



NMHH

Nemzeti Média- és Hírközlési Hatóság

**DRAFT DOCUMENTATION
OF THE AUCTION PROCEDURE
FOR THE ENTITLEMENT
TO THE RADIO SPECTRUM USE
OF THE 32 GHZ FREQUENCY BAND**

PUBLISHED on: 08 November 2022



Table of contents

TABLE OF CONTENTS	2
1 INTRODUCTORY PROVISIONS	5
1.1 DEFINITIONS.....	5
1.2 ABBREVIATIONS OF LEGISLATION	6
1.3 SUBJECT OF THE AUCTION	8
1.4 OVERVIEW OF THE TECHNICAL SITUATION OF THE 32 GHz FREQUENCY BAND.....	8
1.5 OVERVIEW OF MARKET COMPETITION AND THE ECONOMIC SITUATION OF THE MARKET	10
1.5.1 <i>Relevant markets, substitution analysis</i>	10
1.5.2 <i>Market shares</i>	11
1.5.3 <i>Potential applicants</i>	12
1.5.4 <i>Market needs</i>	12
1.5.5 <i>Impact of the auction procedure on completed and planned investments</i>	12
1.6 LEGAL BACKGROUND FOR THE AUCTION PROCEDURE	13
1.7 INFORMATION ON THE RADIO SPECTRUM POLICY GROUP'S VOLUNTARY PEER REVIEW PROCEDURE	13
1.8 CONTACT DETAILS OF THE AUCTIONEER	14
2 GENERAL PROVISIONS	14
2.1 REASONS FOR INITIATING THE AUCTION PROCEDURE, THE OBJECTIVES TO BE ACHIEVED THROUGH THE PROCEDURE	14
2.2 DETAILED CONDITIONS FOR THE USE OF THE RADIO SPECTRUM AVAILABLE FOR ACQUISITION.....	15
2.3 RESERVED PRICE OF LOTS	15
2.4 RESTRICTIONS ON THE ACQUISITION OF ENTITLEMENTS TO RADIO SPECTRUM USE	15
2.4.1 <i>Duration of the entitlement to radio spectrum use, the initial date for the use of the user blocks, the usability of the user blocks</i>	16
2.5 LAUNCHING OF THE AUCTION PROCEDURE	16
2.6 COMMUNICATIONS, REPRESENTATIVES	16
2.7 ACCESS TO THE DOCUMENTATION, REGISTRATION	17
2.7.1 <i>Conditions of registration</i>	17
2.7.2 <i>The amount and method of payment of the registration fee</i>	18
2.8 WRITTEN ENQUIRIES	18
2.9 MODIFICATION OF THE DOCUMENTS OF THE ANNOUNCEMENT FOR THE COMPETITIVE PROCEDURE	18
2.10 CONDITIONS OF PARTICIPATION.....	19
2.10.1 <i>Conditions of participation</i>	19
2.10.2 <i>Joint Application (consortium), group of undertakings</i>	20
3 DETAILED RULES FOR THE AUCTION PROCEDURE	21
3.1 FUNDAMENTAL PRINCIPLES OF THE AUCTION PROCEDURE	21
3.1.1 <i>Prohibition of modification or withdrawal of the Application</i>	21
3.2 LANGUAGE OF THE PROCEDURE	21
3.3 HIERARCHY OF THE DOCUMENTS OF THE ANNOUNCEMENT FOR THE COMPETITIVE PROCEDURE	22
3.4 SECRETS PROTECTED UNDER THE LAW AND THE PROTECTION OF PERSONAL DATA	22
3.5 COPYRIGHTS.....	24
3.6 THE APPLICANT'S OR PARTICIPANT'S RESPONSIBILITY IN RESPECT OF THE AUCTION	24
3.7 PARTICIPATION FEE AND CONDITIONS OF PAYMENT	25
3.8 CONTENTS OF THE APPLICATION.....	25
3.9 DEEDS, DOCUMENTS AND STATEMENTS TO BE SUBMITTED AS PART OF THE APPLICATION.....	25
3.10 UNCLASSIFIED APPLICATION	27
3.11 FORMAL ACCESSORIES AND FORMAL VALIDITY REQUIREMENTS OF THE APPLICATION	28

3.12	FORMAL INVALIDITY OF THE APPLICATION	29
3.13	PROCEDURAL GUARANTEE.....	29
3.14	PERFORMANCE GUARANTEE	30
3.15	COMMON RULES OF THE GUARANTOR’S DECLARATIONS	30
3.16	RULES ON THE EXTENSION AND RELEASE OF THE GUARANTEE.....	31
3.17	SUPERVISION OF COMPLIANCE WITH THE CONDITIONS OF PARTICIPATION	32
3.18	LEGAL CONSEQUENCES OF INFRINGING CONDUCT BY THE APPLICANT/PARTICIPANT	32
3.18.1	<i>Enforcing the procedural guarantee</i>	33
3.18.2	<i>Legal consequences of violating the prohibition of modification or withdrawal of the Application</i>	34
4	AUCTIONING PROCEDURE	34
4.1	SUBMISSION OF APPLICATIONS	34
4.2	OPENING OF THE APPLICATIONS FOR PARTICIPATION.....	36
4.3	FORMAL EXAMINATION OF THE APPLICATION.....	37
4.4	REGISTRATION AS PARTICIPANT	37
4.4.1	<i>Refusal to register as a participant, legal remedy.....</i>	38
4.5	OPENING OF THE OFFER	38
4.6	CONTENT OF THE OFFER.....	39
4.7	INVALIDITY OF CONTENT OF THE OFFER (SUBSTANTIVE INVALIDITY).....	39
4.8	REMEDY OF DEFICIENCIES.....	39
4.9	VALIDITY OF THE BID	39
4.10	DETERMINATION OF THE WINNERS OF THE AUCTION.....	40
4.10.1	<i>Evaluation of the bids.....</i>	40
5	ESTABLISHING THE RESULTS OF THE AUCTION PROCEDURE	44
5.1	FORMING USER BLOCKS	44
5.1.1	<i>General rules</i>	44
5.1.2	<i>Placement of the blocks by order</i>	44
5.1.3	<i>Deviation from the order.....</i>	44
5.1.4	<i>Conciliation rules for choosing between several possible solutions</i>	45
5.2	CLOSING THE PROCEDURE	45
5.2.1	<i>Determination of the Winners.....</i>	45
5.2.2	<i>Declaring the auction procedure unsuccessful.....</i>	46
5.2.3	<i>Termination of the auction procedure.....</i>	46
5.2.4	<i>Legal remedy.....</i>	46
6	ACQUISITION OF THE ENTITLEMENT TO RADIO SPECTRUM USE, RIGHTS AND OBLIGATIONS	46
6.1	CONDITIONS OF PAYMENT OF THE TOTAL AUCTION FEE	46
6.2	RADIO LICENCE	47
6.3	EXTENT OF THE BAND FEE, METHOD OF ITS PAYMENT.....	47
6.4	CONDITIONS FOR THE SECONDARY TRADING OF ENTITLEMENT, RIGHT TO RADIO SPECTRUM USE	47
6.5	AMENDMENT OF THE ENTITLEMENT TO RADIO SPECTRUM USE.....	48
6.6	COOPERATION IN SPECIAL PERIODS AND IN THE INTEREST OF NATIONAL DEFENCE.....	48
6.7	COOPERATION FOR THE PURPOSES OF GATHERING CONFIDENTIAL INFORMATION.....	48
6.8	DATA PROVISION	48
6.9	REVOKING THE ENTITLEMENT, RIGHT TO RADIO SPECTRUM USE UPON REQUEST	48
ANNEX 1	49

TECHNICAL SPECIFICATIONS FOR THE USE OF THE 32 GHZ FREQUENCY BAND.....	49
ANNEX 2.....	52
APPLICANT’S DECLARATIONS	52
ANNEX 3/A.....	55
OFFER FORM.....	55
ANNEX 3/B.....	56
COUNTER-OFFER FORM TEMPLATE	56
ANNEX 4.....	57
IT INFORMATION.....	57
<i>Terms used</i>	57
<i>Availability of forms</i>	57
<i>Recommended operating systems, browsers</i>	58
<i>Authentic identification</i>	58
<i>Uploading files</i>	58
<i>HASH key verification</i>	60
<i>Use of test forms</i>	64
ANNEX 5.....	67
EXAMPLES OF BIDS NOT MEETING THE NUMBERING REQUIREMENTS	67
ANNEX 6.....	68
EXAMPLES DEMONSTRATING HOW AUCTION WINNERS ARE DETERMINED.....	68
<i>Example 1</i>	68
<i>Example 2</i>	70
ANNEX 7.....	76
MARKET SITUATION.....	76
<i>I. Assessment criteria</i>	76
<i>I.1. Substitution analysis</i>	76
<i>I.2. Assessment of high and non-transitory barriers to entry</i>	77
<i>I.3. Assessment of the tendency towards effective competition</i>	78
<i>I.4. Assessment of individual dominant position</i>	79
<i>I.5. Assessment of joint dominant position</i>	81
<i>II. Other criteria</i>	81
<i>II.1. Public consultation for interested parties</i>	81
<i>II.2. Impact of the awarding of the frequency on investments made and planned</i>	82
<i>III. Summary</i>	83

This document constitutes the auction documentation (hereinafter as: Documentation) of the auction procedure (hereinafter as: Auction or auction procedure) launched for the entitlements to radio spectrum use of the 31.871-32.543/32.683-33.355 GHz frequency bands (hereinafter as: the 32 GHz frequency band) issued by the Office of the National Media and Infocommunications Authority (1015 Budapest, Ostrom u. 23–25., hereinafter as: Auctioneer) specifying the detailed rules of the Auction and the application process thereof.

The Documentation in its electronic form contains active links, which means that paragraphs, chapters and annexes can be accessed by clicking on the left mouse button. To go back to the current section, press the “ALT and ←” keys together.

1 Introductory provisions

1.1 Definitions

(1) For the purposes of the Documentation:

Term	Definition
Offer	The Offer Form as per Annex 3/A, and the performance guarantee as per Sections (131)–(134), and in the case of more than one guarantee, the guarantees together.
entities belonging to the same group of undertakings	Those entities that have relations with each other as specified under Section 1.12.2 of Annex 3 of NMHH Decree no. 7/2015 (XI. 13.) on the National Frequency Allocation and the Rules for the Use of Frequency Bands.
lot	2x28 MHz of theoretical frequency amount in the 32 GHz frequency band being the object of the Auction, for the entitlement to frequency use of which Offers or – in the cases specified in the Documentation – Counter-Offers may be submitted, subject to the restrictions set out in Section (49).
economic entity	An economic entity as defined in Act CXXX of 2016 on the Code of Civil Procedure.
Authority	National Media and Infocommunications Authority

Term	Definition
Application	The documents as per Section .
bid	The price offered by the applicant – as part of the application to the Auction – on the Offer Form or Counter-Offer Form to acquire the entitlement to frequency use of a certain lot specified in Section (5).
MFCN	Mobile/Fixed Communication Networks.
registration fee	Registration fee payable for the opportunity to ask questions until the expiry of the application deadline.
application for participation	The part of the Application other than the Offer.
RSPG	Radiospectrum Policy Group.
Counter-Offer	The bid made by the participant on the Counter-Offer Form at the invitation of the Auctioneer in order to break a tie, in the cases specified in Sections (222) and (235).

- (2) All other terms used in the Documentation shall have the meaning defined elsewhere in the Documentation or, in the absence of such definitions, as defined in the relevant legislative provisions, in particular the interpretative provisions specified in Section 2 of the Ápszr.

1.2 Abbreviations of legislation

- (3) This Documentation uses the following abbreviations for legislation:

Abbreviation of the legislation	Title of the legislation
GPAP Act	Act CL of 2016 on the Code of General Administrative Procedure

Abbreviation of the legislation	Title of the legislation
ANFT	NMHH Decree no. 14/2020. (XII. 15.) on the National Allocation Plan of Identifiers of Electronic Communications Network Identifiers and the Rules of Identifier Management
Ápszr.	NMHH Decree no. 4/2011 (X. 6.) on the rules of auction or competitive procedure for obtaining the entitlement to frequency use
Fee Decree	NMHH Decree no. 1/2011. (III. 31.) on the fees for frequency reservation and use,
Electronic Communications Act	Act C of 2003 on Electronic Communications
Electronic Administration and Trust Services Act	Act CCXXII of 2015 on the General Rules on Electronic Administration and Trust Services
Credit Institutions Act	Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises
Code	Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code
ACP Act	Act I of 2017 on the Code of Administrative Court Procedure
NFFF	NMHH Decree no. 7/2015 (XI. 13.) on the National Frequency Allocation and the Rules for the Use of Frequency Bands
National Assets Act	Act CXCVI of 2011 on National Assets
Pfgr.	NMHH Decree no. 7/2012 (I. 26.) on certain official procedures of civil spectrum management

Abbreviation of the legislation	Title of the legislation
Civil Code	Act V of 2013 on the Civil Code
Secondary Trading Decree	NMHH Decree 7/2013 (IX. 19.) on the secondary trading of radio frequencies
Competition Act	Act LVII of 1996 on the Prohibition of Unfair Market Practices and Restriction of Competition

1.3 Subject of the Auction

- (4) The subject of the auction procedure is the entitlement to radio spectrum use available in the 32 GHz frequency band.
- (5) Duplex 672 MHz frequency amount will be subject of the awarding procedure. This will allow participants to acquire a total of 24 lots (2x28 MHz theoretical frequency amount per each) and the entitlements to radio spectrum use for the user blocks formed from them.

1.4 Overview of the technical situation of the 32 GHz frequency band

- (6) Making available the 32 GHz frequency band for the fixed point-to-point systems has become necessary in the context of the EU obligations to use the 26 GHz frequency band for MFCN.
- (7) Based on the NFFF, currently fixed point-to-point and point-to-multipoint systems are allowed to operate in the 26 GHz frequency band, within the 24.5-26.5 GHz part of the band. The network operators obtained the entitlements to radio spectrum use through auction procedures and mainly implement backhaul network (typically point-to-point) links in the frequency band. The entitlements to radio spectrum use will expire between 2024 and 2027, the vast majority of them in 2027.
- (8) According to the Auctioneer, it will be possible to allow the use of the 26 GHz frequency band for MFCN purposes if at the same time it ensures the operational capability of the backhaul network systems by allowing the use of another frequency band, preferably with similar propagation characteristics and available spectrum amount. The 32 GHz frequency band was identified by the Auctioneer as a frequency band suitable for that purpose. This was discussed with market participants at a public hearing in December 2019. As a result of the discussions and consultations, the key elements of the conditions for the use of the 32 GHz frequency band necessary for the technical planning were already defined in the NFFF in 2020, further regulatory details were specified in the NFFF amendment published in April 2022, and in NMHH Decree no. 1/2022. (IV. 6.) amending NMHH Decree no. 7/2015 (XI. 13.) on the National Frequency Allocation and the Rules for the

Use of Frequency Bands. At the public hearing held in March 2022, market participants were informed, among other things, of the current regulation of the 32 GHz frequency band, and were given the opportunity to express their views on the utilisation of the band.

- (9) When establishing the rules for the use of the 32 GHz frequency band, in addition to the circumstances already described at the public hearing, it also had to be taken into account that increased data traffic from base stations in mobile networks will require the use of high-capacity backhaul network connections. In the NFFF, in line with the relevant international documents, the base blocks are defined in 2×28 MHz units at the same time, given the nature of the expected use, the design of the national band arrangement is based on the band arrangement specified for channels with a bandwidth of duplex 56 MHz and above. In the case of the gigabit links used to meet increased data traffic demands, duplex 112 MHz bandwidth (i.e. 4 base blocks as per the NFFF) channels are expected to be used as a minimum, and therefore in the course of determining the size of the obtainable user blocks and the rules of forming user blocks, the Auctioneer has taken into account to ensure that contiguous channels with a minimum bandwidth of 4 base blocks can be established. The amount of radio spectrum available in the 32 GHz frequency band is not only limited but also scarce, so, in the context of efficient use, point-to-point systems will be allowed to operate on the basis of the entitlements to radio spectrum use awarded as a result of this auction procedure. With due consideration of the operational characteristics of point-to-point systems, there is no need to establish a separation band between user blocks.
- (10) Allowing the use of point-to-point systems in the 32 GHz frequency band is also linked to increasing the efficiency of use in border areas. In general, in the neighbouring countries where the 32 GHz frequency band is used, there are only a few stations that could cause interference due to their proximity to the border, and the probability of co-channel interference is very low due to the wave propagation characteristics of the frequency band and the nature of the application (point-to-point links) (highly dependent on the distance from the border, terrain, technical characteristics, and site conditions). Taking this into account, individual coordination on a case-by-case basis shall be sufficient.
- (11) With regard to the use of the 32 GHz frequency band, the Auctioneer examined whether the tuning range of the currently available equipment covers the whole band, or whether certain equipment types can only be used in a narrower range. The tuning range of the available equipment is of paramount importance in so far as whether the user block of a given entitlement holder will be more difficult to use because it also includes some kind of breakpoint. In this respect, the Auctioneer has even examined the theoretical possibility that an entitlement holder may be unable to use a higher bandwidth channel (e.g. 112 MHz), even though the size of its user block would allow this, because the frequency limit of the tuning range of that type of equipment restricts its use. On the basis of the examination, the Auctioneer has concluded that although breakpoints do occur in the radio equipment currently available on the market, but they occur at different points of the 32 GHz frequency band, changing from manufacturer to manufacturer, and the available selection of equipment is great; therefore, although the entitlement holders need to be aware of breakpoints when selecting the equipment, they should not be subject to failure.
- (12) By awarding the 32 GHz frequency band as soon as possible, it will be possible to ensure that the new links are already implemented in this band, instead of the 24.5-26.5 GHz frequency band, therefore there will be no need to migrate these new links, and the possibility to use both frequency bands temporarily will make migration more predictable and plannable. After the migration and the expiry of the entitlements, the 26 GHz frequency band will be cleared.

1.5 Overview of market competition and the economic situation of the market

- (13) Links between different network elements (e.g. base stations) are essential for the operation of the different electronic communications networks (e.g. mobile radio telephone networks). These links can be implemented using either wired (e.g. optical) or wireless links.
- (14) Wireless links can be provided by the entitlement holders as a stand-alone service (this is the primary – direct – market for wireless links), but more typically, these are used to connect different points in the entitlement holders' own networks. Such links are most likely to be needed in the networks of mobile telephony operators (mainly the backhaul network). (In this case the market for the mobile services provided through the established network constitutes the related – indirect – downstream market that is built on the market of wireless links¹.)
- (15) The 32 GHz frequency band which is the subject of the present awarding procedure is currently not in use in Hungary, therefore it is not possible to speak about its primary market, nor about the downstream markets, nor can the intensity of competition in these markets be assessed.
- (16) As demonstrated in the technical situation review and as described in Section (41), the primary purpose of awarding the 32 GHz frequency band, as stated by the Auctioneer, is to enable the use of the 26 GHz frequency band for MFCN purposes. This will require the clearing of the 26 GHz frequency band and providing an alternative frequency band for the migration of the point-to-point systems previously deployed there, simultaneously with – or preferably before – the expiry of the entitlements in 2024 and 2027. After the expiry of the entitlements in the 26 GHz frequency band, the 32 GHz frequency band can be used instead of the 26 GHz frequency band to ensure the operation of the backhaul network systems. In view of this, a large number of backhaul network links are expected to be established in the 32 GHz frequency band, as the entitlements to radio spectrum use to be awarded as a result of this auction procedure will allow the operation of point-to-point systems in the 32 GHz frequency band.
- (17) Taking these into account, the subject of the analysis regarding the competition in the market is the potential impact of the entitlement holders' future operations in the 32 GHz frequency band on the existing competition in the – direct and indirect or downstream – markets affected by the services using this frequency band. (This detailed analysis is included in Annex 7.)
- (18) The primary purpose of using the 32 GHz frequency band is to replace the wireless links currently provided in the 26 GHz frequency band. Therefore, if the future entitlement holders' intention to use the frequency band does not significantly deviate from the expected market behaviour, this auction procedure will not have a significant impact on the competition currently taking place in the different markets (assuming that the relevant market players also have access to sufficient radio spectrum in the 32 GHz frequency band, which is likely to be the case as demonstrated in of Annex 6, in the Chapter entitled III. Summary).

1.5.1 Relevant markets, substitution analysis

- (19) As it is necessary to connect the different points of the electronic communications networks with some kind of wired or wireless technical solution, therefore, if the entitlement is awarded, it is

¹ A downstream market or service is a service (or market for a service) related to the 'core' service that uses the original service as an input for the provision of that service. The main "downstream" market for microwave links using the 32 GHz frequency band is the mobile (data and voice) services market. The situation and developments of these mobile markets are presented in detail by the Mobile Market Report published by the Authority every six months (<https://nmhh.hu/szakmai-erdekeltek/hirkozles-szabalyozas/piaci-jelentesek/mobilpiaci-jelentesek>).

expected that the frequency band will be used by the future entitlement holders essentially to implement their own interconnections within their networks (primarily backhaul network links), including data transmission for internal network operations, for which currently there is no established market. With the emergence of the infrastructure operators (tower companies), it may also be possible to provide network interconnections on a market basis, however this does not yet have an established market practice.

- (20) Instead, two separate markets needs to be examined:
- (20.1) The entitlement holder may offer (mainly business) users this type of connection, i.e. the service here is the provision of the wireless link itself. This is the primary – direct – market for wireless links.
 - (20.2) Associated retail markets of the service provided to end-users (e.g. mobile voice or data) on the (full) network of any spectrum license holder. These are the related – indirect – (downstream) markets that are created on the market of wireless links.
- (21) In both cases, a significant part of the provided services are currently provided by wireless solutions, using microwave bands, with block management, through links also operating in the 26 GHz frequency band. The wireless link itself has a direct impact on the service as a whole in the former case, and an indirect impact in the latter.
- (22) In both cases, there are currently several ways to provide the necessary links for the services to be delivered:
- (22.1) Links implemented in frequency bands (e.g. 13, 18, 23, 38 GHz frequency bands) where entitlement to the use of radio spectrum can be acquired based on individual licensing procedures.
 - (22.2) Links implemented in frequency bands (26 GHz frequency band) where entitlement to the use of radio spectrum can be acquired through a competitive procedure based on block management.
 - (22.3) Wired links, such as optical connections.
- (23) All of the implementation options of the links listed above are currently in use, but it is important to underline that no one option is a perfect substitute for the other.
- (24) The 32 GHz frequency band is the best substitute for the links implemented in the 26 GHz frequency band, as both can be used with block management and there are no significant differences between them in their capacity and wave propagation properties. Based on the NFFF, the 32 GHz frequency band can be used to implement point-to-point and point-to-multipoint links. A review of the equipment market shows that currently only equipment suitable for point-to-point links is available. The 32 GHz frequency band is the microwave band where, under similar conditions, the point-to-point links currently operating in the 26 GHz frequency band could be replaced.

1.5.2 Market shares

- (25) Regarding the assessment of market shares, the information made available to the Auctioneer during the public hearings held by the Auctioneer to assess market needs indicates that the use of the 32 GHz frequency band – similarly to that of the 26 GHz frequency band – currently represents a market opportunity primarily for mobile operators, but it is also possible that other undertakings active in the electronic communications sector may also see a market opportunity in the

32 GHz frequency band. Therefore, given that future entitlement holders do not necessarily operate in a single market, and hence the assessment of market shares has no relevance; at most, one could only analyse market shares by segmenting the potential entitlement holders into smaller, more homogeneous groups, but even then only in the related (downstream) retail markets.

- (26) In order to maintain competition in the mobile market, it is essential that no single market player is at a significant disadvantage in its ability to establish backbone, backhaul network connections. According to this, appropriate acquisition limits must be applied when the 32 GHz frequency band is put into use.
- (27) By examining the different mobile operators, public data can be used to understand the market shares of the different operators currently present in the different retail mobile markets (see detailed analysis in Annex 7).

1.5.3 Potential applicants

- (28) Anyone can apply for entitlements in the 32 GHz frequency band, including new entrants, undertakings that currently do not operate point-to-point systems in the microwave frequency band, or undertakings that have entitlements to frequency use in the 26 GHz frequency band. The new entrant, like the current entitlement holders of the 26 GHz frequency band, will be able to use the entitlements acquired as a result of this auction procedure to operate in various electronic communications markets, such as the mobile market, the broadcasting (media service distribution), the leased line services market, etc.

1.5.4 Market needs

- (29) Based on the public hearing held on 22 March 2022, the position of market players was not unanimous. Some have called for the awarding of the 32 GHz frequency band as soon as possible, while others considered it premature, unjustified or in need of further assessments and investigations.
- (30) On this basis, it can be concluded that:
 - (30.1) Based on the statements, weaker and less intense competition is expected for the 32 GHz frequency band.
 - (30.2) No distortion of competition is expected in a weakly competitive environment, however the Auctioneer has also examined whether competition could be strengthened in the long term, as a result of the expected technological developments and concluded that, although no rapid technological development is expected on microwave, it is likely that competition will be much more intense around 2030 given the competition generating impact of continuous technological development. In this context, the reason for launching the auction procedure was innovation and business development, i.e. the fact that in this way the Auctioneer can help innovative players to use the 32 GHz frequency band.

1.5.5 Impact of the auction procedure on completed and planned investments

- (31) The Auctioneer examined the potential impact of the auction procedure on the investments already completed and those planned by market players and on the deployment of electronic communications networks designed to use the 32 GHz frequency band.
- (32) As the opening of the 32 GHz frequency band is taking place right now, and the rights to use the radio spectrum are becoming available now, consequently currently there are no investments completed in this frequency band. The 26 GHz frequency band is currently used in a way very

similar to the expected future use of the 32 GHz frequency band, as described above, so investments made in the 26 GHz frequency band can be taken as a baseline. What is therefore relevant for the purpose of the analysis is to assess the extra costs the migration from 26 GHz to 32 GHz will entail for the future licence holders.

- (33) Estimates suggest that transition will definitely have extra costs, but their magnitude is not considered to be significant enough to have a major impact on any business plan.
- (34) The Auctioneer also established that the 32 GHz frequency band would also have frequency acquisition costs, monthly fees, etc., but even if current services were to remain in the 26 GHz frequency band (on which the entitlements will expire in 2024 and 2027) instead of migrating them to the 32 GHz frequency band, the entitlement holders could incur costs of a similar type and amount.

1.6 Legal background for the auction procedure

- (35) The auction procedure is an administrative case and an administrative procedure within the Auctioneer's competence of authority. The auction procedure is subject to the applicable provisions of the Ápszr, the Electronic Communications Act, and the GPAP Act.
- (36) The detailed rules of the auction procedure are determined in the Documentation pursuant to Section 3 (3) of the Ápszr.
- (37) The Documentation shall apply in issues arising during the auction procedure.

1.7 Information on the radio spectrum policy group's voluntary peer review procedure

- (38) Pursuant to Paragraph (2d) of Section 55 of the Electronic Communications Act, upon preparing the draft version of the Documentation, the Auctioneer has examined the rules relating to the voluntary peer review procedure of the RSPG specified in Section 40/A (8) of the Electronic Communications Act and Article 35 (1) of the Code. Given that the technical specifications for the use of the 32 GHz frequency band are not harmonised under Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), there is no obligation under the Code to apply the peer review procedure. However, pursuant to Article 2(5) of Commission Decision 2019/C 196/08 of 11 June 2019 setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC, the RSPG may organise meetings, at the request of national regulatory authorities or other competent authorities, to discuss and exchange views and experiences on licensing procedures and conditions for the use of the radio spectrum. This is reinforced by the current annual work programme of the RSPG, which stipulates that the exchanges between Member States based on existing workshops on past and future competitive procedures shall be continued.
- (39) With regard to the fact that the 32 GHz frequency band is connected to the operation of wireless broadband networks and the Auction is a competitive procedure prepared by the Auctioneer according to the rules of the first Code since the implementation of the Code, the Auctioneer initiates

the presentation of this Auction to the responsible RSPG sub-group² at a non-Code peer review workshop.

1.8 Contact details of the Auctioneer

(40) Contact details of the Auctioneer in these matters:

Address: 1015 Budapest, Ostrom u. 23-25.

Postal address: National Media and Infocommunications Authority 1525 Budapest Pf. 75.

Phone: +36 1 468 0579

E-mail: 32ghz@nmhh.hu

The Auctioneer's contact details through the Administrative Portal:

Short name of the Authority: NMHH

Full name of the Authority: National Media and Infocommunications Authority

KRID: 516334978

2 General provisions

2.1 Reasons for initiating the auction procedure, the objectives to be achieved through the procedure

(41) The primary objective of the awarding of the radio spectrum available in the 32 GHz frequency band within the framework of a competitive procedure is to promote the development of the digital economy, in such a way that the 26 GHz frequency band dedicated for the new generation of so-called 5G services – but currently used for the operation of fixed service systems – will become available for use by the new generation services on the long term. The aim is also that the Auctioneer can offer to the holders of entitlements to the 26 GHz frequency band an alternative which offers similar wave propagation characteristics and radio spectrum management solutions. The 32 GHz frequency band is also similar to the 26 GHz frequency band in that it offers flexibility of use through block management, without licensing individual links, while the competitive procedure offers a solution for long-term investment.

(42) Additional goals of the Auction:

(42.1) facilitating the deployment of backhaul networks supporting 5G services, promoting network developments, and hence improving coverage;

(42.2) promoting the efficient use of the radio spectrum;

² The working group named "Peer review and Member States cooperation on authorisations and awards sub-group"

- (42.3) promoting innovation and business development; and
 - (42.4) providing the frequency set needed to increase the data rate significantly and to increase the secure availability of the service significantly.
- (43) Achievement of these objectives is also linked to meeting the EU obligation under Article 54 of the Code, which obliges Member States to take all necessary measures to allow the use of the 26 GHz frequency band, where this is necessary in order to facilitate the deployment of 5G.
- (44) As a result of the public hearings held in 2019 and 2022, aimed to assess market needs, also dealing with the 26 GHz and 32 GHz frequency bands, the Auctioneer has identified a potential market demand for more spectrum than those currently available, hence the competitive procedure will ensure that market competition is enforced.

2.2 Detailed conditions for the use of the radio spectrum available for acquisition

- (45) The statutory terms and conditions for the use of the 32 GHz frequency band subjected by this auction procedure are determined by the NFFF.
- (46) The entitlement holder may lawfully install and operate fixed service FDD point-to-point applications on the basis of the framework licence, subject to compliance with the other legal conditions.
- (47) Rules for the transfer of the entitlements, rights to radio spectrum use acquired as a result of the auction procedure and for their lease are determined by the NFFF. The Secondary Trading Decree governs the procedural rules on the secondary trading of the entitlement to radio spectrum use acquired as a result of the auction procedure.
- (48) Further detailed use related requirements are laid down in Annex 1.

2.3 Reserved price of lots

The reserved price of 1 (one) lot in the 32 GHz frequency band: HUF 50.000.000 (in words: fifty million Hungarian forints)

2.4 Restrictions on the acquisition of entitlements to radio spectrum use

- (49) Based on the provisions of the NFFF, the following quantitative limitations shall apply to the entitlements to radio spectrum use offered in the current auction procedure:
 - (49.1) As a result of the auction procedure, a participant may acquire entitlement to radio spectrum use for at least 2 (two) lots, i.e. 112 MHz in the 32 GHz frequency band.
 - (49.2) As a result of the auction procedure, a participant may acquire maximum 6 (six) lots, i.e. 336 MHz of entitlements to radio spectrum use in the 32 GHz frequency band. Participants belonging to the same group of undertakings may only acquire a number of lots in the auction procedure in such a way so that after the auction procedure is closed, the entities belonging to the same group of undertakings together will have maximum 6 (six) lots, i.e. the total of 336 MHz of entitlements to radio spectrum use within the territorial scope of the entitlement.

2.4.1 Duration of the entitlement to radio spectrum use, the initial date for the use of the user blocks, the usability of the user blocks

- (50) The duration of the entitlements to radio spectrum use that may be obtained as a result of the auction procedure shall be 15 years pursuant to Section 55(9b) of the Electronic Communications Act. The period of 15 years shall begin as of the day of acquisition of the exclusive right provided for in Section 22(2) of the Ápszr. The period during which the holder of the entitlement to radio spectrum use is actually unable to exercise its entitlement in relation to the affected frequency band, due to a measure ordered by a regulatory decision or a court as per the ACP Act, affecting the enforcement of a resolution according to Section (258.1), shall not be included in the above 15-year period, but the period of the entitlement to radio spectrum use shall instead be extended by the duration of the period mentioned in this paragraph.
- (51) The period of the entitlement to radio spectrum use may be extended once for a period of 5 (five) years without a competitive procedure, in accordance with the procedure detailed in Section 34/C of the Pfgr., provided that the conditions specified therein are met.
- (52) Taking into account Section 9 (2) of the NFFF, renewal is not excluded for the 32 GHz frequency band.

2.5 Launching of the auction procedure

- (53) The auction procedure shall be launched ex officio on the date of publication of the notice on the Auctioneer's website, on 12 January 2023.

2.6 Communications, representatives

- (54) Unless otherwise provided by the Documentation, the Auctioneer shall communicate in writing with the applicant/participant and, in the event of a representation with the representative, as stipulated in Section 26 (1) of the GPAP Act.
- (55) Pursuant to Section 9 of the Electronic Administration and Trust Services Act, economic entity applicants/participants must use electronic means of communication and administration in the current procedure, with the proviso that the applicant may submit the Application on the form specified in Section (161) and the participant may submit the Counter-Offer on the form specified in Section (226).
- (56) With regard to the electronic administration of this auction procedure, the rules of the Civil Procedure Act and Government Decree no. 451/2016 (XII. 19.) on the detailed rules of electronic administration shall apply. These require the applicant/participant to submit electronic documents on which the authorised signatory
 - (56.1) has affixed his/her qualified signature, or
 - (56.2) has affixed his/her advanced electronic signature or stamp which are based on a qualified certificate, or
 - (56.3) has authenticated the document using the identification based document authentication service. This Section only applies to sole proprietors.

In this auction procedure, Sections (56.1)–(56.3) hereinafter collectively referred to as: “electronic signature”.

- (57) Sections 13-14 of the GPAP Act shall be applied to representation.
- (58) In order to ensure the efficiency and speed of communication, the applicant is obliged to name at least one representative with whom the Auctioneer may communicate personally or electronically, in a way that does not qualify as in writing (together: verbally) (hereinafter as: contact person representative), in cases specified by law or in this Documentation. To this end, the applicant shall, as part of the Application as per Section (116), provide the name, personal identification data and contact details (phone number, e-mail address, postal address in Hungary) of its contact person representative.
- (59) As part of the application, the applicant must also expressly and irrevocably declare, without any legal reservation, that it accepts the fact that any communication via the contact person representative in any of the methods as per Section 26 (1) of the GPAP Act shall qualify as legal effective notice for the applicant/participant, and also that the applicant/participant shall be solely responsible for the conduct of the contact person representative, in particular if the contact person representative was unavailable, and shall bear any adverse consequences thereof.
- (60) Any changes in the identity or data of the contact person representative or the representative must be reported without delay, but no later than within 3 days, to the Auctioneer in writing.

2.7 Access to the Documentation, registration

- (61) The Documentation is also available to the public on the website of the Auctioneer³ and can be downloaded in electronic format free of charge.
- (62) Registration shall not be a prerequisite of Application, however, only persons and entities officially registered as stipulated in the Documentation may submit written questions about the Documentation, as specified in Section 8 (1) of the Ápszr.
- (63) Registration is allowed from the date of publication of the notice until the application deadline.

2.7.1 Conditions of registration

- (64) Cumulative conditions of the registration shall be to fill out the data sheet that can be downloaded from the link⁴ available on the website of the Auctioneer and to send the completed data sheet to any of the Auctioneer’s contact details indicated in Section (40) – as opposed to the provisions of Section (55) – as well as the verification of the payment of the registration fee. If any of these conditions are not met, the registration is invalid.
- (65) The Auctioneer shall register those registered in accordance with the conditions set out in this section and shall notify the registered parties of the fact of such registration. In the event of an incomplete registration or one that is inadequate for any other reasons, the Auctioneer shall inform the initiator of the registration by indicating the deficiencies.

³ https://nmhh.hu/32_GHz_arveresi_eljaras_dokumentacio

⁴ https://nmhh.hu/regisztracios_adatlap_32_GHz_arveres

2.7.2 The amount and method of payment of the registration fee

- (66) The amount of the registration fee is HUF 100,000 + VAT, totalling HUF 127,000 (in words: one hundred and twenty seven thousand Hungarian forints).
- (67) The registration fee must be transferred to the Auctioneer's account number 10032000-00300939-00000017 held at the Hungarian State Treasury, and must specify "Regisztráció 32GHz" (32 GHz registration) in the payment reference field.
- (68) The Auctioneer shall also verify the registration fee being credited to its payments account specified in this chapter based on its own records.
- (69) The Auctioneer shall send the registered person, organisation and the person or organisation performing the registration an invoice for the registration fee paid.

2.8 Written enquiries

- (70) The Auctioneer shall provide the option of submitting written questions to those registered in the auction procedure in accordance with Section (65). Questions must be sent to the Auctioneer's Administrative Portal contact details specified in Section (40).
- (71) Questions about the Documentation submitted in writing up to the 10th (tenth) day prior to the application deadline shall be answered by the Auctioneer within 8 (eight) days in order to ensure that applicants will have at least 2 (two) days from receiving the answer to the expiry of the application deadline. The Auctioneer may summarise frequently asked questions and answer them collectively. Prior to the application deadline, the Auctioneer will send all written questions raised by registered participants, as well as its answers, to all entities or organisations having registered or submitted an Application, without disclosing the identity of the party having raised the question. The Auctioneer shall send all the questions asked by applicants and all answers to every applicant, without specifying the name of the inquirers.
- (72) The answers sent by the Auctioneer only serve informational purposes and, contrary to the Documentation, have no legal effect or legal binding force with regard to any individual administrative case or in terms of the regulatory decisions.

2.9 Modification of the documents of the announcement for the competitive procedure

- (73) The Auctioneer may modify the notice and the Documentation, in line with the principles of objective, transparent and non-discriminatory procedure as per Section 6 of the Ápszr.
- (74) The notice and the Documentation may be modified up to the 8th (eighth) day before the application deadline. The Documentation may be amended if the Auctioneer perceives that the Documentation calls for clarification or supplementation based on a written enquiry made pursuant to Section (70).
- (75) The Auctioneer shall publish its amendments to the notice in accordance with the rules on the publication of the notice.

- (76) The Auctioneer shall publish its amendments to the Documentation by posting them to its bulletin board or publishing them on its website; it shall notify the parties registered as per Section (65) about the publication and contents of the amendments within 2 (two) days of their publication.
- (77) Amendments to the notice and the Documentation shall enter into force upon their publication.
- (78) The publication date shall be the date of publication of the amendment to the Documentation on the Auctioneer's website.

2.10 Conditions of participation

2.10.1 Conditions of participation

- (79) The following economic entities may participate in the auction procedure:
 - (79.1) those complying with the conditions set out in Section 9 of the Ápszr. and having paid the participation fee as required under Section (114);
 - (79.2) those that do not have any outstanding public debts overdue for more than sixty days, as specified in the Act on the Rules of Taxation;
 - (79.3) those not being the subject of proceedings for a declaration of bankruptcy, liquidation, winding-up, forced liquidation or any other dissolution proceedings;
 - (79.4) those not having any supervisory fee or radio spectrum usage fee payment obligations towards the Auctioneer that are more than 30 (thirty) days overdue (the Auctioneer verifies outstanding supervisory fee or radio spectrum usage fee payment obligations based on its own records; the applicant is not required to furnish proof);
 - (79.5) those having declared in writing in the document submitted as part of the Application, irrevocably and unconditionally acknowledging that the contents of the Documentation and the notice are binding upon them;
 - (79.6) those that are required to use electronic communication and administration, or have designated as their representative a person or organisation that is required by law to use electronic communication and administration;
 - (79.7) those who have not suspended their activities or whose activities have not been suspended;
 - (79.8) those who are not (current or past) public officers, employees, consultants or proxies of the Auctioneer having participated in drafting the Documentation, or are close relatives of such persons;
 - (79.9) those who have no executive officers or owners holding a share of at least 25 (twenty-five) percent who are (current or past) public officers, employees, consultants or proxies of the Auctioneer having participated in drafting the Documentation, or are close relatives of such persons;
 - (79.10) those (sole proprietors) who have no prior conviction for any of the following crimes:

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- (79.10.1) crimes against public justice as stipulated under Title VII of Chapter XV, and economic crimes stipulated under Chapter XVII of Act IV of 1978 on the Criminal Code, in force until 30 June 2013;
- (79.10.2) corruption as defined in Chapter XXVII of Act C of 2012 on the Criminal Code, crimes against the safety of payments and stamps as defined in Chapter XXXVIII, crimes incurring a loss to the budget as defined in Chapter XXXIX, money laundering as defined in Chapter XL, crimes violating financial management as defined in Chapter XLI, crimes affecting the protection of consumers and the fairness of competition as defined in Chapter XLII or crimes of illicit data acquisition or crimes against information systems as defined in Chapter XLIII of the Penal Code;
- (79.11) those that have no executive officers or owners holding a business share of at least 25 (twenty-five) percent banned from holding an executive office in an economic entity, or previously convicted of any of the crimes listed in sub-paragraph (79.10) above;
- (79.12) those whose activities have not been restricted by a court in a final and enforceable decision pursuant to Paragraphs (1) and (2) of Section 5 of Act CIV of 2001 on Criminal Law Measures Applicable against Legal Entities;
- (79.13) those that were not excluded from a previous procedure, completed within 3 (three) years prior to the application deadline, for the use of state assets for the submission of false data;
- (79.14) those that qualify as transparent organisations pursuant to point 1 of Section 3 (1) of the National Assets Act;
- (79.15) those who have not been found guilty, whether under a final decision passed by the Hungarian competition authority or under a final and enforceable decision passed by a Hungarian court, becoming final during the 24 (twenty four) months preceding the launch of the auction procedure, of violating the prohibition of agreements aimed at restricting economic competition, the prohibition of abuse of a dominant market position or of concentrations between undertakings as defined under the Competition Act;
- (79.16) those that do not belong to the same group of undertakings that also includes an undertaking that is subject to any of the personal (participation) conditions for exclusion as per Sections (79.4), (79.8), (79.9) and (79.15) above.

2.10.2 Joint Application (consortium), group of undertakings

- (80) Each applicant can only apply and participate independently in the auction procedure; several persons or organisations may not submit an Application together, no consortium may participate in the auction procedure.
- (81) Entities and organisations belonging to a single group of undertakings are allowed to participate in the auction procedure, subject to the acquisition conditions specified in Section (49.2).

3 Detailed rules for the auction procedure

3.1 Fundamental principles of the auction procedure

- (82) When carrying out the auction procedure, the Auctioneer shall proceed in line with the legislation in force – in particular the stipulations set out in the Electronic Communications Act, the GPAP Act, the Ápszr. – and with this Documentation, taking into consideration the criteria of objectiveness, transparency, non-discrimination and proportionality. In order to fulfil the fundamental principles and the objectives defined in the Electronic Communications Act, the GPAP Act and the Ápszr., the Auctioneer shall act in line with the requirement of equal treatment.
- (83) Applicants/participants shall proceed in line with the principles of good faith and fairness in the auction procedure, and shall cooperate with the Auctioneer for the sake of the fast and successful conclusion of the procedure. Applicants/participants shall not conduct themselves in a manner aimed at deceiving the Auctioneer, shall not make declarations (including the Application) in the course of the auction procedure that contain fallacious (incorrect, false) facts and shall not conceal any facts having significance in terms of the Auction in any of their declarations or documents (including the Application). Applicants/participants shall be liable for the adequacy, valid grounds, timeliness, credibility and truthfulness of the contents of their statements (including the Application) issued in the context of the auction procedure.
- (84) In the event of a breach of the requirements set out in Section (83), if the Documentation does not establish any further legal consequences, the Auctioneer may impose a procedural fine on the applicant or participant.

3.1.1 Prohibition of modification or withdrawal of the Application

- (85) The Application cannot be changed or withdrawn (bid validity).
- (86) Submitting any paper, data or document in response to the Auctioneer's call to remedy a deficiency, request for declaration or data provision does not qualify as a modification of the Application.
- (87) The behaviour of an applicant/participant violating the provisions of this chapter will not dissolve their affiliation with the Application of another applicant/participant.
- (88) The legal consequences of violating the prohibition of modification or withdrawal (modification and withdrawal hereinafter collectively as: withdrawal) of the Application are specified in Chapter 3.18.2.

3.2 Language of the procedure

- (89) The official language of the auction procedure shall be Hungarian. The language of the Documentation, the notice, and all communication between the applicants/participants and the Auctioneer pertaining to the Auction shall be Hungarian. Any document made available by the Auctioneer in another language is provided for informational purposes only.
- (90) If the applicant or participant submits a document in a language other than Hungarian, an e-certified Hungarian translation or a certified Hungarian translation drawn up as a notarised electronic

document must be attached as well regarding the document concerned. The authority will accept the non-Hungarian language document with the content as translated.

- (91) If necessary, public documents issued outside Hungary or private documents certified by a foreign court, authority, notary or any other person bestowed with 'public trust' must be submitted with a supplementary certificate. If the public document issued abroad or the original of the private document certified by a foreign court, administrative authority, notary or other person vested with public authority is a paper document, the applicant must submit a notarised electronic certified copy of the original document.
- (92) If, due to an international agreement or the practice of reciprocity, having public documents issued abroad and private documents certified by a foreign court of law, administrative authority, notary or any other person bestowed with public trust, furnished with diplomatic legalisation by the Hungarian mission authority to the country of issue is not necessary, all documents affected must be submitted separately, together with the documents – equipped with an electronic signature – supporting the legality of the lack of authentication. The Auctioneer may request further documents, certificates or declarations, remedy of deficiencies or the issue of declarations from the applicant/participant as proof of compliance with the requirements of this chapter.

3.3 Hierarchy of the documents of the announcement for the competitive procedure

- (93) The announcement for the competitive procedure includes the notice published in terms of the announcement for the competitive procedure, this Documentation and its annexes specifying the detailed conditions and provisions of the announcement for the competitive procedure, and any amendments to the Documentation or the notice.
- (94) In the event of any discrepancy between the documents constituting the announcement for the competitive procedure and the other documents, the prevailing order among the documents shall be the following: amendment to the Documentation, this Documentation, amendment to the notice and the notice.

3.4 Secrets protected under the law and the protection of personal data

- (95) During the auction procedure – in particular when allowing access to the documents, during the announcement of the decision and its publication – the Auctioneer shall ensure the protection of personal data, and the secrets and data protected by the law. The legislation on data processing and the Data Processing Notice (Privacy Policy)⁵ published by the Auctioneer on the basis of that legislation shall also apply to the auction procedure. By submitting an Application, the applicant also expressly accepts the terms of the Data Processing Notice (Privacy Policy).
- (96) Pursuant to Section 33 (2) of the Electronic Communications Act, the applicant/participant may designate the range of data they deem necessary to be treated as restricted data, with due heed to the protection of the secrets protected under the law, in particular trade secrets or other equitable interests as well as any significant considerations related to electronic communications policy

⁵ https://nmhh.hu/cikk/199384/Adatkezelesi_tajekoztato

or to the state of competition on electronic communications market, except for data that is public for general public interests and data that may not be classified as restricted data under the law as defined in relevant legislation. In this case, the applicant/participant shall also prepare a document version that does not contain the data defined above. (In the case of Applications, an unclassified Application as per Chapter 3.10.)

- (97) Any data, document, information or notification delivered to the Auctioneer by the applicant/participant in the context of the auction procedure shall be deemed to be a trade secret if qualified as such by the applicant/participant in line with relevant legislation.
- (98) The Offer and the Counter-Offer forming part of the Application cannot be classified as secret protected under the law or protected for any other reason; the Auctioneer shall publicly disclose these pieces of information to the extent required to conduct the auction procedure and meet the statutory legal requirements, in the cases specified in this Documentation.
- (99) The applicant acknowledges that the Auctioneer shall treat the entirety of the Application submitted by them, the annexes thereto, the portions submitted in the context of remedy of deficiencies and the written questions and declarations submitted to the Auctioneer in compliance with the Electronic Communications Act – in particular Section 33 thereof – and with the other relevant legislation governing the handling of data. Accordingly, the Auctioneer, the Auctioneer's officers, employees, authorised parties, experts and organisations and persons acting on their behalf, as well as other persons or bodies authorised by legislation, may access data protected under the law without the consent of the applicant, in keeping with the rules governing the protection of trade secrets.
- (100) Pursuant to Section 27 of the Electronic Communications Act, the Auctioneer, the Auctioneer's officers, employees, authorised parties, experts and organisations and persons acting on their behalf, as well as applicants, shall preserve secrets protected under the law and ensure that no unauthorised persons gain access to them.
- (101) Data, information and documents containing secrets protected under the law shall be strictly used by the Auctioneer, the Auctioneer's officers, employees, authorised parties, experts and organisations and persons acting on their behalf, as well as applicants/participants for the purpose of performing their obligations related to the auction procedure defined in legislation or in the Documentation.
- (102) Applicants/participants shall inform their employees, colleagues, authorised parties, performance assistants and all other cooperating entities involved in the Application of the confidential nature and scope of the data, information and documents handled confidentially, and shall oblige them to observe their obligations regarding the protection of data. Applicants/participants shall be held liable for the conduct of their contractors and assistants.
- (103) At the Auctioneer's special request regarding the publicity of data of public interest, the applicant/participant shall clearly specify, supported by justification, which data among those protected under the law would entail disproportionate harm to the applicant/participant's business interests in the event of disclosure or publication.
- (104) The decision concluding the auction procedure may be freely viewed with the exception of personal data, secrets protected by the law and protected data, and the Auctioneer is obliged to make the decision public.

3.5 Copyrights

(105) The applicant hereby acknowledges that the Auctioneer shall acquire non-exclusive usage rights, free of charge, for the entire duration of the copyright period, for the complete Application submitted by the applicant – including the information contained therein – whether in its entirety or in parts, as well as any other material, submission or question submitted to the Auctioneer in the context of the application or the auction procedure (hereinafter jointly, for the purposes of this section: other submissions), which the applicant expressly authorises by submitting the Application. This right – subject to the rules on the protection of secrets protected under the law and pertaining to data of public interest – extends to the use of the Applications and other submissions submitted by the applicant related to this auction procedure, in particular their hard copy or electronic reproduction and their use in the work material prepared by the Auctioneer on the application and the auction procedure.

3.6 The applicant's or participant's responsibility in respect of the Auction

(106) As part of its Application, the applicant shall submit a declaration stating its intent to participate in the auction procedure, in accordance with Annex 2.

(107) The applicant shall be responsible for studying and interpreting the Documentation, including its annexes. The applicant/participant shall bear the risk of being denied registration in the auction register by the Auctioneer or its Application being pronounced invalid by the Auctioneer in the event it does not fulfil the formal requirements set out in the relevant legislation or the Documentation or some other legal consequences recorded in the Documentation are identified.

(108) The applicant shall be responsible for assessing the domestic electronic communications market and the legislative environment governing electronic telecommunication activities – including the relevant standards and other normative requirements – and any related risks, for keeping abreast of changes and for complying with current regulations. The Auctioneer assumes no responsibility for any disadvantage affecting the applicant/participant because it did not adequately assess the domestic electronic communications market and the legislative environment governing electronic telecommunication activities during or following the Auction.

(109) The applicant/participant shall bear all costs of preparing and submitting the Application. Reimbursement of the participation fee may only be possible in the cases defined in Section 7 (3) of the Ápszr.; in all other cases the applicant/participant cannot reclaim its costs related to the Auction from the Auctioneer, its authorised party, cooperating entity or any other state or public authority or authority on any grounds, irrespective of the Auction's outcome.

(110) Applicants/participants shall refrain from any conduct that may impact the outcome of the Auction in any form or unfairly influence the decisions made by other applicants/participants of the Auction, thus, in particular, from any form of collusion, and from making any declarations, statements or indications – especially in public (through the press, electronic media, online websites or forums) – that may impact

(110.1) the value of the obtainable entitlements to frequency use,

(110.2) the conditions of participation in the Auction, and/or the contents of the Application, or

(110.3) the business plans related to the obtained entitlements.

- (111) If the conduct described in Section (110) is perpetrated by a person or an organisation other than the applicant/participant, the Auctioneer shall assess the degree of responsibility borne by the affected applicant/participant for the statement or conduct, and may request the submission of relevant data.
- (112) If there is a suspicion of a breach of the fairness of the auction procedure, the Auctioneer shall be entitled to report this to the Hungarian Competition Authority (hereinafter: the Competition Authority). The above shall not restrict the Competition Authority's competence to conduct competition surveillance procedures pursuant to relevant legislation, irrespective of the contents of the Documentation.
- (113) If it is established in a final administrative or final and enforceable court decision that the entitlement to frequency use subjected by the auction procedure was obtained based on an unlawful agreement (for the purposes of this section, hereinafter: cartel agreement) as per Section 11 of the Competition Act, or it is established in a final administrative or binding court decision following the successful conclusion of the Auction that the applicant/participant had concluded a cartel agreement that also impacted its participation in this Auction, the Auctioneer shall revoke the entitlement to radio spectrum use affected by the cartel agreement. The entitlement holder's entitlement to radio spectrum use shall be terminated with immediate effect on the day the resolution declaring revocation with immediate effect becomes final or enforceable.

3.7 Participation fee and conditions of payment

- (114) Applicants to the auction procedure shall pay, via an irrevocable transfer, until expiry of the application deadline, a participation fee of HUF 10,000,000 + VAT, totalling HUF 12,700,000 (in words: twelve million, seven hundred thousand Hungarian forints) to the Auctioneer's account number 10032000-00300939-00000017 held at the Hungarian State Treasury. The words "32 GHz részvétel" (32 GHz participation) must be indicated in the payment reference field of the bank transfer.
- (115) The Auctioneer will issue an invoice to the relevant entity's name and address after payment of the participation fee is received.

3.8 Contents of the Application

- (116) The Application submitted in the manner and within the deadline specified in Section (161) shall include the application for participation, consisting of the documents as per Sections (117.1)–(117.9) and the Offer as per Section (117.10).

3.9 Deeds, documents and statements to be submitted as part of the Application

- (117) In order to apply for the auction procedure, the applicant is obliged to submit the following deeds, documents and statements in accordance with the formal requirements set out under Section (125):
- (117.1) The name, identification and contact details of the contact person representative as per Section (58), the following contact details: telephone number, e-mail address, Hungarian

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postal address, and the authorisation given for contact/communication purposes as per Sections (58)–(59);

- (117.2) If the right of the natural person who is submitting the Application to represent the applicant independently cannot be established from a public register or statutory public register, the authorisation issued by the applicant, whereby it empowers the natural person – identified through the Client Gate – who is submitting the Application to submit the Application;
- (117.3) The “Applicant’s declarations” as per Annex 2, duly filled in by the applicant;
- (117.4) If the applicant is not recorded in a Hungarian public register or statutory public register, any of the following documents suitable for identification of the applicant:
- (117.4.1) in the case of a Hungarian organisation, a certificate issued by a public authority, court, etc. (hereinafter referred to as “official certificate”) in an electronic document equipped with an electronic signature required for identification, or in the case of a paper-based official certificate, a notarised electronic certified copy of the original document, indicating at least the date of establishment of the economic entity, the fact of its existence, the authority keeping the register of the economic entity, the identity of the owners of the applicant, the persons authorised to represent it and the manner of representation; where applicable, information on the amount of the subscribed capital;
 - (117.4.2) in the case of non-Hungarian registration, a certificate issued by the competent European authority in the form of an electronic document with an electronic signature, or another paper-based certificate issued by a foreign authority, certified by a notary in the form of an electronic document, which verifies at least the fact and date of incorporation, the amount of the registered capital, the names of the owners of the company and the persons authorised to sign on behalf of the company (authorised signatories);
 - (117.4.3) in the case of other non-Hungarian organisations, the registration decision or official certificate issued by the competent European authority in the form of an electronic document with an electronic signature, or another European document issued in the form of an electronic document with an electronic signature, authentically attesting the fact of registration, or another paper-based document issued by a foreign authority, certified by a notary in an electronic document, authentically attesting the fact of registration, and a certified copy of the articles of association or other deed of foundation, consolidated with the amendments, being in force on the day the auction procedure is launched, issued by a notary in an electronic document not more than 30 (thirty) days prior to the application deadline;
- (117.5) In relation to the applicant, the following certificates, documents and declarations supporting compliance with the conditions for participation specified in the Subsections of Section (79), not older than 30 (thirty) days prior to the application deadline:
- (117.5.1) A reference to being listed in the database of taxpayers with no public debt, or – if no such reference has been made – a certificate electronically issued by the competent tax authority, equipped with an electronic signature, attesting compliance with the provisions set forth in Section (79.2).
 - (117.5.2) (In the case of non-resident legal entities or other unincorporated entities, or a legally competent organisation in its own right – a non-Hungarian applicant –, a

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certificate issued by the competent tax authority of the country of establishment on the satisfaction of the condition specified in Section (79.2). If the competent authority does not issue a certificate on the fulfilment of the conditions specified in Section (79.2), a declaration by the applicant on the fulfilment of the condition, certified by a notary. Such certificates and/or declarations shall be legalised as per Section (91) unless the applicant provides evidence in accordance with Section (92) that legalisation is not necessary.

- (117.5.3) In case of non-resident legal entities or other unincorporated entities, or a legally competent organisation in its own right, i.e. a non-Hungarian applicant, a certificate issued by the competent authorities of the country of residence that the applicant is not under any bankruptcy, liquidation, winding-up procedure or any other procedure aimed at terminating the organisation. If the competent authority does not issue the type of certificates specified in this section, a declaration by the applicant, certified by a notary on the fulfilment of the condition, must be submitted. Such certificates and/or declarations shall be legalised as per Section (91) unless the applicant provides evidence in accordance with Section (92) that legalisation is not necessary.)
- (117.6) The certificate as per Section (165).
- (117.7) The procedural guarantee as per Sections (127)-(130), taking the provisions of Sections (136)(136)-(139) into account.
- (117.8) All documents and statements – other than those stipulated under sub-paragraphs (117.1)–(117.7) above – that are compulsory pursuant to the provisions of the Documentation, the GPAP Act or the Ápszr., or that confirm any of the circumstances requiring certification.
- (117.9) If the Application contains data to be handled confidentially as per Section (96), the unclassified Application as per Chapter 3.11 as well.
- (117.10) The Offer complying with Section (166.2) (the Offer Form as per Annex 3/A and the performance guarantee, in accordance with Sections (131)–(134), and, in the case of more than one guarantee, the guarantees together, taking Sections (136)-(139) into account).
- (118) If the Auctioneer suspects that the applicant or participant has not complied with the requirements of Section (79.14) as declared in the applicant's statements, the Auctioneer may require the applicant or participant to submit additional documents, certificates or statements, or to remedy deficiencies or to provide a supplementary statement in order to prove that the applicant has complied with the requirements of Section (79.14).
- (119) The applicant is not obliged to submit a deed or document which is accessible from a public or statutory public register.

3.10 Unclassified Application

- (120) If the Application – not including the Offer documents as per Section (205) – also includes an electronic document containing confidential information as per Section (96), unclassified versions of such documents must be submitted with the Application, subject to Section (121).

- (121) The applicant must also apply the rules in Sections (161)–(163) for the submission of unclassified electronic documents, so that, in the case of the unclassified version of the document, the file name and file extension must be the same as the name and extension of the file containing the secret, with the proviso that the file name of the file not containing classified information must begin with the word “titokmentes” (unclassified), whereas the file name of the file containing classified information must begin with the word “titkos” (classified).
- (122) The applicant must upload and submit the unclassified versions of the Application in accordance with Section (167.1), onto the form as per Section (161).
- (123) All unclassified electronic documents of the Application must be signed with an electronic signature of the person (or persons, in the case of joint signatory rights) legally authorised to represent the applicant, including the unclassified version of documents issued by third parties.
- (124) If an unclassified application is submitted, the applicant must declare, under Annex 2, that the content of the unclassified document submitted as part of the Application is identical to the document for which the applicant has carried out the relevant declassification, except for the redacted confidential parts.

3.11 Formal accessories and formal validity requirements of the Application

- (125) Formal accessories and formal validity requirements of the Application:
 - (125.1) The Application must be submitted in accordance with Section (161).
 - (125.2) The Application must include the documents, deeds and declarations listed in Section (117)
 - (125.3) The Application cannot contain any inserts, deletions or overwritten segments.
 - (125.4) The Application shall be drawn up in Hungarian. For the rules on translation and certification, refer to Sections (90)–(92) herein.
 - (125.5) The documents submitted as part of the Application must be signed in accordance with Section (56). If the applicant is an economic entity, the written representation of which does not take place by corporate signature, the applicant's declarations submitted as part of the application shall be signed with an electronic signature by the representative of the applicant, or by the applicant if they are sole proprietor.
 - (125.6) Where the original of a document issued by a third party is a paper-based document, the applicant must submit a certified electronic copy of the original document, issued by a notary, as part of the Application.
 - (125.7) Those original documents of the Application which have been issued and signed with an electronic signature by third parties must be submitted in unchanged form.
 - (125.8) The application may not contain any conditions or restrictions contrary to the Documentation.

3.12 Formal invalidity of the Application

(126) Applications shall furthermore be formally invalid if

- (126.1) the applicant did not pay the participation fee on time;
- (126.2) the Application was not submitted according to the notice or by the deadline as per Section (176) or within the time limit specified in Section (178)-(179) and in the manner specified in Section (161);
- (126.3) from the time of the submission of its Application – and for the entire duration of the remaining period of the auction procedure – the applicant does not comply with the personal (participation) conditions specified in Sections (79)–(80);
- (126.4) the documents, declarations or deeds submitted as part of the Application do not meet formal requirements specified in Section (125);
- (126.5) the Application does not include the documents, deeds and declarations referred to in Section (117);
- (126.6) the Applicant attaches the Offer, or any part thereof, to its application for participation;
- (126.7) the applicant has not properly submitted all the documents, declarations or deeds required to be submitted as part of the Application pursuant to the GPAP Act, the Ápszt. or the Documentation;
- (126.8) in the cases specified in Section (154);
- (126.9) in all other cases where the Documentation provides for the application of the consequences of formal invalidity.

3.13 Procedural guarantee

- (127) To guarantee the performance of its obligation to comply with the procedural rules in Section (85) and its obligation to keep the bid validity specified in the Documentation, according to the relevant provisions of the Ápszt. and this chapter, the applicant, as part of its Application, shall submit – as procedural guarantee – a guarantee (guarantor's declaration) undertaken by a credit institution, equipped with the issuer's electronic signature, irrevocable or only revocable subject to the Auctioneer's authorisation, with the Auctioneer as its beneficiary.
- (128) The amount of the procedural guarantee to be submitted as part of the Application – and within that the application for participation – shall be at least HUF 30,000,000 (in words: thirty million Hungarian forints).
- (129) One or more, up to a maximum of 4 (four) guarantees covering the entire amount specified in Section (128) may be submitted as a procedural guarantee.
- (130) The procedural guarantee must be valid from the submission of the Application until at least 31 May 2023.

3.14 Performance guarantee

- (131) In accordance with the relevant provisions of the Ápszr. and this chapter, as part of its Application, the applicant shall submit – as performance guarantee – a guarantee undertaken by a credit institution, equipped with the issuer's electronic signature (guarantor's declaration), irrevocable or only revocable subject to the Auctioneer's authorisation, wherein the Auctioneer is indicated as the beneficiary of the guarantee.
- (132) The amount of the performance guarantee to be submitted as part of the Application – and within that the Offer – must reach the total amount of the offer as specified by the applicant on the Offer Form.
- (133) One or more, up to a maximum of 4 (four) guarantees covering the entire amount calculated according to Section (132) may be submitted as a performance guarantee.
- (134) The performance guarantee must be valid for the period from the date of submission of the Application until 15 June 2023.
- (135) The full as well as the proportional amount (i.e. equal to the outstanding amount) of the performance guarantee may be drawn immediately if the winning participant does not perform or only partially performs its obligation to pay the full auction fee.

3.15 Common rules of the guarantor's declarations

- (136) As guarantee, such a guarantor's declaration – issued by a credit institution meeting the requirements determined in Sections (138)-(139) – may be accepted which meets the following conditions:
- (136.1) it is an original document containing a guarantee undertaking, bearing the issuer's electronic signature, in which the guarantor undertakes an obligation to perform the guarantee upon the Auctioneer's written request, without inspecting the underlying legal relationship, in line with the rules governing bank turnover, within 3 (three) banking days at the latest, and in which
- (136.2) the Auctioneer is the sole beneficiary of the guarantee, and
- (136.3) the guarantee is irrevocable or can be revoked only with the authorisation of the Auctioneer.
- (137) The guarantor's declaration shall also include the following:
- (137.1) the name and bank account number of the guarantor;
- (137.2) the name, address, current account number and tax number (tax identification code) of the obliged party (applicant);
- (137.3) the amount of the guarantee, in words and numbers;
- (137.4) the starting and end dates of the validity of the guarantee;
- (137.5) an obligation according to which the issuer of the guarantee (guarantor) shall pay the amount drawn down by the Auctioneer within 3 (three) working days via wire transfer to the Auctioneer in the event of the full or partial exercise of the guarantee;

- (137.6) a declaration by the guarantor stating that the provisions of Section 6:436 of the Civil Code shall not apply; furthermore
- (137.7) the guarantor's declaration agreeing to notify the Auctioneer of any changes in the data included in the guarantor's declaration in writing within two (2) working days of learning of the occurrence of such a change.
- (138) In the present auction procedure, guarantor's declarations issued electronically by only those credit institutions authorised to offer financial services in Hungary, which are entitled to provide, as a minimum, at least the financial service specified in point (g) of Section 3 (1) of the Credit Institutions Act (i.e. undertaking surety and guarantee and other banking obligations), out of the services identified in Section 3 (1) of the Credit Institutions Act are accepted as a guarantee.
- (139) Guarantees cannot be accepted if extraordinary measures as per Section 189 of the Credit Institutions Act have been instituted against the guarantor within one year preceding the commencement of the auction procedure. If extraordinary measures are instituted against the guarantor during the term of the auction procedure, the applicant/participant, shall be obliged, if called upon by the Auctioneer, to furnish sufficient new guarantee(s) as per the Documentation.

3.16 Rules on the extension and release of the guarantee

- (140) The participants shall extend the guarantees upon the Auctioneer's request, with the conditions included in the resolution published by the Auctioneer, or provide a new guarantee if the extension is not possible or upon participant's decision in the following cases:
 - (140.1) if the Auctioneer suspends the auction procedure based on Section 31 (4) of the Electronic Communications Act, after the decision taken on resuming the procedure;
 - (140.2) if the regulatory decision as per Section (258) or Section (266) is not made until 15 May 2023 in the auction procedure;
 - (140.3) if a public administration lawsuit has been brought against the authority's decision concluding the auction procedure;
 - (140.4) if the court ordered the Auctioneer to carry out a new procedure.
- (141) The guarantees submitted based on the demand of the Auctioneer as per Section (140) must comply with the provisions of Sections (127)–(130) and (131)–(134).
- (142) The performance guarantee shall be released by the Auctioneer in the manner specified in Sections (145)–(148), if – through the Auctioneer's final decision – the Auctioneer:
 - (142.1) did not enter the applicant into the auction register in accordance with Section (191),
 - (142.2) deleted (removed) the participant from the auction register as per Section (191),
 - (142.3) declared the procedure unsuccessful,
 - (142.4) did not declare the participant as winner of the procedure,
 - (142.5) terminated the procedure, or
 - (142.6) the winner paid the entire auction fee.

- (143) With the exception of Sections (140), (140.4) and (144), the Auctioneer shall release the procedural guarantee, or the remaining part thereof, after the decision concluding the auction procedure has been communicated, in the manner specified in Sections (145)–(148).
- (144) The Auctioneer shall release the procedural guarantee or the remaining part thereof – in the manner specified under Sections (145)–(148) – if its decision rejecting the admission of the applicant into the auction register has become final.
- (145) The Auctioneer shall release the guarantee through the Hungarian State Treasury.
- (146) Within 30 days of the decision becoming final (in the cases as per Sections (142) and (144)) or within 30 days from the decision being notified (in the case as per Section (143)) the Auctioneer shall prepare a declaration of waiver regarding the release of the guarantee, equipped with an electronic signature, and send it electronically to the guarantor together with the electronic bank guarantee. Simultaneously, the Auctioneer will inform the applicant/participant about the fact of sending, too.
- (147) Simultaneously with Section (146), the Auctioneer shall forward the hard copy (paper) declaration of waiver – having the same content as the electronic declaration of waiver – to the Hungarian State Treasury by post.
- (148) The declaration of waiver as per Section (146) of the Documentation shall be sent by the Hungarian State Treasury to the guarantor by post within 30 days of receipt, together with a note stating that the signatories of the declaration of waiver have the authority to sign on behalf of the Auctioneer and that their signatures correspond to the specimen signatures on file with the Hungarian State Treasury.

3.17 Supervision of compliance with the conditions of participation

- (149) The applicant/participant shall be obliged to comply with the conditions of the formal validity requirements specified in the Documentation from the time of submission of its Application throughout the entire duration of the auction procedure.
- (150) If the applicant/participant does not comply with any of the participation conditions for any reason during the auction procedure, it shall notify the Auctioneer thereof without delay. No modifications, changes or legal succession in the person of the applicant/participant affecting the formal validity of the Application shall be permitted during the auction procedure. The applicant, participant shall be obliged to inform the Auctioneer without delay of any change or any circumstance anticipating a change affecting its Application, and at the same time, shall submit any documents required by the Documentation that are affected by the change, in a format similar to those of the originals. Notification of changes shall not be considered a modification of the Application under Section (85).

3.18 Legal consequences of infringing conduct by the applicant/participant

- (151) The applicant/participant is obliged to comply with the procedural rules and regulations set out in the Documentation and in legislation, in particular in the Ápszr. (in this chapter, hereinafter referred to as: **procedural law obligations**).

- (152) In the event of violating the procedural obligations, the Auctioneer may impose a procedural penalty in accordance with Section 38 of the Electronic Communications Act, or apply the legal consequences of the formal invalidity of the Application in the cases specified in the Documentation, and the Auctioneer shall also enforce the procedural guarantee in cases specified in Section (156).
- (153) If the breach of procedural law obligations entails, in addition to the legal consequences identified in this chapter, a fine or legal consequence or indemnification or other civil or criminal liability, the legal consequences applied pursuant to the Documentation or the provisions of the Ápszr. shall not exempt the applicant/participant from other legal consequences arising from their behaviour, and imposing a fine or exercising a procedural guarantee does not affect the right of the Auctioneer to apply other legal consequences.
- (154) Besides imposing the procedural fine set out under Section 38 of the Electronic Communications Act, the Auctioneer shall apply the legal consequences of formal invalidity i.e., the Application is deemed formally invalid according to Chapter 3.9) if:
- (154.1) it is established in a final and enforceable court judgment – or such judgment is not excluded by the lack of substantiation —, that the criminal conduct by the applicant/participant or its officer, employee, worker, agent or expert has misled the Auctioneer and such conduct has, in the opinion of the Auctioneer, affected the outcome of the auction procedure in earnest or has the potential to do so;
 - (154.2) a final regulatory decision establishes that the Auctioneer has been misled by the unlawful conduct of the applicant/participant, and this conduct influences the results of the merits of the auction procedure or is suitable for that purpose;
 - (154.3) the applicant/participant has violated the provisions of Section (83), including in the event that the participant does not make a declaration in response to a request from the Auctioneer with regard to the issue(s) as per Section (193);
 - (154.4) if the participant withdraws its Application or any part of it (including the Offer) or the Counter-Offer after the registration in the auction register as per Section (191); or
 - (154.5) the Offer of the participant is invalid for any reason.

3.18.1 Enforcing the procedural guarantee

- (155) The corresponding, appropriate amount of the procedural guarantee may be enforced by the Auctioneer immediately.
- (156) The procedural guarantee, as per Section (128), shall be enforced by the Auctioneer in the following cases, if the applicant/participant:
- (156.1) withdraws the Application or any part of it (including the Counter-Offer as well) before being registered in the auction register as per Section (191),
 - (156.2) fails to pay on time the procedural fine levied by the Auctioneer.
- (157) The amount of the procedural guarantee enforced shall be due to the Auctioneer.

3.18.2 Legal consequences of violating the prohibition of modification or withdrawal of the Application

- (158) If the Application or any part of it (including the Offer or any part thereof as well) is withdrawn before being registered in the auction register as per Section (191), the Auctioneer shall apply the legal consequences of an invalid Application against the applicant withdrawing the Application.
- (159) If the participant withdraws its Application or any part of it (including the Offer or any part thereof) after the registration in the auction register as per Section (191), the Auctioneer shall apply the legal consequences stipulated for invalidity of the Application and shall enforce 30% of the procedural guarantee provided in the amount specified in Section (128).
- (160) If the participant withdraws its Counter-Offer or any part thereof, the Auctioneer shall enforce 30% of the procedural guarantee provided in the amount specified in Section (128).

4 Auctioning procedure

4.1 Submission of Applications

- (161) The documents of the Application specified in Sections (117)-(118) must be submitted in one copy, only electronically, after Client Gate authentic identification, in accordance with the requirements set out in the Documentation, using the dedicated form provided for this purpose by the Auctioneer, available on the day and within the time period specified in Section (176). For detailed technical (IT) information on how to submit the form, see Annex 5.
- (162) The Auctioneer shall make available the supporting test forms (the Client Gate authentic identification test form⁶ and the virus check test form⁷) to assist in the use of the form referred to in Section (161) 21 days prior to the day specified in Section (176), and shall ensure its availability until the end of the period as per Section (176).
- (163) All documents of the Application, including the ZIP container file in accordance with Section (170), must be given a unique file name by the applicant. The file name must not contain the following characters: / ? : * " > < | { } [] % + , ; = @, and the name of the uploaded files must not contain any classified information, in particular the amount of the Offer, the number of blocks requested or a reference to them. Uploaded electronic documents must not exceed the size specified on the form.
- (164) All documents of the Application – except for the documents as per Section (125.7) – must be signed with an electronic signature of the person (or persons, in case of joint signatory rights) legally authorised to represent the applicant. If the applicant is an economic entity, the written representation of which does not take place by corporate signature, the applicant's declarations submitted as part of the application shall be signed with an electronic signature by the representative of the applicant, or by the applicant if they are sole proprietor.
- (165) If the legal right of representation of the representative(s) who signs the Application in accordance with Section (164) cannot be established from a public or statutory public register, the applicant

⁶ <https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00202/index.html>

⁷ <https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00203/index.html>

The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.

must provide evidence of the right of representation of the representative(s) by means of an electronic document or certificate issued by a notary as part of the Application.

(166) The Application shall comprise the following two parts:

(166.1) the application for participation consisting of the documents as per Sections (117.1)–(117.9) and

(166.2) the Offer consisting of the documents as per Section (205).

(166.3) An applicant's Application is the totality of the documents submitted in the course of the application process.

(167) All documents of the Application must be submitted by the applicant in accordance with Section (161).

(167.1) The applicant shall upload all documents of the application for participation on to the form, separately from the Offer, without encryption or packaging (attached one by one), and

(167.2) the applicant shall upload the Offer as per Section (205) on to the form, separately from the application for participation, in a ZIP container file, as described in Section (170)

and submit these as specified in Sections (161)–(164) and on the form.

(168) The applicant shall submit the documents forming the Application as attachments, on the form as per Section (161), broken down into the sections specified on the form, in accordance with the provisions of Section (163). The size of the documents submitted as part of the application for participation must not exceed 10 MB per document. The size of the ZIP file must not exceed 200 MB! The combined size of the attachments on the form must not exceed 500 MB. To resolve any possible technical problem (including a technical problem due to the size limit) encountered when completing the form, please contact the Auctioneer using one of the contact details provided on the form.

(169) If the right of the person submitting the Application to represent the applicant independently, other than a natural person, cannot be established from a public register or statutory public register, the form must be completed with an authorisation (power of attorney) stating that the person submitting the Application is authorised to submit the Application on behalf of the applicant.

(170) The Applicant must place the documents constituting the Offer – as specified in Section (205) – in a ZIP compressed container file before uploading them on the form and must encrypt the ZIP file using AES-256 encryption with unique password protection. The password must consist of at least 14 characters and be composed of lower case, upper case letters, numbers, special characters (the Auctioneer recommends the use of the tools available at the following links: <https://www.jel-szogenerator.hu> and the 7-ZIP software at <https://www.7-zip.org/>). The form does not allow the uploading of a ZIP file without a password. After uploading, the form will display the HASH key of the uploaded ZIP file (unique string, imprint) in a read-only field and ask for confirmation that the HASH key of the uploaded file matches the original. For more information, see Annex 4.

(171) The use of a password that does not comply with Section (170) shall not render the Offer invalid, however, the Auctioneer shall not be liable if – as a result of the use of a password that does not comply with Section (170) – the protection of the Offer will not be ensured.

(172) If the ZIP compressed container file referred to in Section (170) contains multiple Offer Forms with different contents, the Offer with the highest total offered amount, containing valid bids as per

Section (214) shall be considered by the Auctioneer as the applicant's Offer. The other Offer Forms will be disregarded by the Auctioneer.

- (173) The password referred to in Section (170) may be disclosed to the Auctioneer only in the manner and at the time specified in the Documentation or in the call issued by the Auctioneer during the procedure. The receipt of the password will be recorded by an electronic notarial certificate and confirmed directly by the Auctioneer as well. Keeping the password secret from third parties shall be the responsibility of the applicant/participant, who is obliged to take all necessary security measures to ensure that such password is not disclosed to unauthorised persons. Only after the password has been made known to the Auctioneer shall the Auctioneer be responsible for ensuring that the password remains protected from unauthorised third parties.
- (174) The Application must include all documents, declarations, deeds and certificates specified under Section (117).
- (175) The fact and circumstances of submitting the Application shall be certified by an electronic notarial certificate issued with respect to the given application.
- (176) Applicants may submit their Application – taking into account the requirements of form and content detailed in the Documentation – in the manner specified in Section (161),
between 09.00 and 12.00 hours on 3 February 2023.
- (177) The Auctioneer shall consider an Application to have been submitted within the time limit set out in Section (176) if the Applicant has received an electronic confirmation within that time limit, following successful authentic identification through the Client Gate. The official time of submission is the time indicated on the official notification (form receipt acknowledgement) sent by the Client Gate next to the referenced receipt number.
- (178) If the submission of the Application is not possible due to force majeure or permanent malfunction on the date and at the starting time specified in Section (176), the Auctioneer shall notify the parties registered according to Section (65) by electronic means no later than the starting time specified in Section (176) and, if and when the technical conditions for such notification are met, shall publish the respective notification on its website. The Auctioneer shall provide information of the new date and time of submission of the Application at least two days in advance.
- (179) If on the day specified in Section (176), after the starting time specified therein, a force majeure event or a permanent malfunction occurs, the Auctioneer shall – unless different information is provided by it – allow the submission of the Application between 9.00 and 12.00 on the next working day.
- (180) One applicant may submit one Application only, and more than one person or organisation may not jointly submit an Application.
- (181) If an applicant submits more than one Application within the application deadline, the Auctioneer shall deem the Application submitted at the latest date to be the sole Application submitted.

4.2 Opening of the applications for participation

- (182) The Auctioneer shall start the processing of the applications for participation no earlier than on the first working day following the deadline set out in Section (176).

- (183) The Auctioneer shall start the opening of the applications for participation in the order in which they have been submitted.
- (184) All applications for participation shall be opened in the presence of a notary, without the applicants being present.
- (185) The notary shall certify the fact and circumstances of the opening of applications for participation in the form of electronic notarial minutes.
- (186) After opening the application for participation, the Auctioneer will send to the applicant the electronic copy of the notarial minutes certifying the fact and circumstances of opening the applicant's application for participation and will also notify the applicant's contact person representative of the fact of sending.
- (187) In the course of opening the applications for participation, the conditions of validity regarding form and content shall not be examined by the Auctioneer.

4.3 Formal examination of the Application

- (188) The Auctioneer shall examine within 15 (fifteen) days of the expiry of the application deadline whether the application for participation complies with the personal (participation) and formal requirements for validity set out in Section 9 of the Ápszr. and in the Documentation (hereinafter collectively: formal validity conditions). In this context, the Auctioneer shall examine only the fact of submission of the Offer.
- (189) During the examination of the formal validity of the application for participation, the Auctioneer shall examine if any of the reasons for invalidity specified in Section (126) exist. The Auctioneer shall also examine whether the Application contains the documents, deeds and declarations listed in Section (117), and if the manner and time of their submission complies with the conditions specified in Sections (161) **Hiba! A hivatkozási forrás nem található.**-(180).
- (190) As regards the formal validity conditions, deficiencies (if any) may be remedied only in the following cases, except for the Offer Form as per Section (205.1): not including the Offer Form according to paragraph (206.1) and the performance bank guarantee subject to Section (205).
- (190.1) the document, declaration or deed submitted as part of the Application does not meet the formal requirements specified in Chapter 3.11;
- (190.2) the Application does not include the documents, deeds and declarations referred to in Sections (117.1)-(117.9);
- (190.3) the applicant has not properly submitted all the documents, declarations or deeds required to be submitted as part of the Application pursuant to the GPAP Act, the Ápszr. or the Documentation.

4.4 Registration as participant

- (191) The Auctioneer registers applicants submitting formally valid Applications in the auction register.
- (192) The Auctioneer shall notify registered applicants of their registration in the auction register and shall publish the list of applicants registered as participants on its website on the day they are registered. Among the data listed in the auction register, the name of the participants and the data allowing their identification shall be public.

(193) After the admission into the auction register, the Auctioneer shall invite the participants, within the meaning of Section (191), to declare which of the other participants registered in the auction register are part of the same group of undertakings as the participant concerned.

4.4.1 Refusal to register as a participant, legal remedy

(194) The Auctioneer shall issue an order refusing registration as a participant.

(195) An order as per Section (194) that has become final may be challenged in a public administration lawsuit within fifteen days of its notification.

4.5 Opening of the Offer

(196) The Offers of the participants shall be opened by the Auctioneer after the participants have been entered into the auction register.

(197) On the last working day prior to the opening of the Offer at the latest, the Auctioneer shall notify the participant of the date and time of opening of its Offer and the method of sending the password required for the opening. The password must be sent by SMS to the telephone number specified in the notification, unique for each participant, at the time specified by the Auctioneer. The Auctioneer shall also inform the contact person representative of the participant of the notification.

(198) The opening of the Offers shall be carried out in the presence of a notary, and participants may not be present there.

(199) The notary shall certify the fact and circumstances of the opening of the Offers in the form of electronic notarial minutes.

(200) If the participant fails to send the password to the Auctioneer required for opening the Offer based on the notification as per Section (197), or if the password sent by the participant is not suitable for opening the Offer, the Auctioneer shall, without delay, notify the participant's contact person representative at the phone number specified in the Application about the absence or inadequacy of the password. The Auctioneer shall make an audio recording of the conversation. If the participant's contact person representative is not available at the contact channel provided, the Auctioneer shall retry the notification on one occasion following the first attempt. If the opening is not possible due to the reasons stipulated in this Section, the Auctioneer shall apply the legal sanction provided for in Section (207) against the participant.

(201) If the procedure as per Section (200) is successful within 1 hour of the first attempt to make contact, the Auctioneer shall proceed with the opening of the Offer.

(202) It shall be the responsibility of the participant to send the correct password in accordance with the notice as per Section (197), and the Auctioneer shall not be liable for any legal consequences arising from the incorrect sending of the password or failure to send the password.

(203) In the course of opening the Offers, the conditions of validity shall not be examined by the Auctioneer.

(204) Following the opening, the Auctioneer will send to the participant the electronic copy of the notarial minutes and will also notify the participant's contact person representative of the fact of sending.

4.6 Content of the Offer

(205) The applicant must submit the following as part of its Offer:

- (205.1) the Offer Form as per Annex 3/A, and
- (205.2) the performance guarantee as per Sections (131)-(134), in the case of more than one guarantee, the guarantees together.

4.7 Invalidity of content of the Offer (substantive invalidity)

- (206) If the Applicant has not submitted a performance bank guarantee as part of the Offer, or if the amount of the performance bank guarantee is less than the amount specified in Section (132), the Offer shall be invalid.
- (207) The Offer will be invalid if the content of the Offer Form is not accessible for any reason, in particular due to the lack of a password suitable to open the Offer or due to a virus infection.
- (208) The Offer shall be invalid if the number of bids on the Offer Form that are considered valid under Section (214) does not reach the minimum acquisition limit specified in Section (49.1).

4.8 Remedy of deficiencies

- (209) If the Application does not meet the formal validity conditions and Section (190) allows for the remedy of deficiencies in terms of the given validity condition, the Auctioneer shall call upon the applicant/participant to remedy the deficiency within 5 (five) days.
- (210) The Auctioneer may set a deadline longer than 5 (five) days — but no more than fifteen (15) days pursuant to Section 10 (5) of the Ápszr. — for fulfilling the provisions of the call to remedy a deficiency if the 5 (five) day duration is evidently insufficient for acquiring the data, certificate or declaration.
- (211) If the applicant/participant remedies the deficiency and supplements the missing items within the deadline specified in the call, the Application shall be considered as having been originally correct and complete.
- (212) The deadline specified for performing the remedy of deficiencies represents the expiry of the limitation period; no petition for excuse may be submitted after its expiry.
- (213) No remedy of deficiencies shall be allowed in terms of the Offer Form and the cases referred to in Section (206) concerning the performance guarantee.

4.9 Validity of the bid

(214) The value of the bid indicated in the Offer Form or Counter-Offer Form

- (214.1) must be equal to the reserved price as set out in Chapter 2.3 and the value of the bid made on the Counter-Offer Form must exceed the bid value made on the Offer Form in accordance with Section (227);
- (214.2) must be an even, whole number;

- (214.3) the last 3 (three) digits of the bid value may not be 3 (three) consecutive numerals in increasing or decreasing order;
 - (214.4) the last 3 (three) digits of the bid value may not be 3 (three) identical numerals;
 - (214.5) a bid value cannot be the same as another bid value.
- (215) Bids not complying with Section (214) shall be considered invalid (examples are given in Annex Annex 5).

4.10 Determination of the winners of the auction

- (216) Bids valid under Section (214) shall be assessed by the Auctioneer in accordance with Section 4.10.1. In the course of the assessment, the Auctioneer will disregard the invalid bids as per Section (215).

4.10.1 Evaluation of the bids

4.10.1.1 *Sorting the bids of each participant*

- (217) The Auctioneer shall put the valid bids in order – irrespective of the serial number of the lots for which the given bids were submitted by the participant in the Offer Form – according to the size of the bid values, separately for each participant and shall determine the arithmetic mean of the 2 (two) highest bids per participant, rounded off to a whole number according to the general rounding rules. In the course of the further steps of the evaluation process, the Auctioneer shall consider the resulting average prices per participant as the bid values submitted for the lots numbered 1–2, ranked by size in the Offer Form.

4.10.1.2 *Ranking of the bids*

- (218) The Auctioneer shall re-rank all the valid bids made by all participants, calculated by the Auctioneer in accordance with Section (217), according to their amount, and determine the order of the bids of the participants relative to each other.
- (219) Except in the cases provided for in Sections (220)–(245), based on the order, the Auctioneer shall declare in its decision closing the auction procedure the 24 (twenty-four) participants that submitted the highest bid as the winners of the auction. This will be the interim, i.e. quantitative result of the auction.

4.10.1.3 *Ranking of the bids where the valid bids submitted by participants belonging to the same group of undertakings would result in winning bids for more than 6 (six) lots*

- (220) If, during the assessment as per Section (218), valid bids made by participants belonging to the same group of undertakings would result in winning bids for more than 6 (six) lots, the Auctioneer shall declare the winning bids for a maximum of 6 (six) lots to participants belonging to the same group of undertakings, subject to the rules restricting the acquisition of entitlements to frequency

use as set out in Section (49) – also taking into account the minimum acquisition rules described in the Section (49) – and all further bids of participants belonging to the same group of undertakings that do not result in a winning bid shall be deleted.

(221) In the course of the assessment, the highest valid bids made by the other participants – directly following the deleted bids – shall take the place of the deleted bids in the ranking, in each case, and the Auctioneer shall determine the order of the bids and the winning bids on the basis of this amended ranking.

(222) If bids of the same amount result in a tie in such a manner that the Auctioneer is unable to determine which valid bids submitted – for the maximum of 6 (six) lots – by the individual participants belonging to the same group of undertakings would result in a winning bid – also taking into account the minimum acquisition rule set out in Section (49), the Auctioneer shall issue an invitation for counter-offers to the participants belonging to the same group of undertakings as set out in Sections (223)-(226).

4.10.1.4 *Invitation for counter-offers in the event of bids submitted by participants belonging to the same group of undertakings*

(223) In order to break the tie as per Section (222), the Auctioneer shall issue an invitation for counter-offers to participants belonging to the same group of undertakings on a maximum of 1 (one) occasion.

(224) Participants shall have 3 (three) days from the day following the date of receipt of the Auctioneer's invitation for counter-offers to submit counter-offers for the lots affected by the tie. The deadline specified for making the counter-offer represents the expiry of the limitation period; no petition for excuse may be submitted after its expiry.

(225) In the invitation for counter-offers, the Auctioneer shall inform the participants belonging to the same group of undertakings affected by the tie of the following:

- the number of lots affected by the tie; and
- the amount of the bid value affected by the tie, and
- how many participants belonging to the same group of undertakings are affected by the tie.

(226) The participant shall submit its Counter-Offer as per Annex 3/B on the Counter-Offer Form, in one copy, only electronically, using the form⁸ provided for this purpose by the Auctioneer, after authentic identification through the Client Gate. The rules for the submission of Offers set out in Sections (163)-(165), (167)-(173) shall apply to the submission of Counter-Offers, with the proviso that no performance guarantee shall be submitted as part of the Counter-Offer submission. The Auctioneer shall disregard any other deeds or documents attached by the participant to the Counter-Offer Form. The fact and circumstances of submitting the Counter-Offer shall be certified by an electronic notarial certificate issued with respect to the given Counter-Offer.

(227) The rules set for the completion of the Offer Form shall apply *mutatis mutandis* to the completion of the Counter-Offer Form, with the deviations set out in the Documentation. Counter-Offers can be submitted by sending the Counter-Offer Form as per Annex 3/B to the Auctioneer, upon the Auctioneer's invitation, provided that new bids may be placed on the Counter-Offer Form only in respect of the lots affected by the tie. In the case of a counter-offer, the counter-offer bid value indicated on the Counter-Offer Form must exceed the bid value made on the Offer Form, and the

⁸ <https://e-nmhh.nmhh.hu/e-nhh/4/urlopok/esf00128/index.html>

participant must comply with the numbering requirements set out in Section (214) with respect to the bid value. If a Counter-Offer is submitted, no new performance guarantee matching the value of the bids of the counter-offer made on the Counter-Offer Form needs to be provided.

- (228) If any bid made in the course of a counter-offer procedure is deemed invalid as set out in Section (214) or does not meet the content requirements, this shall not result in the invalidity of the original bid or the substantive invalidity of the Offer. In such a case, the Auctioneer shall disregard the invalid bid(s) made by the participant in the course of the counter-offer submission and shall evaluate the participant's original bid. If the participant does not comply with the terms of the Auctioneer's invitation for counter-offers within the time limit set out in Section (224), the Auctioneer shall only evaluate the participant's original valid bid.
- (229) The Auctioneer shall re-evaluate the Counter-Offer Forms submitted in response to the invitation for counter-offers in accordance with Section (218), except that the result of the evaluation may only modify the relative order of the bids submitted for the lots affected by the invitation for counter-offers. If the submission of counter-offers also concerns the acquisition of the entitlement of the 2 (two) pieces of lots indicated as the minimum acquisition limit, the Auctioneer shall also carry out the averaging as per Section (218) prior to the evaluation as per Section (217).
- (230) If the result of the evaluation as per Section (218) following the submission of counter-offers still results in a tie in such a manner that the Auctioneer is unable to determine which of the bids submitted – for the maximum of 6 (six) lots – by the individual participants would result in a winning bid – also taking into account the minimum acquisition rule set out in Subsection (49.1), the Auctioneer shall determine the order of the bids for the tied valid bids by holding a lottery as provided for in Section (231).

4.10.1.5 Lottery in the event of bids submitted by participants belonging to the same group of undertakings

- (231) In the case referred to in Section (230), the Auctioneer shall determine the bids to be deleted by holding a lottery for the participants belonging to the same group of undertakings. The lottery shall be held in the presence of a notary, and participants may not be present at the lottery.
- (232) If a lottery is necessary, the Auctioneer shall notify the contact person representative of the participants concerned.
- (233) The notary shall certify the fact and circumstances of the lottery in the form of electronic notarial minutes.
- (234) Following the lottery, the Auctioneer shall send the participants concerned a copy of the electronic notarial minutes certifying the fact and circumstances of the lottery by electronic means and shall also notify the participant's contact person representative of the fact of sending.

4.10.1.6 General invitation for counter-offers

- (235) After the actions and procedures set out in Sections (220)–(233) have been carried out, or where no such actions and procedures are required, the Auctioneer shall, after conducting the assessment in accordance with Section (218), invite the participants who submitted bids affected by the tie to submit counter-offers, if the number of valid bids exceeds the number of lots that can be acquired (i.e. if participants submit valid bids for at least 25 (twenty-five) lots) and the bids of the

same amount – in the order determined by the assessment of the bids in accordance with Section (218) – result in such a tie that the Auctioneer is unable to determine the winners of all lots.

(236) The Auctioneer shall send a general invitation for counter-offers on a maximum of 1 (one) occasion, only in respect of the lots affected by the tie, to those participants who/which have the possibility to acquire the entitlement to at least 2 (two) pieces of lots, indicated as the minimum acquisition limit as per Section (49.1), together with the lots affected by the tie.

(237) In the invitation for counter-offers, the Auctioneer shall inform the participants affected by the tie of the following:

- the number of lots affected by the tie; and
- the amount of the bid value affected by the tie, and
- how many participants are affected by the tie.

(238) The rules set out in Sections (226)–(228) shall apply to the submission of the Counter-Offer.

(239) The Auctioneer shall re-evaluate the Counter-Offer Forms submitted in response to the invitation for counter-offers in accordance with Section (218), except that such re-evaluation may only modify the relative order of the counter-offer bids submitted for the lots affected by the invitation for counter-offers.

(240) If the submission of counter-offers also concerns the acquisition of the entitlement to 2 (two) lots indicated as the minimum acquisition limit, the Auctioneer will also carry out the averaging as per Section (218) prior to the evaluation as per Section (217).

(241) If the result of the evaluation as per Section (218) following the submission of counter-offers still results in a tie in such a manner that the Auctioneer is unable to determine which of the bids submitted – for the maximum of 6 (six) lots – by the individual participants would result in a winning bid – also taking into account the minimum acquisition rule set out in Section (49.1), the Auctioneer shall determine the order of the bids for the tied valid bids by holding a lottery as provided for in Section (242).

4.10.1.7 Determination of the winner by a lottery

(242) If there is still a tie for the lots concerned following the procedure set out in the Section (241), the winner shall be determined by the Auctioneer by holding a lottery in the presence of a notary. Participants may not be present at the lottery.

(243) If a lottery is necessary, the Auctioneer shall notify the contact person representative of the participants concerned.

(244) The notary shall certify the fact and circumstances of the lottery in the form of electronic notarial minutes.

(245) Following the lottery, the Auctioneer shall send the participants concerned a copy of the electronic notarial minutes certifying the fact and circumstances of the lottery by electronic means and shall also notify the participant's contact person representative of the fact of sending.

5 Establishing the results of the auction procedure

5.1 Forming user blocks

5.1.1 General rules

- (246) User blocks shall be established by the Auctioneer after the quantitative result has been established in accordance with Section (218) and Section (219). The Auctioneer shall merge the awarded base blocks into one theoretical user block per participant, and shall then place the theoretical user blocks in the 32 GHz frequency band as described in this Chapter.
- (247) The theoretical user blocks shall be placed by the Auctioneer in such a way that the portions of the bands not made available as a result of this procedure form the largest possible contiguous block within the frequency.
- (248) No separation band between the user blocks shall be established in the 32 GHz frequency band in the course of placement of the theoretical user blocks.
- (249) The result of the user block formation shall be included by the Auctioneer in the decision closing the procedure.

5.1.2 Placement of the blocks by order

- (250) As a first step, the Auctioneer shall put the theoretical user blocks into order. In determining the order, the size of the theoretical user blocks shall be taken into account by the Auctioneer first. The order will be established by the Auctioneer moving from the largest to the smallest theoretical user block.
- (251) In the case of theoretical user blocks of identical size, the theoretical user block of the participant offering the overall higher auction fee for the awarded lots will come first in the order of placement of the theoretical user blocks.
- (252) In the case of theoretical user blocks of equal size and auction fees of equal amount, the order of placement of the user blocks shall be determined by the Auctioneer on the basis of the alphabetical order of the names of the participants in the auction register (according to the MSZ 3401-81 standard), in such a way that the user block of the participant having a name coming first in the alphabetical order shall be placed first by the Auctioneer.
- (253) Based on the order established according to Sections (250)-(252), the Auctioneer will place the theoretical user blocks, proceeding upwards in the frequency, starting from the lower end of the frequency band.

5.1.3 Deviation from the order

- (254) If, according to the order, the 12th base block (32.179-32.193/32.991-33.005 GHz) as per the NFFF is located within (but not on the edge of) the user block of a certain entitlement holder, the Auctioneer shall establish the band arrangement plan(s) in deviation from the order, by taking into account the following criteria:
- (254.1) the 12th base block as per the NFFF be located primarily on the edge of a user block, or, if this is not possible
- (254.2) the 12th base block as per the NFFF be located within the undistributed frequency amount.

5.1.4 Conciliation rules for choosing between several possible solutions

(255) In case the formation of user blocks can not be determined based on the rules of Sections (250)-(254), taking into consideration that there may be several legal solutions simultaneously to form the user blocks, the Auctioneer shall prepare up to 5 (five) possible plans for user block formation. Amongst the numbered plans prepared by the Auctioneer, the first one is the solution it finds the most favourable overall based on technical considerations, and the fifth one is the solution it finds the most unfavourable.

(256) In the case referred to in Section (255), the Auctioneer shall send the plans to all the winning participants concerned after the determination of the winners of the auction and shall invite the participants to indicate in their declarations which of the plans proposed for the user block formation methods is the most appropriate for the participant concerned. If a participant fails to make a declaration within the time limit available for making declarations, or does not indicate any of the plans in its declaration or does not clearly indicate a plan, the Auctioneer shall form the user blocks based on the declarations of the other participants. If all the participants concerned indicate the same plan, the Auctioneer shall form the user blocks according to that plan. If winning participants indicate different plans, the Auctioneer shall form the user blocks based on the plan that is considered the most appropriate by the majority of the winning participants in their declarations. In case there is no plan supported by a majority or if there are several such plans, the Auctioneer shall form the user blocks according to the solution indicated by it as the first one.

5.2 Closing the procedure

(257) The procedure ends in one of the cases described in Chapters 5.2.1, 5.2.2, 5.2.3.

5.2.1 Determination of the Winners

(258) The Auctioneer's regulatory decision concluding the auction procedure shall state the following:

- (258.1) if the auction procedure is successful, the winner(s) of the Auction and the entitlements to use the user block(s), formed as per Chapter 5.1 that the winner(s) have won; or
- (258.2) the fact that the auction procedure was unsuccessful.

(259) The Auctioneer shall make a consolidated resolution for all user blocks involved in the auction procedure.

(260) The Auctioneer shall notify each participant in the procedure of its decision closing the procedure, and shall publish its decision on its website.

(261) The winner may only be selected from among the participants that, from the submission of their application, have continuously complied with the conditions set out in the Documentation and in the Ápszr.

(262) In its decision concluding the Auction, the Auctioneer shall announce the conditions of usage of the user block in line with the Documentation.

(263) Through obtaining their entitlements to frequency use, the winning participant obtains exclusive rights to initiate a framework licencing procedure for the use of the frequencies acquired.

5.2.2 Declaring the auction procedure unsuccessful

(264) The procedure is unsuccessful if all Applications are invalid.

(265) The Auctioneer shall notify each participant of its decision to pronounce the auction procedure unsuccessful, and shall also publish the decision on its website.

5.2.3 Termination of the auction procedure

(266) In the cases set out under Section 20 (1) of the Ápszr., the Auctioneer shall terminate the procedure by way of an order.

5.2.4 Legal remedy

(267) The appeal (legal remedy) against the decision closing the procedure shall be governed by the provisions of the Electronic Communications Act and the GPAP Act.

6 Acquisition of the entitlement to radio spectrum use, rights and obligations

(268) The date of acquisition of the entitlement to radio spectrum use as per Section (263) shall be the date when the decision as per Section (258.1) becomes final in accordance with Section 22(2) of the Ápszr.

(269) The Auctioneer shall oversee full compliance with and performance of the stipulations set out in the administrative resolution specified in Section (258.1) within the context of an administrative supervisory procedure.

(270) The entitlement holder shall be obliged to meet the conditions attached to the acquisition of the entitlement to radio spectrum use as listed in the Documentation and the regulations pertaining to electronic communications during the entire duration of the entitlement, and if it does not fulfil any condition, the legal consequences set out in the Electronic Communications Act shall apply.

6.1 Conditions of payment of the total auction fee

(271) Pursuant to Section 7 of Act CXXVII of 2007 on value added tax, the full amount of the payable auction fee shall be VAT-exempt due to the public authority activity nature of this auction procedure.

(272) The total auction fee shall be transferred to the Concession Fees account number 10032000-01031582 managed by the Hungarian State Treasury, specifying „32 GHz teljes árverési díj” (“32 GHz total auction fee”) in the payment reference field.

(273) In the event of late payment, the Auctioneer is entitled to charge a late payment penalty as per the GPAP Act and, following a one-off demand for payment and the expiration of the payment deadline specified in the demand for payment, to satisfy its claim from the performance guarantee provided by the participant and submitted as per Sections (131)–(134).

6.2 Radio licence

(274) A radio station and radio system can be installed and deployed subject to planning, with the pertaining installation and radiation parameters specified in the course of planning. Technical plans do not have to be presented or submitted to the Auctioneer; however, subsequently, upon the request of the Auctioneer, the detailed planning documentation of both current and former stations shall be made available to the Auctioneer within 5 (five) days, in a printed form and duly signed.

(275) The radio station and radio equipment can be operated based on the framework licence, once it is finalised. When submitting its application for a framework licence to the Auctioneer, the submitting party must take into account any applicable deadlines for the licencing procedure, as stipulated in the legislation. No further individual licence needs to be requested for the installation and operation of the individual stations.

(276) The framework licence includes the general conditions for operating the electronic communications network without any specific parameters of any particular radio station.

(277) As stipulated in the framework licence, detailed data on each station must be provided to the Auctioneer electronically, in the format defined by the Auctioneer, via the PchIF/PC Data Exchange software

http://nmhh.hu/tart/index/153/Elektronikus_adatszolgaltatas_PCAdatcsere

6.3 Extent of the band fee, method of its payment

(278) A frequency fee (band fee) is payable for the use of the frequency during the period of validity of the entitlement to radio spectrum use.

(279) Based on the Fee Decree, the start date of the band fee payment obligation shall be the first day of validity of the radio licence. The earliest starting date for the validity of the radio licence issued on the basis of the entitlement to radio spectrum use shall be the date when the full auction fee is credited to the account determined by the Auctioneer, in accordance with Section 22 (3) (a) of the Ápszr.

(280) For the detailed rules on establishing the amount of the band fee and payment of the band fee, please refer to the Fee Decree.

(281) The band fee shall be paid monthly, against the invoice issued by the Auctioneer, via bank transfer to the Authority's bank account 10032000-00300939-00000017 with the Hungarian State Treasury.

6.4 Conditions for the secondary trading of entitlement, right to radio spectrum use

(282) The entitlement, right to radio spectrum use acquired in the auction procedure may be transferred and leased, either partially or entirely.

(283) Partial transfers or leases of frequencies may be made on a per lot basis.

(284) The Secondary Trading Decree governs the procedural rules on the secondary trading of the right and entitlement to radio spectrum use acquired in the auction procedure.

6.5 Amendment of the entitlement to radio spectrum use

(285) The amendment of the entitlement to radio spectrum use shall be governed by the provisions of the GPAP Act, the Electronic Communications Act and the Pfgfr.

6.6 Cooperation in special periods and in the interest of national defence

(286) The holders of the entitlement to radio spectrum use shall be obliged to comply with the provisions set out in the Electronic Communications Act and the other rules applicable to electronic communications, and the provisions specified in Act XCIII of 2021 on the Coordination of Defence and Security Activities and its implementing regulations, for the preparation, economic and material provision of services in the event of a special legal order, coordinated defence activities and unexpected attacks, and also the provisions on cooperation with state organisations in the interest of national defence. The use of certain frequency bands may be restricted in the event of a special legal order, coordinated defence activities or unexpected attack.

6.7 Cooperation for the purposes of gathering confidential information

(287) Holders of the entitlement to radio spectrum use are obliged to comply with the relevant provisions set out in the Electronic Communications Act, Act CXXV of 1995 on National Security Services, and Government Decree 180/2004 (V. 26.) on the rules of cooperation between the organisations performing electronic communications tasks and the organisations authorised to collect confidential information and obtain confidential data.

6.8 Data Provision

(288) Holders of the entitlement to radio spectrum use shall disclose to the Auctioneer any data necessary for performing the tasks within the competence of the Auctioneer, as specified in the relevant legislation, in the manner and with the conditions set forth in legislation, even if such data qualify as trade secret. Upon the request of the holder of the entitlement to radio spectrum use, the Auctioneer shall handle the data disclosed by them confidentially and in line with data protection rules.

6.9 Revoking the entitlement, right to radio spectrum use upon request

(289) Upon the request of the holder of the entitlement to radio spectrum use, the Auctioneer shall revoke the entitlement and right to radio spectrum use.

(290) If the entitlement holder requests the withdrawal of the entitlement to radio spectrum obtained in the context of the auction procedure, the amount paid by the participant for the entitlement to radio spectrum (in particular the total auction fee) shall not be reimbursed.

Annex 1

Technical specifications for the use of the 32 GHz frequency band

1. Legislative background

The technical specifications that fundamentally define the use of the 32 GHz frequency band are set out in the NFFF, in particular in Annexes 2 and 3 of the NFFF.

2. Other requirements for the use of the frequency band

In addition to the technical specifications laid down in the NFFF, the holder of the entitlement to radio spectrum use must also comply with the conditions specified in Sections (45)–(47) and in this annex when planning and deploying networks and systems and when using the frequencies.

2.1. Rules on the coexistence of user blocks

In adjacent user blocks within the 32 GHz frequency band, in particular at the edges of the block, the holders of the entitlement to radio spectrum use shall be obliged to use such equipment complying with the ETSI Standard 302 217-2, the spectrum mask of which provides sufficient out-of-block attenuation to allow the use of co-polarisation on the block-edge channels of the adjacent user blocks (ACCP - adjacent channel co-polarised) without interference, irrespective of the installation site. This also provides the possibility to use both polarizations (CCDP - co-channel dual polarization) on a given link in case of a block edge channel. To this end, the spectrum mask requirements for ACCP operation, as specified in ETSI Standard 302 217-2, shall be met at the edges of the adjacent user block(s), depending on the spectrum efficiency class and the channel bandwidth used by the equipment.

2.2. Rules to avoid possible interference between adjacent user blocks

In the event of harmful interference between the systems of different holders of the entitlement to radio spectrum use within the 32 GHz frequency band, despite compliance with the spectrum mask requirements required by the standard, the holders of the entitlement must take the necessary measures and cooperate with each other to resolve any interference problems as soon as possible after the source of the interference has been identified.

3. Terms of using radio spectrum in border areas

In the case of frequency use by stations in border areas, the conditions and requirements stipulated in the currently effective agreements and protocols signed by the Auctioneer and the neighbouring countries must be taken into account, and – in the absence of such documents – the results of successful individual international coordination.

3.1. Rules of international coordination in the 32 GHz frequency band

For the 32 GHz frequency band, there is currently no band-specific bilateral or multilateral agreement that would set requirements for frequency use in border areas, however, the HCM (Harmonised Calculation Method) Agreement contains coordination requirements for fixed service systems in the 1-43.5 GHz frequency range, which also includes the 32 GHz frequency band. Coordination of the stations is not mandatory, but individual coordination is recommended if the given holder of the entitlement to radio spectrum use wishes to ensure protection from stations of the neighbouring country. The coordination distance recommended in the HCM Agreement for the 32 GHz frequency band is 30 km. Under the

agreement, successful coordination can be carried out for a fixed service link if the TD (threshold degradation) caused by the transmitter of the link to be coordinated does not exceed 1 dB at the receiver of the link operating in a neighbouring country that was previously successfully coordinated or is under coordination.

Out of Hungary's neighbours, the currently effective version of the HCM Agreement is in force with Austria, Slovakia, Romania, Croatia and Slovenia. Ukraine and Serbia are not signatories to the HCM Agreement, but in practice coordination with these countries is also done under the HCM Agreement.

An abstract of the agreements and protocols concluded by the Authority can be found in the document entitled "Information on the requirements of the international coordination agreements in the fixed service and land mobile service" available on the Authority's website, here:

http://nmhh.hu/dokumentum/263/nemzetkozi_koord_megall_allando_helyu_es_foldi_mozgo.pdf

Agreements concluded or amended after the auction procedure may supplement or override earlier agreements. The Auctioneer shall involve the affected holders of entitlements to frequency use in the preparation of the amendments. The Auctioneer shall make available all relevant agreements as pdf files to applicants or participants upon their request.

3.2. Frequency use of neighbouring countries in the 32 GHz frequency band

The ITU register does not contain notifications for the neighbouring countries.

On the basis of the HCM Agreement, hundreds of links in Slovakia and a few in Ukraine have been coordinated with Hungary in the 32 GHz frequency band. According to international questionnaires, Slovenia, Croatia, Romania and Serbia currently have no operating links in the 32 GHz frequency band, while Austria uses the 32 GHz frequency band, but has not yet initiated coordination with Hungary.

As a result of making the 26 GHz frequency band available for MFCN systems, several countries started to consider the potential use of the 32 GHz frequency band in the near future, so more intensive use and international coordination can be expected in neighbouring countries as well.

4. Interference issues related to adjacent frequency bands

4.1. The 31.5-31.8 GHz frequency range

The 31.5-31.8 GHz frequency band (hereinafter referred to as: the 31 GHz frequency band) below the 32 GHz frequency band is designated for fixed service systems, passive services applications (Earth exploration-satellite, space research) and radio astronomy stations on a primary basis. Considering the national radio spectrum use, there is currently no use of any kind of service in this frequency band, but the use of radio astronomy stations is conceivable in the near future. If radio astronomy stations are expected to be installed in this frequency band, special attention should be paid to compliance with the out-of-band emission requirements set for fixed service systems operating in the 32 GHz frequency band in the vicinity of the site.

In addition, the 31 GHz frequency band is designated for fixed service point-to-point systems, among others, on a primary basis but there has been no use in this frequency band so far. No interference problems are expected in the course of fixed service systems using the 31 GHz frequency band. At the lower end of the 32 GHz frequency band, there is sufficient guard band to prevent interference from out-of-band emission.

4.2. The 33.4-35.2 GHz frequency range

The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.

The 33.4-35.2 GHz frequency range above the 32 GHz frequency band is planned for space research and designated for non-civil meteorological, speedometer, military and other radars operating in the radiolocation service on a primary basis. The band is a NATO harmonised military band, but there is no actual national use and no plans to use the frequency band in this way in the near future. No interference problems are therefore expected in this adjacent frequency range in the near future.

DRAFT

Annex 2

APPLICANT'S DECLARATIONS

Applicant's name: _____

tax number: _____

company registration number or other identifier: _____

place of incorporation or registration (country code): _____

as applicant (hereinafter referred to as: the **Applicant**) applying for the auction procedure announced for the *entitlement to frequency use related to the 32 GHz frequency band* on 12 January 2023.

1. by signing this declaration, declares expressly, irrevocably and without reservation or restriction of any rights that it intends to participate in the auction procedure announced for the entitlement to frequency use related to the 32 GHz frequency band (hereinafter referred to as: the auction procedure);
2. accepts to be bound by the provisions of the documentation of the auction procedure (hereinafter referred to as: the Documentation) and the notice published regarding the auction procedure, irrevocably and without reservation or restriction of any rights;
3. it intends to participate in the auction procedure and submit an Offer and, in the cases specified in the Documentation, a Counter-Offer for the 32 GHz frequency band;
4. it accepts the legal consequences of the withdrawal of the Offer or the Counter-Offer as set out in the Documentation and the consequences of failure to make a Counter-Offer as set out in the Documentation;
5. acknowledges that entities and organisations belonging to a single group of undertakings may participate in the auction procedure, but may not acquire (not even collectively) more lots than the maximum number of lots a participant is allowed to acquire according to the Documentation;
6. expressly and irrevocably accepts, without any reservation of rights, that any communication to any of the contact details of the below-named contact person representative using any of the communication methods described in Paragraph (1) of Section 26 of Act CL of 2016 on the Code of General Administrative Procedure shall qualify as a legally binding notice towards the Applicant or participant:
 - a. Contact person representative:
 - i. name: _____
 - ii. address: _____
 - iii. mother's name: _____
 - iv. place and date of birth: _____
 - v. number of the document suitable to prove identity: _____
 - b. Contact data of the contact person representative:
 - i. mobile phone number: _____
 - ii. e-mail: _____
 - iii. postal address: _____
7. it expressly, irrevocably and without any legal reservation accepts that the applicant/participant shall be solely responsible for the conduct of the contact person representative, in particular if the contact person representative was unavailable, and shall bear any adverse consequences thereof;
8. declares that
 - a) its Application meets the requirements laid down in Section 9 of NMHH Decree no. 4/2011 (X. 6.) on the rules of the auctions and the competitive procedures for obtaining the entitlement to frequency use;
 - b) it has paid the participation fee as required under Section (114) of the Documentation;

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- c) it does not have any outstanding public debts overdue for more than sixty days, as specified in the Act on the Rules of Taxation;
- d) it is not the subject of proceedings for a declaration of bankruptcy, liquidation, winding-up, forced liquidation or any other dissolution proceedings;
- e) it does not have supervisory fee or frequency fee payment obligations towards the Auctioneer that are more than 30 (thirty) days overdue;
- f) it has not suspended its activities and its activities have not been suspended;
- g) it is not a (current or past) public officer, employee, consultant or proxy of the Auctioneer who participated in drafting the Documentation, or is a close relative of such person;
- h) it does not have executive officers or owners holding a share of at least 25 (twenty-five) percent who are (current or past) public officers, employees, consultants or proxies of the Auctioneer having participated in drafting the Documentation, or are close relatives of such persons;
- i) it does not have executive officers or owners holding a business share of at least 25 (twenty-five) percent who were banned from holding an executive office in an economic entity, or previously convicted for any of the crimes listed in point j);
- j) if the applicant applies as a sole proprietor, it has no prior conviction for any of the following crimes:
 - 1) crimes against public justice as stipulated under Title VII of Chapter XV, and economic crimes stipulated under Chapter XVII of Act IV of 1978 on the Criminal Code, in force until 30 June 2013;
 - 2) corruption as defined in Chapter XXVII of Act C of 2012 on the Criminal Code, crimes against the safety of payments and stamps as defined in Chapter XXXVIII, crimes incurring a loss to the budget as defined in Chapter XXXIX, money laundering as defined in Chapter XL, crimes violating financial management as defined in Chapter XLI, crimes affecting the protection of consumers and the fairness of competition as defined in Chapter XLII or crimes of illicit data acquisition or crimes against information systems as defined in Chapter XLIII of the Penal Code;
- k) its activities have not been restricted by a court in a final and enforceable decision pursuant to Paragraphs (1) and (2) of Section 5 of Act CIV of 2001 on Criminal Law Measures Applicable against Legal Entities;
- l) it was not excluded from a previous procedure, completed within three years prior to the application deadline, for the use of state assets for the submission of false data;
- m) it qualifies as a transparent organisation pursuant to point 1 of Section 3 (1) of the National Assets Act;
- n) it has not been found guilty, whether under a final decision passed by the Hungarian competition authority or under a final and enforceable decision passed by a Hungarian court, becoming final during the 24 (twenty four) months preceding the launch of the auction procedure, of violating the prohibition of agreements aimed at restricting economic competition, the prohibition of abuse of a dominant market position or of concentrations between undertakings as defined under Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices;
- o) it applies for and participates in the auction procedure as an individual person/entity instead of together with several persons/entities or as a consortium;
- p) it does not belong to a group of undertakings that also includes an undertaking that is subject to any of the personal conditions for exclusion as per Sections (79.4), (79.8), (79.9) and (79.15) of the Documentation;
- q) the content of the unclassified document submitted as part of the Application is identical to the document the unclassified version of which the Applicant submitted, except for the redacted confidential parts.

Electronically signed document.

The declaration shall be filled out by the Applicant, taking note of the following:

1. The modification and withdrawal of the declaration are subject to the legal consequences included in the Documentation.
2. The declaration shall not contain any inserts, deletions or overwritten segments.
3. The declaration shall have to be signed using an electronic signature. If the Applicant is such an economic entity, the written representation of which does not take place by corporate signature, the declarations shall be signed with an electronic signature by the representative of the Applicant.
4. The Applicant may not attach any limitations or conditions to the declaration.
5. REQUIRED: APPLICANT'S NAME, TAX NUMBER, COMPANY REGISTRATION NUMBER OR OTHER IDENTIFIER, ELECTRONIC SIGNATURE

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Annex 3/A Offer Form

Offer Form

to the auction subjecting the
“entitlements to the frequency use of the 32 GHz frequency band”

The reserved price of one lot: HUF 50.000.000 (in words: fifty million Hungarian forint)

name of the applicant:	
tax number:	
company registration number or other identifier:	
2x28 MHz lot	The bid value (HUF)
	In words:
Lot no. 1	
Lot no. 2	
Lot no. 3	
Lot no. 4	
Lot no. 5	
Lot no. 6	

The Offer Form must be completed by the applicant, taking into account the following:

- Bids must be submitted for at least two lots on the Offer Form, and bid values must be written out in words.
- The individual bid values specified in the Offer Form must comply with the numbering requirements set out in the Documentation.
- The modification and withdrawal of the Offer Form are subject to the legal consequences included in the Documentation.
- The Offer Form cannot contain any inserts, deletions or overwritten segments.
- The Offer Form must be signed using an electronic signature, in the case of an economic entity, it must be signed and submitted with authorised signature. If the applicant is such an economic entity, the written representation of which does not take place by corporate signature, the declarations shall be signed with an electronic signature by the representative of the applicant.
- The applicant may not attach any limitations or conditions to the Offer Form.
- REQUIRED: APPLICANT'S NAME, TAX NUMBER, COMPANY REGISTRATION NUMBER OR OTHER IDENTIFIER, ELECTRONIC SIGNATURE

Electronically signed document.

Annex 3/B

Counter-Offer Form TEMPLATE⁹

Counter-Offer Form

to the auction subjecting the
“entitlements to the frequency use of the 32 GHz frequency band”

name of the participant:	
tax number:	
company registration number or other identifier:	
2x28 MHz lot:	Bid value as per the Counter-Offer (HUF)
	In words:
lot	

The Counter-Offer Form shall be completed by the participant, taking note of the following:

1. The bid value specified in the Counter-Offer Form must comply with the numbering requirements set out in the Documentation, and the counter-offer bid value must exceed the bid value made on the Offer Form.
2. The counter-offer bid values must be written out in words.
3. The modification and withdrawal of the Counter-Offer Form are subject to the legal consequences included in the Documentation.
4. The Counter-Offer Form cannot contain any inserts, deletions or overwritten segments.
5. The Counter-Offer Form shall be signed using an electronic signature. If the participant is such an economic entity, the written representation of which does not take place by corporate signature, the declarations shall be signed with an electronic signature by the representative of the participant.
6. The Participant may not attach any limitations or conditions to the Counter-Offer Form.
7. The Auctioneer shall disregard any other deeds or documents attached by the participant to the Counter-Offer Form.
8. REQUIRED: PARTICIPANT'S NAME, TAX NUMBER, COMPANY REGISTRATION NUMBER OR OTHER IDENTIFIER, OFFER BID VALUE, ELECTRONIC SIGNATURE

Electronically signed document.

⁹ The Counter-Offer Form will be sent by the Auctioneer to the participants affected by the tie with the number of lines corresponding to the number of bids affected by the counter-offer.

Annex 4

IT information

The purpose of this Annex is to provide IT support for the submission of the auction procedure Application and the Counter-Offer and to share the necessary information technology knowledge and to describe the solutions used. The information provided here is for information purposes only.

The submission of the Application and the Counter-Offers is supported by the Auctioneer through forms, dedicated systems and built and tested processes. The Auctioneer shall not be liable for any third party IT tools or applications used by the applicant/participant.

The images provided in this Annex may differ, to a lesser or greater extent, from the images displayed on the device used by the submitter. The reason for this is that there may be differences between the versions of the applications used and the information redacted due to personal data protection. These differences will not (or only to a lesser extent) hinder the understanding of the information provided in this Annex.

The Auctioneer recommends that you should consult your IT operator or consultant, in any case, regarding the use of the IT tools necessary for the submission of the Application and the Counter-Offer in accordance with the Documentation and regarding the correct production of the documents to be submitted.

Terms used

Term	Definition
Certutil	Certutil.exe is a Windows built-in utility.
HASH key	The HASH key is a unique string of characters, also known as the fingerprint of the file. It is suitable for checking the authenticity of files. By creating a HASH key for files in a known state, it is guaranteed that any changes can be detected afterwards, so that the integrity of the files can be verified. Two files with different names but the same content can also be detected. There are several methods (algorithms) for generating a HASH keys: in this procedure we use the SHA-256 algorithm to identify and verify the integrity of compressed, encrypted ZIP files.
Authentic identification	The authentication service provided by the organisation operating the client gate (NISZ Zrt.), which cross-checks the natural person identification data previously provided during the client gate registration and the data provided during the filling in of the NMHH form, and, if they are identical, confirms the authentic identification of the client.

Availability of forms

The form for submitting an Application:

<https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00127/index.html>

The form for submitting a Counter-Offer:

<https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00128/index.html>

The test form that can be used to verify the Client Gate authentic identification:

<https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00202/index.html>

The test form that can be used for virus scanning:

<https://e-nmhh.nmhh.hu/e-nhh/4/urlapok/esf00203/index.html>

The Auctioneer shall make the form dedicated for submission of the Application and the Counter-Offer available only during the period specified in Section (176) of the Documentation and during the period specified in the invitation as per Sections (224) and (236). The Auctioneer shall make available the test forms that can be used for the verification of the Client Gate authentic identification and for virus scanning at the times specified in Section (162) of the Documentation.

Recommended operating systems, browsers

Windows 10 x32 and x64 operating system (client side) or other operating system capable of running one of the recommended browsers is recommended.

The 2022 releases of the following browsers are recommended

- Google Chrome or
- Microsoft Edge or
- Mozilla Firefox or
- Safari.

Use of Google Chrome is preferred.

Authentic identification

The personal data provided on the form by the submitter includes the data required for the authentic identification, which must exactly match the data registered in the Client Gate account of the submitter.

In the event the authentic identification is unsuccessful, the data provided for authentic identification must be compared to the data registered on the Client Gate by selecting the menu entitled "Registration data" after logging in on <https://ugyfelkapu.gov.hu>, and the form must be uploaded with the submitter's personal data corresponding to the data registered in the Client Gate.

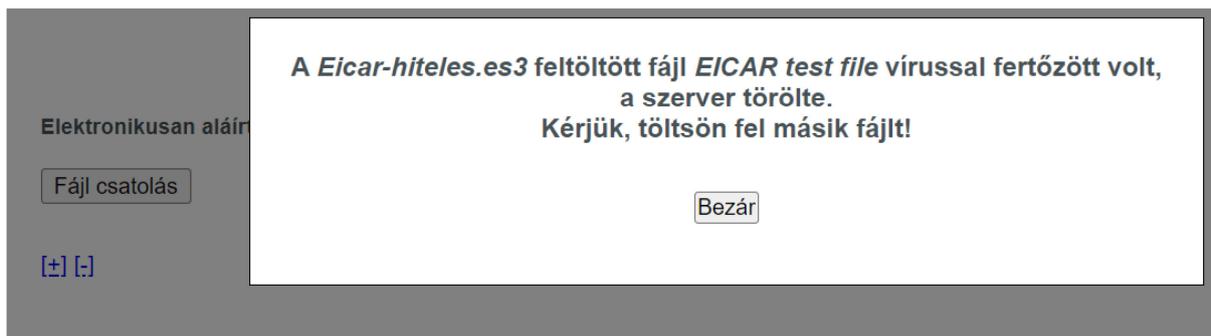
Uploading files

Files with the same file name and extension cannot be uploaded on the form.

Uploading pdf and es3 files

Pdf and es3 files are automatically virus checked after upload. Virus infected files shall be deleted and cannot be submitted.

In the example below, because the file Eicar-hiteles.es3 is infected by a virus, the following message is displayed:



Create and upload a compressed, encrypted file

For encryption and compression, 7-zip software is an appropriate application, but any other application may be chosen if it can produce an encrypted file that meets the requirements.

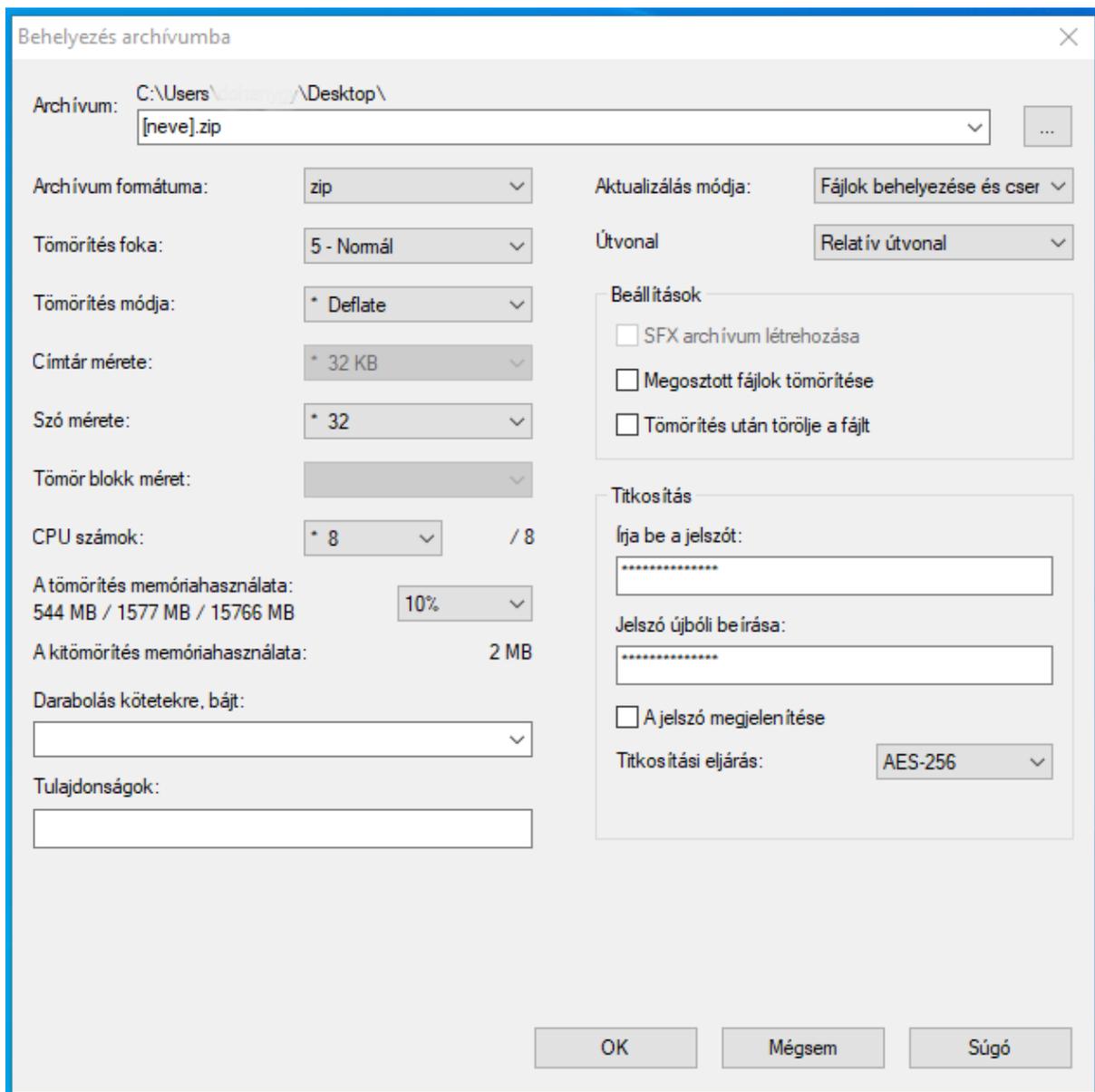
Pdf files must be compatible with Adobe Acrobat Reader DC 2021.011.20039 | 64-bit version.

Only one ZIP file may be uploaded to the form, the size of which must not exceed 200 MB! Uploaded file names must not contain the following characters: \ / ? : * " > < | { } [] % + , ; = @

The ZIP file must be password protected and encrypted according to AES-256 Standard. The password must be at least 14 characters long and consist of lowercase, uppercase letters, numbers, special characters. (We recommend the use of <https://www.jelszogenerator.hu> and the 7-zip software, <https://www.7-zip.org/>).

The compression setting is left to the user and the Auctioneer shall not impose any related requirements.

For 7-zip, here is an example of the settings:



The technical verification of the ZIP file does not include checking the complexity of the AES-256 encryption method and password, but only the existence of encryption. The form does not allow the uploading of a ZIP file without a password.

The encrypted ZIP file must not contain any viruses, however, since the ZIP file is encrypted, virus checking is only possible during the auction procedure, following the unpacking of the encrypted file.

The form displays the SHA-256 HASH key of the uploaded ZIP file on the screen and compares it with the HASH key typed as a result of the HASH key verification performed by the submitter. The form can only be submitted if the two HASH keys are identical. (See the Chapter of the information material entitled HASH key verification.)

HASH key verification

The HASH key of the ZIP file can be generated in several ways. The first example below demonstrates the method of key generation using the Windows operating system's certutil command line program, and the second example uses a Firefox browser extension. The HASH key can be checked through any of the methods demonstrated and the result can be copied to the form.

The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.

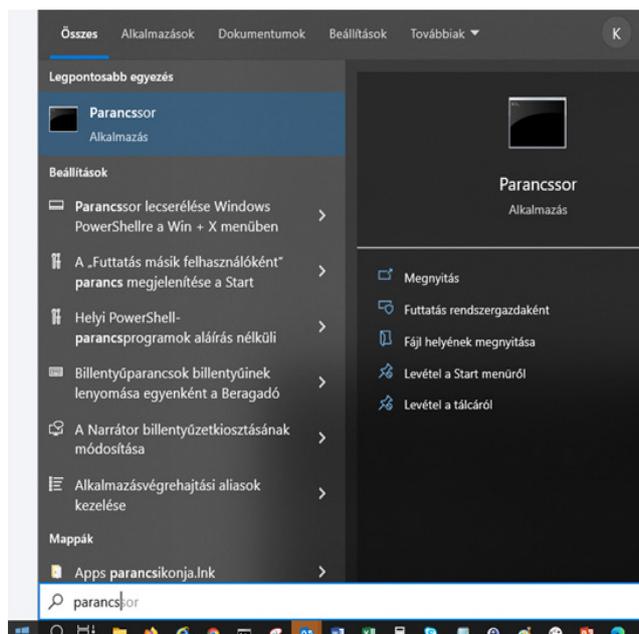
If the submitter uses a different operating system or browser, the information provided here is for informational purposes only. The Auctioneer recommends to the submitter to contact his/her IT operator or consultant for further support.

HASH key verification with the Windows certutil command line program

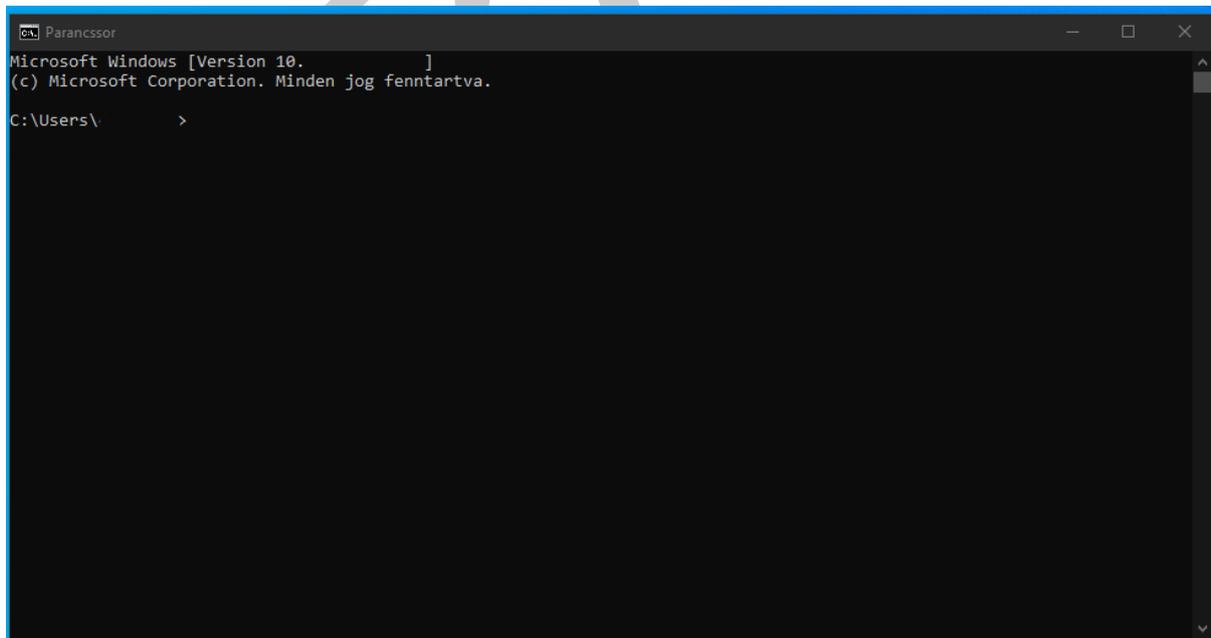
The HASH key can be read and entered onto the form by performing the following steps.

1. Launching the command line program

Click on the start menu in the bottom left corner and start typing Command Prompt, then start the program.

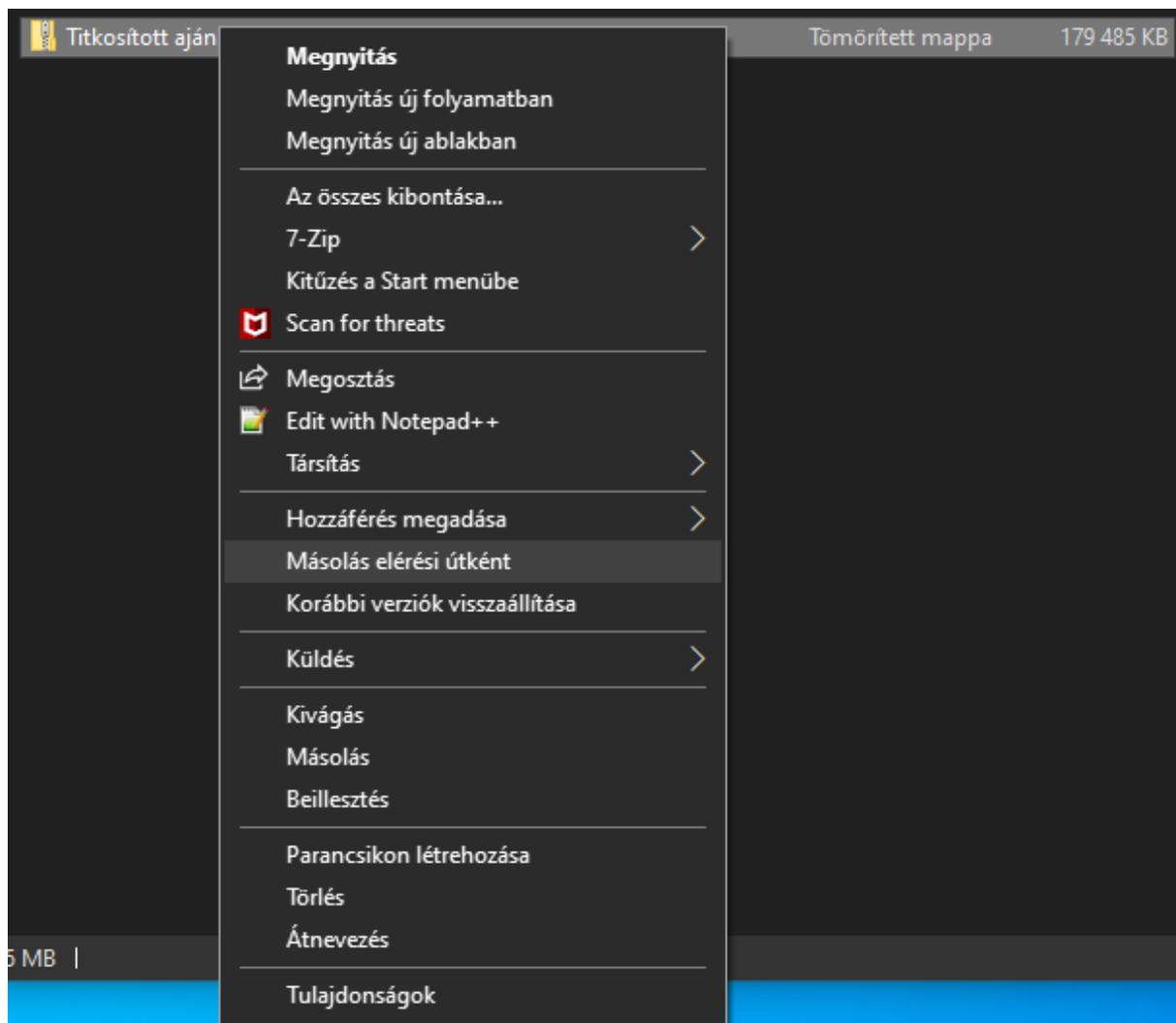


If the program has started successfully, the following are displayed in a new application window.



2. Viewing and saving the file path

The exact file path is necessary to ensure that the submitter successfully receives the HASH key of the file. The easiest way to do this is to select the file and press “SHIFT + right mouse button”. Once you have successfully obtained the file path, you should save it in MS Word, Notepad or another text editor.



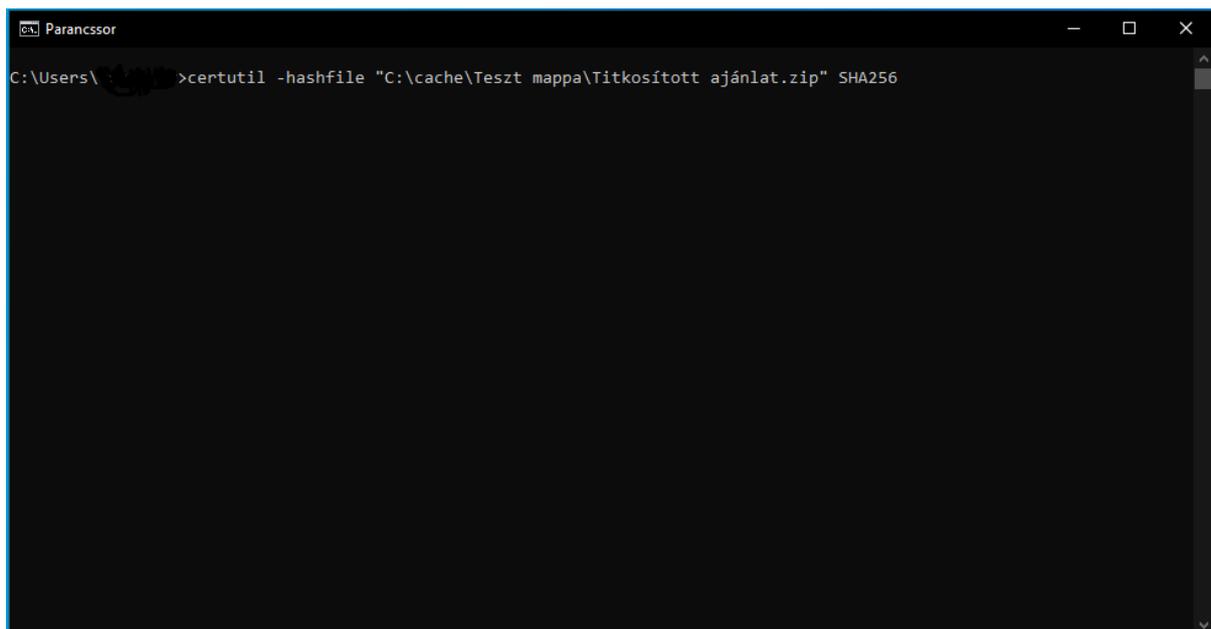
3. Generating the HASH key

To generate a HASH key, you have to execute the certutil command as follows, specifying exactly what type of HASH key you want to get and concerning which file:

```
certutil -hashfile [FILEPATH] SHA256
```

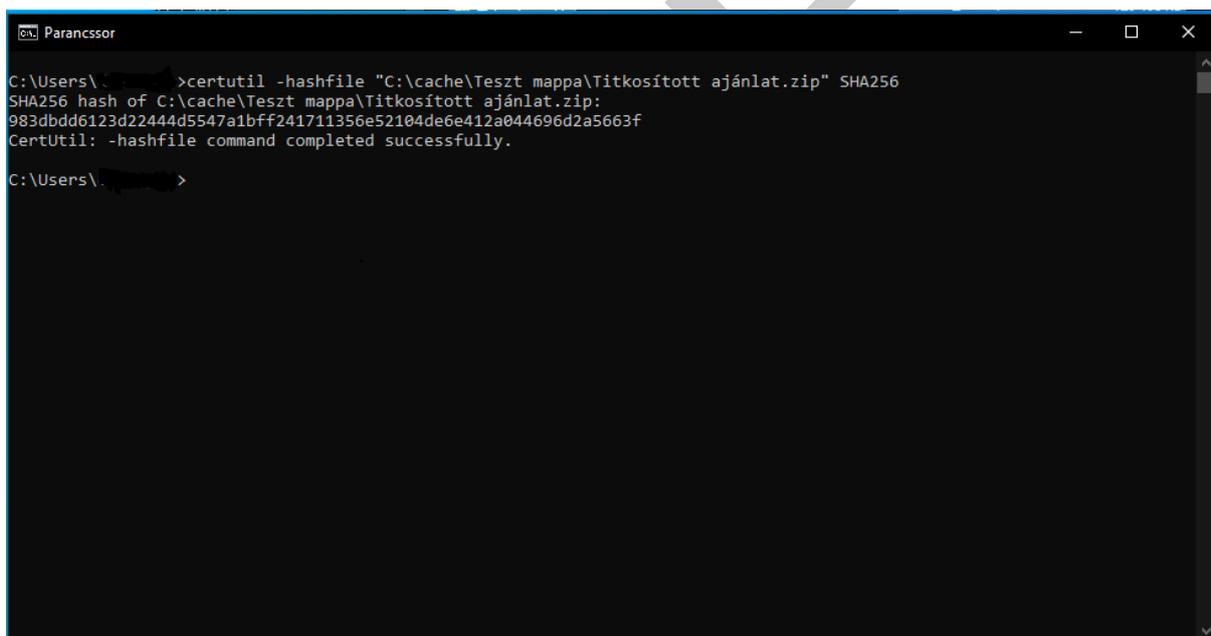
The screenshot below shows how to enter the command line for ajanlat.zip:

The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.



```
Parancssor
C:\Users\... >certutil -hashfile "C:\cache\Teszt mappa\Titkosított ajánlat.zip" SHA256
```

Pressing Enter will print the SHA256 HASH key of the file.



```
Parancssor
C:\Users\... >certutil -hashfile "C:\cache\Teszt mappa\Titkosított ajánlat.zip" SHA256
SHA256 hash of C:\cache\Teszt mappa\Titkosított ajánlat.zip:
983dbdd6123d2244d5547a1bffa241711356e52104de6e412a044696d2a5663f
CertUtil: -hashfile command completed successfully.
C:\Users\... >
```

The generated HASH key can be copied to the form.

HASH key verification by using a Firefox browser extension (add-on)

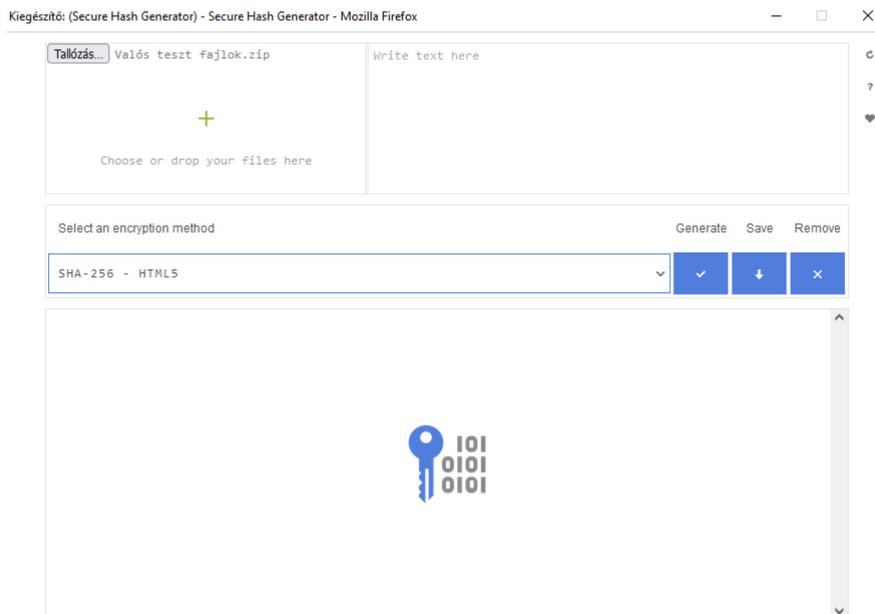
If you are using Firefox browser, you can also use the following extension (HASH key generator) to generate the HASH key: <https://addons.mozilla.org/hu/firefox/addon/secure-hash-generator/>

The extension will appear in the top right-hand corner of the screen once it is installed in your browser.

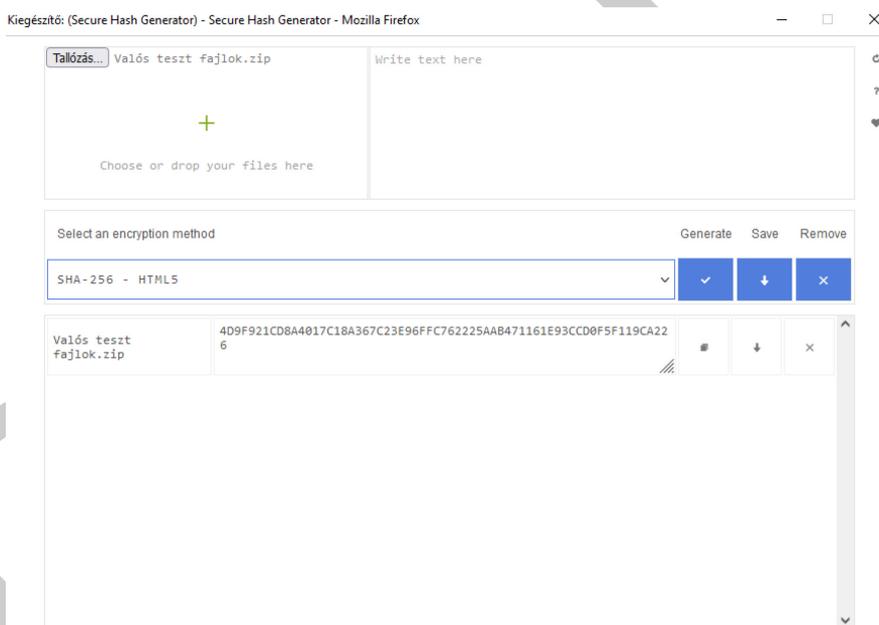


The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.

Click on the icon to open the following window:



The file can be selected from the computer directory by browsing or with the drag&drop function:



The HASH key of the file can be generated after the appropriate SHA-256 algorithm has been selected. The generated HASH key can be copied to the form.

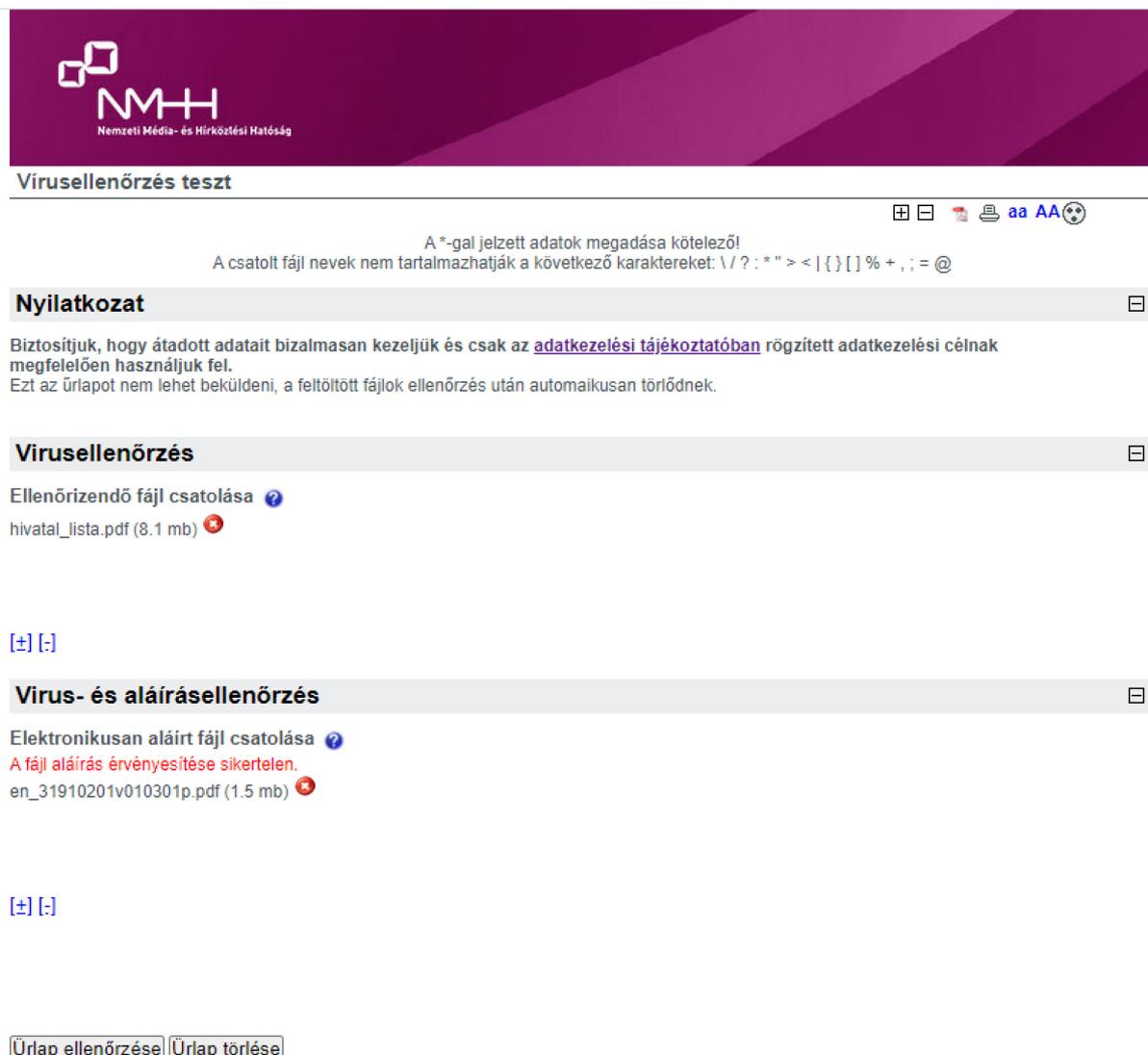
Use of test forms

In order to ensure successful submission of the Application, the Auctioneer provides three testing opportunities, at the times specified in the Documentation, by providing test forms. These test forms cannot be submitted.

Virus check test form

A virus check can be performed on the virus check test form. Uploaded files are automatically deleted after completion of the check.

Virus check can be performed on files having the following extension: .pdf, .es3, .txt, .docx, .xlsx.



The screenshot shows the 'Virusellenőrzés teszt' (Virus Check Test) form. At the top left is the NEMH logo (Nemzeti Média- és Hírközlési Hatóság). The title 'Virusellenőrzés teszt' is displayed. Below the title, there are icons for window management, printing, and font size adjustment. A warning message states: 'A *-gal jelzett adatok megadása kötelező!' (The data marked with * is mandatory!) and 'A csatolt fájl nevek nem tartalmazhatják a következő karaktereket: \ / ? : * " > < | { } [] % + , ; = @'. The form is divided into sections: 'Nyilatkozat' (Statement) with a text box containing a declaration of confidentiality and a note that the form cannot be submitted; 'Virusellenőrzés' (Virus Check) with a section for 'Ellenőrizendő fájl csatolása' (Attach file to be checked) showing 'hivatal_lista.pdf (8.1 mb)'; and 'Virus- és aláírásellenőrzés' (Virus and signature check) with a section for 'Elektronikusan aláírt fájl csatolása' (Attach electronically signed file) showing 'en_31910201v010301p.pdf (1.5 mb)' with a red error message: 'A fájl aláírás érvényesítése sikertelen.' (The file signature verification failed.). At the bottom, there are buttons for 'Ürlap ellenőrzése' (Check form) and 'Ürlap törlése' (Delete form).

Client Gate authentic identification test form

The form allows the submitter to verify that his/her personal data provided on the form and his/her Client Gate registration data match.

It is not possible to submit this form, the authentic identification data provided will be checked by the magyarorszag.hu Central System and will not be stored by the Authority.

In the event the authentic identification is unsuccessful, the data provided for authentic identification must be compared to the data registered on the Client Gate by selecting the menu entitled "Registration data" after logging in on <https://ugyfelkapu.gov.hu>, and the form must be uploaded with the submitter's personal data corresponding to the data registered in the Client Gate.

A “live” Application and Counter-Offer can only be submitted if authentic identification has been successful.



Ügyfélkapus viszontazonosítás teszt űrlap



A *-gal jelzett adatok megadása kötelező!

Nyilatkozat

Biztosítjuk, hogy átadott adatait bizalmasan kezeljük és csak az [adatkezelési tájékoztatóban](#) rögzített adatkezelési célnak megfelelően használjuk fel.

Ezt az űrlapot nem lehet beküldeni, a megadott viszontazonosítási adatokat a Magyarország.hu Központi Rendszer ellenőrzi, a Hatóság nem tárolja.

Az űrlapkitöltő személyes adatai

Viszontazonosításhoz szükséges adatok

Viselt név: *

Címjelzés (pl. Dr., id., ifj): Vezetéknév: Első utónév: További utónevek:

Születési név: *

Vezetéknév: Első utónév: További utónevek:

Anyja születési neve: *

Vezetéknév: Első utónév: További utónevek:

Születési hely: *

Ország: Település:

Születési idő: *

Viszontazonosításhoz szükséges adatok blokk adatainak megjegyzése



Annex 5

Examples of bids not meeting the numbering requirements

Value of the bid	Reason for invalidity of the bid
47 540 126	The bid value is below the reserved price
104200672.5	The bid value is not a whole number
102 387 225	The bid value is not an even, whole number
121 476 000	Last 3 digits of the bid value are identical
105 453 012	Last 3 digits of the bid value are consecutive numbers in ascending order
114 768 876	Last 3 digits of the bid value are consecutive numbers in descending order
1. lot: 111 600 560 4. lot: 111 600 560	The bid value for lot 1 is equal to the bid value for lot 4

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Annex 6

Examples demonstrating how auction winners are determined

The following examples illustrate the procedure described in Chapter 4.10.

The information contained in this Annex should not be construed as an interpretation of the Documentation. The sole purpose of this Annex is to illustrate, for information purposes, the rules for the evaluation and ranking of bids and the subsequent determination of the winners, as set out in Chapter 4.10 of the Documentation. Unlike the Documentation, the examples provided here shall have no legal effect or legal binding force with regard to individual administrative proceedings or administrative decisions.

The Auctioneer may apply or interpret the provisions contained in the Documentation in the auction procedure and in the regulatory procedure in the context of the facts established in the course of the detailed examination of the circumstances of the case; accordingly, the Auctioneer reserves the right to interpret the provisions of the Documentation differently from the examples set out in this Annex, on the basis of the facts of the individual case.

The Applicant shall be responsible for studying and interpreting the rules contained in the Documentation.

Example 1

Initial situation:

- There are five participants: Participants “A”, “B”, “C”, “D” and “E”.
- None of the participants belong to the same group of undertakings as another participant.
- There are 24 lots available within the frequency band.
- The reserved price of 1 (one) lot: HUF 100,000,000.
- The total number of lots that the participants want to acquire is 26, which exceeds the number of lots that can be acquired.
- After the ranking of the valid bids submitted by the five participants in the Offer Form, the participants submitting the 24 highest bids can be declared the winner, no invitation for counter-offers and no lottery is required or justified, therefore the quantitative result of the auction is determined without these procedural steps.

Valid bids submitted by the five participants in the Offer Form:

Please note: for easier interpretation of the figures displayed in the table, bids are written out with numbers in the table, but on the Offer (Counter-Offer) Form, bids must be written out in words!

Lots	Participant “A”	Participant “B”	Participant “C”	Participant “D”	Participant “E”
Lot no. 1	100 000 006	100 000 016	100 000 026	100 000 036	100 000 046
Lot no. 2	100 000 010	100 000 018	100 000 028	100 000 038	100 000 048
Lot no. 3	100 000 004	100 000 014	100 000 024		100 000 044
Lot no. 4	100 000 012	100 000 026	100 000 016		100 000 054
Lot no. 5	100 000 022	100 000 012	100 000 022		100 000 042
Lot no. 6	100 000 002	100 000 010	100 000 020		100 000 040

1.1 Sorting the bids by participant

In this phase, the bid values are sorted by size, broken down by participant, and the arithmetic mean of the 2 (two) highest bids per participant is determined on the basis of the value rounded off to a whole number according to the general rounding rules.

Lots	Participant "A"	Participant "B"	Participant "C"	Participant "D"	Participant "E"
Lot no. 1	100 000 022	100 000 026	100 000 028	100 000 038	100 000 054
Lot no. 2	100 000 012	100 000 018	100 000 026	100 000 036	100 000 048
Average of lots 1 and 2 (i.e. the 2 largest lots)	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 3	100 000 010	100 000 016	100 000 024		100 000 046
Lot no. 4	100 000 006	100 000 014	100 000 022		100 000 044
Lot no. 5	100 000 004	100 000 012	100 000 020		100 000 042
Lot no. 6	100 000 002	100 000 010	100 000 016		100 000 040

After determining the arithmetic mean of the 2 (two) highest bids per participant, the order of the bid values per participant is determined, as follows:

Lots	Participant "A"	Participant "B"	Participant "C"	Participant "D"	Participant "E"
Lot no. 1	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 2	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 3	100 000 010	100 000 016	100 000 024		100 000 046
Lot no. 4	100 000 006	100 000 014	100 000 022		100 000 044
Lot no. 5	100 000 004	100 000 012	100 000 020		100 000 042
Lot no. 6	100 000 002	100 000 010	100 000 016		100 000 040

1.2 Ranking of the bids

In this phase, all valid bids made by the participants and calculated in accordance with Section (217) are ranked by size, and the relative order of the bids of the participants is determined accordingly. On the basis of this order – and also subject to the rules restricting the acquisition of entitlements to radio spectrum use as set out in Section (49) – the participants submitting the 24 (twenty-four) highest bids will be declared as the winner in accordance with Section (218), which constitutes the interim, i.e. quantitative result of the auction.

Ranking of the bids	Bid value	Name of participant	Winner / not winner status
1.	100 000 051	Participant "E"	Winner
2.	100 000 051	Participant "E"	Winner
3.	100 000 046	Participant "E"	Winner
4.	100 000 044	Participant "E"	Winner
5.	100 000 042	Participant "E"	Winner

The language of the proceedings is Hungarian. The English version is provided for reference only. In the event of any conflict or discrepancy between the Hungarian and English versions, the Hungarian version shall prevail.

6.	100 000 040	Participant "E"	Winner
7.	100 000 037	Participant "D"	Winner
8.	100 000 037	Participant "D"	Winner
9.	100 000 027	Participant "C"	Winner
10.	100 000 027	Participant "C"	Winner
11.	100 000 024	Participant "C"	Winner
12.	100 000 022	Participant "B"	Winner
13.	100 000 022	Participant "B"	Winner
14.	100 000 022	Participant "C"	Winner
15.	100 000 020	Participant "C"	Winner
16.	100 000 017	Participant "A"	Winner
17.	100 000 017	Participant "A"	Winner
18.	100 000 016	Participant "B"	Winner
19.	100 000 016	Participant "C"	Winner
20.	100 000 014	Participant "B"	Winner
21.	100 000 012	Participant "B"	Winner
22.	100 000 010	Participant "A"	Winner
23.	100 000 010	Participant "B"	Winner
24.	100 000 006	Participant "A"	Winner
25.	100 000 004	Participant "A"	Not a winner
26.	100 000 002	Participant "A"	Not a winner

Summary of the auction results

- Participant "A": obtained 4 lots;
- Participant "B": obtained 6 lots;
- Participant "C": obtained 6 lots;
- Participant "D": obtained 2 lots;
- Participant "E": obtained 6 lots.

The above results are included in the decision closing the auction procedure, which constitutes the interim, i.e. quantitative result of the auction.

Example 2

Initial situation:

- There are five participants: Participants "A", "B", "C", "D" and "E".
- None of the participants belong to the same group of undertakings as another participant.
- There are 24 lots available within the frequency band.
- The reserved price of 1 (one) lot: HUF 100,000,000.
- The total number of lots that the participants want to acquire is 26, which exceeds the number of lots that can be acquired.
- After the ranking of the valid bids submitted by the five participants in the Offer Form, it is not possible to determine the participants submitting the 24 highest bids, therefore an invitation for

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counter-offers shall be issued, but even after this, there is still a tie regarding the bid values for lot no. 24, therefore the winner of lot no. 24 shall be determined by lottery, hence the quantitative result of the auction shall be determined after these procedural steps have been carried out.

Valid bids submitted by the five participants in the Offer Form:

Please note: for easier interpretation of the figures displayed in the table, bids are written out with numbers in the table, but on the Offer (Counter-Offer) Form, bids must be written out in words!

Lots	Participant "A"	Participant "B"	Participant "C"	Participant "D"	Participant "E"
Lot no. 1	100 000 006	100 000 016	100 000 026	100 000 036	100 000 046
Lot no. 2	100 000 010	100 000 018	100 000 028	100 000 038	100 000 048
Lot no. 3	100 000 004	100 000 014	100 000 024		100 000 044
Lot no. 4	100 000 012	100 000 026	100 000 016		100 000 054
Lot no. 5	100 000 022	100 000 012	100 000 022		100 000 042
Lot no. 6	100 000 002	100 000 002	100 000 002		100 000 040

2.1 Sorting the bids by participant

In this phase, the bid values are sorted by size, broken down by participant, and the arithmetic mean of the 2 (two) highest bids per participant is determined on the basis of the value rounded off to a whole number according to the general rounding rules.

Lots	Participant "A"	Participant "B"	Participant "C"	Participant "D"	Participant "E"
Lot no. 1	100 000 022	100 000 026	100 000 028	100 000 038	100 000 054
Lot no. 2	100 000 012	100 000 018	100 000 026	100 000 036	100 000 048
Average of lots 1 and 2 (i.e. the 2 largest lots)	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 3	100 000 010	100 000 016	100 000 024		100 000 046
Lot no. 4	100 000 006	100 000 014	100 000 022		100 000 044
Lot no. 5	100 000 004	100 000 012	100 000 016		100 000 042
Lot no. 6	100 000 002	100 000 002	100 000 002		100 000 040

After determining the arithmetic mean of the 2 (two) highest bids per participant, the order of the bid values per participant is determined, as follows:

Lots	Participant "A"	Participant "B"	Participant "C"	Participant "D"	Participant "E"
Lot no. 1	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 2	100 000 017	100 000 022	100 000 027	100 000 037	100 000 051
Lot no. 3	100 000 010	100 000 016	100 000 024		100 000 046
Lot no. 4	100 000 006	100 000 014	100 000 022		100 000 044

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Lot no. 5	100 000 004	100 000 012	100 000 016		100 000 042
Lot no. 6	100 000 002	100 000 002	100 000 002		100 000 040

2.2 Ranking of the bids

In this phase, all valid bids made by the participants and calculated in accordance with Section (217) are ranked by size, and the relative order of the bids of the participants is determined accordingly, as follows:

Ranking of the bids	Bid value	Name of participant	Winner / not winner status
1.	100 000 051	Participant "E"	Winner
2.	100 000 051	Participant "E"	Winner
3.	100 000 046	Participant "E"	Winner
4.	100 000 044	Participant "E"	Winner
5.	100 000 042	Participant "E"	Winner
6.	100 000 040	Participant "E"	Winner
7.	100 000 037	Participant "D"	Winner
8.	100 000 037	Participant "D"	Winner
9.	100 000 027	Participant "C"	Winner
10.	100 000 027	Participant "C"	Winner
11.	100 000 024	Participant "C"	Winner
12.	100 000 022	Participant "B"	Winner
13.	100 000 022	Participant "B"	Winner
14.	100 000 022	Participant "C"	Winner
15.	100 000 017	Participant "A"	Winner
16.	100 000 017	Participant "A"	Winner
17.	100 000 016	Participant "B"	Winner
18.	100 000 016	Participant "C"	Winner
19.	100 000 014	Participant "B"	Winner
20.	100 000 012	Participant "B"	Winner
21.	100 000 010	Participant "A"	Winner
22.	100 000 006	Participant "A"	Winner
23.	100 000 004	Participant "A"	Winner
24.	100 000 002	Participant "A"	No winner can be declared for lot no. 24 due to a tie
24.	100 000 002	Participant "B"	
24.	100 000 002	Participant "C"	

Since the number of valid bids exceeds the number of lots that can be acquired and the bids of the same amount (100 000 002) submitted by participants "A", "B" and "C" – in the above order determined based on the assessment of the bids in accordance with Section (218) – result in such a tie that it is not possible to determine the winners of all lots – i.e. in this case the winner for lot no. 24 –, therefore the participants who submitted the bids affected by the tie (participants "A", "B" and "C") shall be invited to submit counter-offers.

2.3 General procedure for the submission of counter-offers

In order to break the tie described in Section 2.2 of this Annex, an invitation for counter-offers will be sent to participants "A", "B" and "C". Participant "A" fails to submit the Counter-Offer within the time limit, whereas participants "B" and "C" submit the below Counter-Offers for the 1 piece of lot affected by the tie by completing the Counter-Offer Form:

Bid value	Name of participant
120 000 002	Participant "B"
120 000 002	Participant "C"

In line with Section (228), in the absence of submission of a counter-offer, the original bid of participant "A" will be considered, i.e. the bid value of participant "A" will remain 100 000 002.

2.4 Ranking of the bids after the submission of counter-offers

Taking into account that the submission of counter-offers does not affect the acquisition of the entitlement to 2 (two) pieces of lots indicated as the minimum acquisition limit, therefore there is no need for the repeated execution of the averaging as per Section (218).

Ranking of the bids	Bid value	Name of participant	Winner / not winner status
1.	100 000 051	Participant "E"	Winner
2.	100 000 051	Participant "E"	Winner
3.	100 000 046	Participant "E"	Winner
4.	100 000 044	Participant "E"	Winner
5.	100 000 042	Participant "E"	Winner
6.	100 000 040	Participant "E"	Winner
7.	100 000 037	Participant "D"	Winner
8.	100 000 037	Participant "D"	Winner
9.	100 000 027	Participant "C"	Winner
10.	100 000 027	Participant "C"	Winner
11.	100 000 024	Participant "C"	Winner
12.	100 000 022	Participant "B"	Winner
13.	100 000 022	Participant "B"	Winner
14.	100 000 022	Participant "C"	Winner
15.	100 000 017	Participant "A"	Winner
16.	100 000 017	Participant "A"	Winner
17.	100 000 016	Participant "B"	Winner
18.	100 000 016	Participant "C"	Winner
19.	100 000 014	Participant "B"	Winner
20.	100 000 012	Participant "B"	Winner
21.	100 000 010	Participant "A"	Winner
22.	100 000 006	Participant "A"	Winner

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23.	100 000 004	Participant "A"	Winner
24.	120 000 002	Participant "B"	No winner can be declared for lot no. 24 due to a tie
24.	120 000 002	Participant "C"	
26.	100 000 002	Participant "A"	Not a winner

As participants "B" and "C" submitted bids of the same amount in the general counter-offer submission procedure, there is still a tie for the 1 lot concerned after the general counter-offer submission procedure, therefore the winner must be determined by performing a lottery as per Section (242).

2.5 Conducting the lottery

Based on the results of the lottery, participant "C" will be the winner of the 1 lot affected by the lottery.

2.6 Ranking of the bids after the lottery

The ranking of the bids will be determined by taking into account that – as stated in Section (239) – the result of the invitation for counter-offers (and the subsequent lottery) will only change the relative order of the counter-offer bids submitted for the lots affected by the invitation for counter-offers. On the basis of this order – and also subject to the rules restricting the acquisition of entitlements to radio spectrum use as set out in Section (49) – the participants submitting the 24 (twenty-four) highest bids will be declared as the winner, which constitutes the interim, i.e. quantitative result of the auction.

Ranking of the bids	Bid value	Name of participant	Winner / not winner status
1.	100 000 051	Participant "E"	Winner
2.	100 000 051	Participant "E"	Winner
3.	100 000 046	Participant "E"	Winner
4.	100 000 044	Participant "E"	Winner
5.	100 000 042	Participant "E"	Winner
6.	100 000 040	Participant "E"	Winner
7.	100 000 037	Participant "D"	Winner
8.	100 000 037	Participant "D"	Winner
9.	100 000 027	Participant "C"	Winner
10.	100 000 027	Participant "C"	Winner
11.	100 000 024	Participant "C"	Winner
12.	100 000 022	Participant "B"	Winner
13.	100 000 022	Participant "B"	Winner
14.	100 000 022	Participant "C"	Winner
15.	100 000 017	Participant "A"	Winner
16.	100 000 017	Participant "A"	Winner
17.	100 000 016	Participant "B"	Winner
18.	100 000 016	Participant "C"	Winner
19.	100 000 014	Participant "B"	Winner
20.	100 000 012	Participant "B"	Winner

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21.	100 000 010	Participant "A"	Winner
22.	100 000 006	Participant "A"	Winner
23.	100 000 004	Participant "A"	Winner
24.	120 000 002	Participant "C"	Winner
25.	120 000 002	Participant "B"	Not a winner
26.	100 000 002	Participant "A"	Not a winner

Summary of the auction results

- Participant "A": obtained 5 lots;
- Participant "B": obtained 5 lots;
- Participant "C": obtained 6 lots;
- Participant "D": obtained 2 lots;
- Participant "E": obtained 6 lots.

The above results are included in the decision closing the auction procedure, which constitutes the interim, i.e. quantitative result of the auction.

DRAFT

Annex 7

Market situation

I. Assessment criteria

As part of the overall assessment of the market situation, the Auctioneer considered it necessary to examine the following aspects:

- substitution,
- high and non-transitory barriers to entry,
- tendency towards effective competition,
- individual dominant position and
- joint dominant position.

I.1. Substitution analysis

In traditional market analysis, a substitution analysis is about establishing the boundaries of a given service market. The analysis includes both demand-side and supply-side substitution.

However, in the present case, the purpose of the substitution analysis is not to define the market (and its boundaries), but to understand what technical substitutes exist/may exist for the 32 GHz frequency band, and on that basis to determine whether these substitutes affect the award of the 32 GHz frequency band and vice versa.

In fact, the question is not the substitutability of the frequency band, but the substitutability of the link between the specific geographic points to be established in the frequency band, which is to be examined separately between the specified endpoints. The technical planning and use of microwave frequency bands for fixed links may be carried out in frequency bands designated for each link or by block management.

Findings of the analysis:

Based on the NFFF, point-to-point and point-to-multipoint systems can be used in the 32 GHz frequency band. A review of the equipment market shows that at the time of launching the auction procedure, only equipment suitable for point-to-point links is available. The 32 GHz frequency band is one of the microwave frequency bands where the connections currently operating based on point-to-point systems in the 26 GHz frequency band can be replaced.

There are two theoretical substitutes for this use:

- wireless fixed links, implemented on other frequency bands (e.g. 13, 18, 23, 38 GHz frequency bands),
- wired links, such as optical connections.

Connections implemented in other frequency bands for civil use (outside the 26 GHz frequency band) are currently implemented in different microwave frequency bands. Certain frequency bands designated on a "first-come-first-served" basis (frequency assignment and radio licensing), without holding a competitive procedure, are quite saturated. The 13 GHz, 18 GHz, 23 GHz, 38 GHz and 70-80 GHz frequency bands are also heavily used (especially the 38 GHz frequency band). The higher the frequency band

examined (starting from the 13 GHz frequency band and moving towards the 70-80 GHz frequency band), the more the usage is concentrated in larger cities, given that point-to-point links using higher frequency bands can cover shorter and shorter distances. In these municipalities, the locations available for installing devices are also limited. As a significant share of microwave transmission is used to connect mobile base stations (backhaul network), which need increasingly higher data transmission capacity, frequency bands where more spectrum is available and wider bandwidths can be used are preferred (especially in the higher ranges).

Lower frequency bands allow longer distances to be bridged, but they also typically have lower transmission capacity, so they cannot be considered as a meaningful substitute for the 32 GHz frequency band. Although other higher frequency bands (mainly those above 23 GHz), would functionally be capable of replacing the 32 GHz frequency band, cannot be considered as substitutes for practical reasons, since, on the one hand, from a regulatory point of view, due to the individual licensing procedure, i.e. the fact that block management is not allowed, and on the other hand, from a technical point of view, since it is not possible to create new bulk connections with the current intensive usage.

The 26 GHz frequency band belongs to the block management category facilitating technical planning for operators (network operators), which is/has been used mainly by mobile radio telephone operators, and can be considered as a substitute from a practical point of view as well. Services provided on the 32 GHz and 26 GHz frequency bands can co-exist without interfering with each other from a technical and market perspective.

In addition to wireless solutions, the backbone and backhaul networks can also be deployed with wired links. With regard to wired solutions, it should be noted that although they could replace wireless links in terms of providing access, at the same time the market analysis shows that currently a mix of both wired and wireless links are used, but that wired links cannot be built everywhere economically, or even at all, as in some places it is not possible to lay optical fibre cable sections (for instance in national parks, etc.).

Hence, at a practical level, wired links are not fully functional substitutes for wireless links, and vice versa, especially considering the fact that optical cables and fibres can provide orders of magnitude more data capacity than at the largest channel spacing of any microwave frequency band. On this basis, it can be concluded that perfect substitution is not achieved in either direction; however partial substitution is achieved in terms of functionality. Economically, however, these substitutes do not represent a real alternative.

1.2. Assessment of high and non-transitory barriers to entry

According to traditional market analysis, high and non-transitory barriers to entry in a given market exist when the structural and/or legal-regulatory characteristics of the market do not allow entry to the market. In the presence of high and non-transitory barriers to entry, even a more efficient undertaking than the incumbent(s) is not able to enter and remain in the market permanently. High and non-transitory barriers to entry may thus hinder the emergence of effective competition in the market, which may justify ex ante type regulatory intervention in the market under investigation if the level of competition behind the entry barriers is insufficient or if ex post competition law intervention is insufficient. The "Explanatory Note" attached to Commission Recommendation No. 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services distinguishes between two types of

barriers to entry: structural and legal or regulatory barriers. Structural barriers exist when the existing level of demand and the characteristics of the technology used, as well as the associated cost conditions, create asymmetric entry conditions between incumbents (undertakings that already have significant positions in the market) and new entrants. Legal and regulatory barriers apply when the source of the disadvantage for the entrant or potential entrant is not economic in nature, but is the result of legal, administrative or other government regulation of the market.

Findings of the analysis

The examination of high and non-transitory barriers to entry within the analysis of the award of the 32 GHz frequency band is certainly justified, as the provision of services using the frequency band without getting a license to use the radio spectrum in a competitive procedure is only possible with wired and/or microwave links to be installed in different frequency bands under individual licencing. Hence, this is a fundamental barrier, but the present auction procedure helps to reduce these barriers to entry.

It should also be noted that, in addition to the above, there is also a technological barrier, as the maximum channel bandwidth that can in principle be achieved in the 32 GHz frequency band is 224 MHz under current international regulations. Based on the NFFF, the use of a maximum channel bandwidth of 112 MHz is allowed in Hungary, which allows multiple operators to access spectrum and is in line with the maximum limit of six base blocks of spectrum that can be acquired by a single entitlement holder, which is defined in the NFFF as a general rule. The 112 MHz channel bandwidth can be achieved by combining 4 adjacent 28 MHz base blocks. Since gigabit links require the use of 112 MHz bandwidth channels (4 base blocks), it should be made possible to establish a contiguous channel with a width of minimum 4 base blocks. Thus, in the case of point-to-point links, the existing regulation does not allow the use of channel bandwidths larger than 112 MHz, but it is possible to use smaller bandwidth channels (with a subdivision of up to 7 MHz) within a user block.

Although it is possible for a device to aggregate two separate channels within a single frequency band in order to achieve higher data transmission capacity using one channel, but the ability to aggregate two blocks depends on whether the given device supports this mode of operation. Depending on the position of the two separate blocks within the frequency band, it is also possible that one device may not be able to aggregate the two channels (even if they are adjacent) due to the span of the equipment (in-band breakpoint).

I.3. Assessment of the tendency towards effective competition

According to traditional market analysis, the tendency towards effective competition exists if, in the event of the removal of external regulatory intervention on the given market, the market would achieve the objective of the external regulatory intervention through its self-regulatory mechanisms within the time horizon examined. Accordingly, the assessment of the tendency towards effective competition should consider whether there are market mechanisms that suggest that competition is enhanced or that reduce the role of the barriers to entry identified in the previous Section.

Furthermore, it is necessary to assess the impact of the future operation of the future entitlement holder in the given frequency band on the state of competition in the market affected by the services provided through the use of the given frequency band.

Findings of the analysis

As it is necessary to connect the different points of the communication networks with some kind of wired or wireless links, therefore, if the entitlement is awarded, it is expected that the frequency band will be used by the future entitlement holders essentially to implement their own interconnections within their networks (backbone network, backhaul network links), including data transmission for internal network operations, for which currently there is no established market. With the emergence of infrastructure operators (tower companies), it may be possible to provide network interconnections on a market basis, however there are no examples of this in the current market practice.

Instead, two separate markets needs to be examined:

- The entitlement holder may offer (mainly business) users this type of connection, i.e. the service here is the provision of the wireless link itself. This is the primary – direct – market for wireless links.
- Associated retail markets (downstream markets) for the retail provision of a final service (e.g. mobile voice or data) on the (full) network of any entitlement holder. These are the related – indirect – (downstream) markets that are created on the market of wireless links.

In both cases, a part of the provided services are available on wireless solutions, using microwave bands, with block management, through links also operating in the 26 GHz frequency band. The wireless link itself has a direct impact on the service as a whole in the former case, and an indirect impact in the latter. In terms of the tendency towards effective competition, the use of the 32 GHz frequency band is not expected to change significantly the competition of the related services, as it represents a replacement (substitution) of the links operating in the 26 GHz frequency band, and therefore no change in the competition of the services that are based on these links is expected.

I.4. Assessment of individual dominant position

The purpose of the assessment of individual dominant position is to examine the competition-distorting effects in cases when various restrictive elements are built into the given frequency award procedure (e.g. spectrum cap, prohibition of secondary trading) by the Auctioneer.

In the present case, the Auctioneer has examined the following key aspects:

- market share,
- lack of potential competition.

Assessment of market shares

In terms of assessment of the market shares it can be established that the information made available to the Auctioneer during the public hearings held by the Auctioneer to assess market needs indicates that the use of the 32 GHz frequency band – similarly to that of the 26 GHz frequency band – currently represents a market opportunity primarily for mobile operators, but it is also possible that other undertakings active in the telecommunications sector may also see a market opportunity in the 32 GHz frequency band. Therefore, given that future entitlement holders do not necessarily operate in a single market, and hence the assessment of market shares has no relevance; at most, one could only analyse market shares by segmenting the future entitlement holders into smaller, more homogeneous groups, but even then only in the related retail markets.

The most important of these related markets are the retail markets for mobile voice and data services. These markets have been three-player markets for a very long time, with market shares changing slowly. At present, according to the Mobile Market Report¹⁰ published by the Authority on 27 June 2022, the market share of the second and third ranked operators behind the market leader (with a market share of around 44% based on SIM cards used for calls) is almost the same (around 27-27%). The most significant change in recent years has been the emergence of a fourth operator with its own mobile network, with a market share of around 2-3%, currently targeting the most price-sensitive consumers, based on its retail offers. (The situation and developments of the mobile markets are presented in detail – even beyond the market shares – by the Mobile Market Report published by the Authority every six months.)

In order to maintain competition in the mobile market, it is essential that no single market player has a significant disadvantage in its ability to establish backhaul connections. According to this, appropriate acquisition limits must be applied when the 32 GHz frequency band is put into use.

However, regarding the backhaul network deployment capacity of certain operators, it should be noted that the operators using the 26 GHz frequency band are aware of the fact that microwave links can be operated in the 26 GHz frequency band only until 2027, hence the number of deployments of new links in this frequency band has been severely reduced. On this basis, it can be predicted that the opening of the 32 GHz frequency band – subject to the enforcement of appropriate acquisition limits – will not significantly affect the intensity of competition that has been established, based on the current use of the 26 GHz frequency band.

Assessment of the lack of potential competition

In general, potential competition exists when a potential price increase could lead to the entry to the market of competitors providing substitute services in the longer term. Thus, potential competition can be seen as the long term realisation of supply-side substitution. The very prospect of such longer-term substitution may deter incumbents from continuing to operate largely independently of competitors, customers and ultimately consumers; for example, by cutting off service provision or significantly increasing their prices (or keeping them significantly above competitive levels). If the market of an operator being in a dominant position on the relevant market is, in the longer term, a “contestable” market by new entrants, this may limit the operator's activities and possible abuse of its dominant position already under the given market conditions.

In the case of the award of the 32 GHz frequency band, the fact that anyone can apply for entitlements in the 32 GHz frequency band on equal terms, including new entrants, i.e. undertakings that currently do not yet have an entitlement to frequency use in the 26 GHz frequency band, as mentioned in the previous section, is also essential. At the same time, the new entrant, like the current entitlement holders of the 26 GHz frequency band, will be able to use the entitlements acquired as a result of this auction procedure to operate in various electronic communications markets, such as the mobile market, the (television) broadcasting market, the leased line services market, etc. As such, the impact of the activities of the new entrant on potential competition needs to be assessed in these markets. However, from a more general point of view it can be established that a new entrant typically stimulates competition in any given market. Nevertheless, it can also be concluded that only the acquisition of an entitlement in the 32 GHz frequency band would not in itself enable a new entrant to create a substantially new competitive situation.

¹⁰ (<https://nmhh.hu/dokumentum/230162/mobilpiacijelentes2018q12021q4.pdf>)

I.5. Assessment of joint dominant position

In the light of the assessment of the market situation, it should also be examined whether the activities and conduct of two or more independent undertakings in the same relevant market within the same timeframe may constitute a joint dominant position and, if so, what conclusion can be drawn from this as to the conditions to be applied in this auction procedure.

A joint dominant position arises when two or more undertakings are in essentially the same position vis-à-vis their competitors and customers, and ultimately consumers, as a single undertaking in dominant position would be. For this to happen, a common interest is necessary, meaning that it is in the interest of the undertakings concerned to create a dominant position vis-à-vis the other operators in the relevant market jointly (e.g. to squeeze out the others). It also implies that there is no effective competition between the two or more undertakings concerned in the relevant market (e.g. market sharing).

In the course of awarding the 32 GHz frequency band, it should be taken into account that:

- the possibility of secondary trading exists for all entitlement holders,
- based on a preliminary assessment of demand, presumably there is an oversupply in the 32 GHz frequency band, hence applicants can acquire the frequency amount they need,
- in all cases, the ownership structure will be examined,
- in the case of cooperation for shared use between two operators, it may be advantageous to aggregate and combine separately acquired blocks in order to achieve higher transmission capacity. However, the conditions for such use must also be met from the equipment side. Although it is possible for a device to aggregate two separate channels within a single frequency band in order to achieve higher data transmission capacity using one channel, at the same time, the ability to aggregate two blocks depends on whether the given device supports this mode of operation. Depending on the position of the two separate blocks within the frequency band, it is also possible that one device may not be able to aggregate the two channels (even if they are adjacent) due to the span of the equipment (in-band breakpoint).

It should also be examined whether frequency sharing within the framework of secondary trading in the case of the blocks of the 32 GHz frequency band could subsequently lead to or potentially strengthen the joint dominant position of the affected entitlement holders, and whether it is justified to impose ex ante restrictions on secondary trading in the 32 GHz frequency band to address this risk. In light of the above, although joint cooperation may take place, it can be concluded that the creation of joint dominant position using the 32 GHz frequency band is unlikely, as the future supply is likely to allow all participants to obtain entitlements, and the amount of spectrum available is likely to be sufficient to meet their own needs, and the possible aggregation of the blocks of two entitlement holders (partly as a consequence of the foregoing) would not lead to any substantial advantage.

II. Other criteria

II.1. Public consultation for interested parties

Based on the public hearing held on 22 March 2022, the position of market players was not unanimous. Some have called for the awarding of the 32 GHz frequency band as soon as possible, while others consider it premature, unjustified or in need of further assessments and investigations.

On this basis, it can be concluded that:

- Based on the statements, weaker and less intense competition is expected for the 32 GHz frequency band.
- No distortion of competition is expected in a weakly competitive environment, however the Auctioneer has also examined whether new competition could potentially emerge in the long term as a result of technological developments and concluded that, although no rapid technological development is expected on microwave, it is likely that competition will be much more intense around 2030 given the competition generating impact of continuous technological development.
- In this context, the reason for launching the auction procedure was innovation and business development, i.e. the fact that in this way the Auctioneer can help innovative players to use the 32 GHz frequency band.

II.2. Impact of the awarding of the frequency on investments made and planned

The Auctioneer examined the expected impact of the auction procedure on the investments already made and those planned by market players and on the deployment of electronic communications networks using the frequency band affected by the auction procedure.

Since no market player has been awarded an entitlement to use the 32 GHz frequency band yet, therefore there is no completed investment in this frequency band, but several investments have been completed in the 26 GHz frequency band currently in use instead. What is therefore relevant for the purpose of the analysis is to assess the extra costs the migration from 26 GHz to 32 GHz will entail for the future licence holders.

Entitlements previously designated in the 26 GHz frequency band will expire in 2027, so no new investment in terms of devices is expected in this frequency band and the former devices will no longer be usable in the 26 GHz frequency band after 2027. Based on estimates, although transition will definitely have extra costs, but the magnitude of these costs is not considered to be significant enough to have a major impact on any business plan.

The Auctioneer also identified that the 32 GHz frequency band would also have frequency acquisition costs, monthly fees, etc., but even if current services were to remain in the 26 GHz frequency band (on which the entitlements will expire in 2024 and 2027) instead of migrating them to the 32 GHz frequency band, the future entitlement holders could incur costs of a similar type and amount.

Furthermore, it is possible for the entitlement holders to return the user blocks established in the 26 GHz frequency band one by one, separately for each base block, thereby helping to free up the frequency band more smoothly. This way, migration can be continuous and there is no need to pay the full band fee – in line with the original acquisitions – for the concurrent entitlements in the 26 and 32 GHz frequency bands throughout the entire transitional period.

The Auctioneer has also examined the theoretical scenario that if a service provider was unable to obtain an entitlement in the 32 GHz frequency band instead of its expiring 26 GHz frequency band entitlement, how this would potentially affect its past (network) and planned investments. It can be assumed that, without the 32 GHz frequency band, the service provider concerned would no longer be able to develop its network as efficiently as its competitors, which would put it at a competitive disadvantage and would also devalue its current investments. Hence this also underlines the need to maximise the amount of frequency that can be acquired to ensure that as many participants as possible have the option to acquire frequency.

III. Summary

The awarding of the 32 GHz frequency band will primarily ensure the replacement of entitlements currently available in the 26 GHz frequency band, meaning that the 32 GHz frequency band will be a substitute for the 26 GHz frequency band. Overall, the replacement of the 26 GHz frequency band with the 32 GHz frequency band does not essentially lead to any technological efficiency gains for the future entitlement holders (point-to-point links are replaced by point-to-point links), and thus there is no market distortion from a forward-looking perspective – as long as all participants are assured that they can acquire the proper and sufficient number of blocks (lots).

On this basis, the wireless links market is not expected to change significantly, in a way that would affect competition.

Based on the preliminary consultation, it is not expected either that besides the current four mobile radio telephone operators a large number of additional applicants will join and generate significant additional demand for the blocks, and therefore the acquisition limit of maximum 6 blocks (taking into account the maximum number of blocks that can be obtained, i.e. 24) is sufficient to ensure the objective that no single market participant in the mobile market is at a significant disadvantage in its ability to establish backhaul connections, as compared to the others.

Although 4 base blocks would be sufficient from a technical and manufacturer point of view, but taking into account the NFFF rule on the maximum frequency range amount, and also that the Documentation that states that the maximum quantity that can be obtained by participants belonging to the same group of undertakings is valid for the entire group of undertakings, and since there may be several independently operating companies/networks within each group of undertakings, setting the limit at a maximum 6 base blocks may therefore ensure efficient operation even in the case of a group of undertakings, at the same time, it limits unnecessary frequency hoarding, thereby providing greater opportunity for more participants to acquire frequencies.