party at an advantage without any legal consequences? (Withdrawal or granting an advantage to the other party would not constitute rescission as per Section 3.9 of the Documentation, or the violation of any obligation under procedural law.)

Answer: The Contracting Authority will notify participants in advance.

It is not possible to expressly grant an advantage to any participant; participants may withdraw their Application or their offers for specific basic blocks subject to the legal consequences set out in the Documentation.

Question II.7: Documentation Annex 1, Figure 1 and Section 2.2

Reference: Documentation Annex 1, Figure 1 and Section 2.2



For FDD point-to-multipoint systems, the frequency bands of transmission signal paths are the following: user station – central station signal path: lower block band, central station – user station signal path: upper block band.

Question: With regard to the fact that the signal paths illustrated in Annex 1, Figure 1 and Section 2.2 are contrary to those set out in Annex 2, Chapter II Section 13.7 to NMHH Decree 7/2011 (X.6.) (Decree on the establishment of the rules relating to the usage of frequency bands) (correctly: user station – central station signal path: upper block band, central station – user station signal path: lower block band), does the Contracting Authority plan to amend the Technical Conditions Annex to align it with the referenced legislation?

Answer: Thank you for the observation. We will amend the Technical Conditions of the Documentation in order to align them with the relevant section of NMHH Decree 7/2011 (X.6.) (Decree on the establishment of the rules relating to the usage of frequency bands).

Question II.8: Documentation Annex 1, Section 4 (International coordination)

Reference: Documentation Annex 1, Section 4

Question: Which one is correct to designate Slovenia: the abbreviation used in Documentation Annex 1, Section 4 (“SLV”), or the one used in the table in Section 4.1 (“SVN”)?

Answer: The abbreviation used in the table in Section 4.1 is the correct version: “SVN”. Despite the typographical error in Section 4, it is possible to identify the country based on context and the table data. Thank you for your observation nonetheless.

Question II.9: Documentation Annex 2

Question II.9 a): Documentation Annex 2

Reference: Documentation Annex 2

Question: Is the “Offered price” as per Annex 2 of the Documentation exclusive or inclusive of VAT?

Answer: Pursuant to Section 2.2 of the Documentation, the tender price of one basic block is HUF 75 000 000, that is, seventy-five million Hungarian forints.

The price is exclusive of value added tax.

The offered price amount shall be indicated in Annex 2 exclusive of value added tax, however, in the event of a winning application, the winning applicant shall, pursuant to Section 5.1 of the Documentation, pay the total sum of offered prices for all of the basic blocks constituting the acquired user block, as well as the value added tax on the amount in one amount as the total tender price to the bank account of the Contracting Authority.

Question II.9 b): Documentation Annex 2

Reference: Documentation Annex 2

Question: On the Bidding sheet as per Documentation Annex 2, only the “Offered price” section needs to be completed or barred?

Answer: Yes.

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

Question III.1: Band reconfiguration criteria

***Question:** Magyar Telekom is the largest incumbent frequency user in the 26 GHz band. In the tender announced in 2008, we acquired rights of use of frequency for user block “D” – currently referred to as as “B” –, comprising three basic blocks for a substantial price of HUF 500 million. Is our interpretation correct that the Contracting Authority plans to relocate, in the course of a band reconfiguration, the user block of the largest frequency user – Magyar Telekom – to the smallest possible extent in order to avoid the substantial costs of having all equipment outside the band range re-designed?*

Answer: Yes, the Contracting Authority will take the above aspects into consideration. We will strive to create the least amount of technical and logistic obstacles to operators in the course of band reconfiguration, i.e. we will take into consideration the current allocation of the frequency band.

Question III.2: Changes in regulation governing automotive radar equipment

***Question:** Pursuant to Decision 2005/50/EC, automotive short-range radar equipment operate in the 24 GHz band. The Documentation states that European regulation in this domain has changed. Under the previous regulation, automotive short-range radar equipment could have operated in the 24 GHz band until 2013 and were to be migrated to the 79 GHz band thereafter. How did the regulation change; when can the migration of automotive radar equipment – a source of significant interference – be expected?*

Answer: Commission Implementing Decision 2011/485/EU amended Decision 2005/50/EC on the harmonisation of the 24 GHz range radio spectrum band for the time-limited use by automotive short-range radar equipment in the Community.

Commission Decision 2005/50/EC defines a deadline of 2013, however, this deadline does not apply to the cut-off date for the operation of automotive short-range radar equipment (hereinafter referred to as: SRR) in the 24 GHz band, but represents the cut-off date for putting vehicles equipped with 24 GHz SRRs into service. Pursuant to the EU decision, 24 GHz SRRs will remain in circulation until the end of the life of the vehicles equipped with them.

Commission Implementing Decision 2011/485/EU amends the following essential element of the 2005 Decision: in case of the frequencies between 24.25 and 26.65 GHz, automakers can now introduce vehicles equipped with SRRs affected by the Decision until 1 July 2018 and 2022, instead of the previous cut-off date of 1 July 2013.

The European Union still considers 24 GHz SRRs an interim solution, and has defined the 79 GHz band as the most optimal for the long-term development and application of automotive short-range radar equipment. However, automotive short-range radar technologies in the 79 GHz band are still under development and not ready for commercial deployment; therefore, use of the 24 GHz frequency band for SRRs continues to be acceptable.

Question III.3: Identity of the organisations having purchased the tender documentation

***Question:** Can the identity of the organisations having purchased the tender documentation be revealed? If not, what is the reason?*

Answer: Even if it is the Contracting Authority's goal to offer the largest possible spectrum to the market, this nevertheless remains a competition, from the aspect of which, it is important that actors submit applications without knowing everything about the other applicants. Similarly to the 900 MHz tender, the Contracting Authority will not reveal the number of organisations having purchased the tender documentation before the application.

Question III.4: Usability of the frequency obtained in the Tender

***Question:** The Documentation does not clearly specify, or does not state as to whether the frequency itself can be used, in the event of a winning application, for installing equipment and then reselling the link (rather than the frequency itself) to a few operators.*

Answer: This question was asked at the consultation; the answer can be found above: Question II.3: Documentation Section 2.3 (Usability of the frequency obtained in the Tender)

Question III.5: Can only basic block pairs be requested?

Question III.5 a): Can only basic block pairs be requested?

***Question:** The tender documentation does not clearly state as to whether basic blocks can only be obtained in pairs, in other words, can only two, four, or six basic blocks be acquired, or can three basic blocks also be acquired, for instance? We understand that a minimum of two basic blocks must be acquired, but can bids be submitted for separate basic blocks?*

Answer: Yes. There are two rules: at least two basic blocks must be acquired, and at most six can be acquired. This means that user blocks comprising three or five basic blocks may also be created.

Question III.5 b): Can only basic block pairs be requested?

***Question:** According to the presentation, individual basic blocks will be examined at the final stage of allocation in order to assess whether they fit into the 32 allocable range. Does this mean that basic blocks can be taken one by one, that is, it is not user blocks that will be removed. To sum up, the question is whether it is possible for a participant (with the exception of the two active operators) to acquire an odd number of basic blocks,?*

Answer: If a long list were to emerge and an applicant were to submit a bid for two basic blocks — offering different prices for each block —, and its bid for the first basic block were placed third in the ranking while its bid for the second block placed 28th, the latter bid would obviously have to be rejected. This automatically entails the necessary rejection of its bid ranked in third place, because only one basic block cannot be allocated; accordingly, the following applicant would advance one position upwards.

Question III.5 c): Can basic block pairs be requested?

***Question:** If an applicant applied for four basic blocks, but its bid for the fourth basic block is identical to another applicant's bid, and both applicants cannot be satisfied, a draw will be held to determine the winner. Is it possible for an operator needing an even number of basic blocks — i.e. two, four or six — to withdraw in the aforementioned situation, thus acquiring one less basic block, in other words two, or four if it was applying for six, or is it required to keep the odd number of blocks?*

Answer: The Notice does not distinguish between bids submitted for basic blocks in terms of whether the win has to do with a user block comprising an odd or even number of basic blocks. Withdrawal following the submission of a bid is not possible. However, the Contracting Authority will consider incorporating this into the Documentation.

Question III.6: Point value of tender prices

***Question:** Is our interpretation correct that in scoring, the price — with a maximum awardable score of 50 points — will not include the earlier prices offered by the two incumbent tenderers, Antenna Hungária and Magyar Telekom? In other words, only the prices offered by new tenderers will count?*

Answer: Yes.

Question III.7: Point value of existing basic blocks

Question III.7 a): Point value of existing basic blocks

***Question:** Magyar Telekom already has three basic blocks. When scoring the band size factor, a total of 40 points can be awarded to the first two basic blocks already held by the applicant or acquired by it in the current tender; if we take part in the tender and win one or two basic blocks in addition to our current three, how many points will these be awarded?*

Answer: Pursuant to the tender documentation, an applicant holding three basic blocks and applying for a fourth one will be awarded 20 points in the assessment. If it is applying for two basic blocks, it will count as its fifth basic block, which in turn will be awarded a score of 0 points in the assessment.

Question III.7 b): Point value of existing basic blocks

***Question:** Is our interpretation correct that, from this perspective (see previous answer), operators already holding blocks are at a competitive disadvantage?*

Answer: The Contracting Authority has expressed its preference for creating diversity in this frequency band and, accordingly, is making the accumulation of very broad bands somewhat of a competitive disadvantage. This applies to the entire 26 GHz band.