



Č e s k ý t e l e k o m u n i k a č n í ú ř a d

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Prgue xxxxx XX, 2016

Ref. No. CTU-XX XXX/2016-613

**Opening of the tender for granting of the
rights for use of the radio frequencies
for provision of the electronic
communications network in the 3.7 GHz
frequency band**

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1 BACKGROUND OF THE TENDER

The Office in determination of the tender conditions¹ worked on the process of the European harmonization for handling with the spectrum in a coordinated way through CEPT (European Conference of the Postal and Telecommunication Administrations) and the RSPG Commission (Radio Spectrum Policy Group), and RSC (Committee for the Radio Spectrum). The basic harmonization document is the Commission Decision 2008/411/EC of 21 May 2008 on the harmonisation of the 3 400-3 800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community², as amended by the Commission implementing decision 2014/276/EU, of 2 May 2014, on amending Decision 2008/411/EC on the harmonisation of the 3 400-3 800 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community³.

The Office as relevant state administration body according to § 108, subsection 1, paragraph o) and p) of the Act and according to § 149 of the Rules of administrative procedure, hereby opens this tender according to § 21 of the Act with respect to the request for provision of efficient use of the radio frequencies according to § 15, subsection 1 and 2 of the Act, and in conformity with PVRS 7, that limits the number of rights for use of the radio frequencies within said parts of the radio spectrum.

¹ The capitalized terms are defined in the chapter 14 of the Opening.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008D0411&rid=1>

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0276&rid=1>

2 GOALS OF THE TENDER

The goal of the tender while considering the documents in chapter 1 of the Opening is allowing of use of the integrated set of the radio frequencies from 3,600-3,800MHz frequency band (hereinafter referred to as “3.7GHz band”) and establish the conditions for efficient achieving of the following goals:

- development of the new services of the electronic communications through wireless high-speed networks, particularly the services of the broadband high-speed Internet access, and establishing the conditions for technological innovation;
- the efficient use of the radio frequencies from the 3.7GHz band in favour of the consumers through granting the rights to the allocated radio frequencies for technologically neutral public networks of the electronic communications of either fixed or mobile radiocommunications service⁴ for provision of the electronic communications services;
- support of the competition in the field of the electronic communications services provided through the public networks of the electronic communications at the wholesale and retail level having an impact on the full market of the electronic communications, aimed at the benefits for the end users.

2.1 Development of the new services and support of the technological innovation as a tool for increased competitiveness.

Implementation of the new technologies and development of the high-speed networks are one of the main priorities of the European countries including the Czech Republic. According to *A Digital Agenda for Europe*⁵ created by the European Commission the development of the high-speed networks (including wireless ones) contributes to reliable growth of the economy and creation of new jobs.

Similarly, the study *ICT a konkurenceschopnost České republiky*⁶ made for the government of the Czech Republic reveals that the networks of the electronic communications form the grounds of so-called technological infrastructure needed for improved competitiveness of the Czech Republic.

The document *Digitální Česko v. 2.0: Cesta k digitální ekonomice*⁷ further details the goals defined in the A Digital Agenda for Europe and sets priorities for reduction of the “digital gap” in the field of approach to the high-speed Internet between rural settlements and cities.

The radio spectrum, which is the subject of this tender, is particularly suitable for the capacity coverage of locations with high concentration of potential users operating across the whole territory of the Czech Republic. The Office assumes use of this radio spectrum particularly for construction of the high-speed access networks according to the harmonized documents.

⁴ So-called MFCN – Mobile Fix Communication Network

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>

⁶ http://www.cssi.cz/cssi/system/files/cssi/Studie ICT_a_konkurenceschopnost_CR_20101003.pdf (Czech language only)

⁷ http://www.vlada.cz/assets/media-centrum/aktualne/Digitalni-Cesko-v--2-0_120320.pdf (Czech language only)

The conditions that stipulate minimum extent of the population coverage are included in the conditions for the efficient use of the radio spectrum defined in chapter 7.4 of the Opening.

2.2 Efficient use of the frequency spectrum

In order to arrange for the efficient use of each part of the frequency spectrum the Office decided to offer all radio frequencies from the 3.7GHz in the tender.

The Office defined in the subject of the tender the offered frequency sections with respect to maximum efficiency of the use of the allocated blocks for wireless radio networks, and with respect to the fact that the band where there are not collisions with other users of the frequency spectrum is promising for the future introduction of the electronic communications networks at very high access speed. Therefore, the Office decided to define the Auction blocks with the use of the channel widths several times larger than the 5MHz channel width defined in PVRS 7 so that the allocations of the radio frequencies allowed operation of the technologies providing sufficient transmission capacity suitable for provision of the electronic communications services, which would satisfy not only current but also future needs of the users of the services provided through the radio frequencies, while assuming growing demand for continuously increasing volumes of the data transmissions⁸.

At the same time, the Office decided to set different spectral limits for the Applicants who are the Existing operators, and for the other Applicants. The Office aims at the efficient use of the frequencies in the 3.7 GHz band and support of the competition so that development of the new public communication networks, which may be used for provision of the services of the electronic communications at retail and wholesale level, takes place in addition to the development of already existing networks of the electronic communications that use the radio frequencies in the 800 MHz, 900 MHz, 1,800 MHz, 2,100 MHz and 2,600MHz bands used for provision of the services of the Existing operators at the retail and wholesale level. Considering current spectral facilities of the Existing operators the Office assumes that the range of the radio frequencies, which are the subject of this tender, and that exceeds the spectral limit defined for the Existing operators in chapter 6.1 of the Opening, shall not be necessary for development of the mobile networks of the Existing operators for substantial part of the allocation time. Therefore, they should be allocated to the Applicants that are not authorized to use the radio frequencies at that mobile frequency bands. The Office explicitly specifies that when setting the spectral limits in this tender, the setting of the spectral limits under conditions of the tender for granting of the rights for use of the radio frequencies for the public communication network in the 1,800 MHz and 2,600 MHz bands opened on March 8, 2016 were considered, as well as the fact that the allocations of the radio frequencies or those awarded based on said tender shall not have an impact on the spectral limits in this tender.

⁸ At the same time, the Office proposed and submitted to the Ministry of Trade and Industry a draft for modification of the governmental decree No. 154/2005 Coll. on determination of amount and calculation method for the fees for use of the radio frequencies and numbers, as amended. The proposed modification considers the fact that the nature of the networks operated with the use of the frequencies based on this Tender makes them falling within the category of the terrestrial mobile service networks. Hence, the proposed governmental decree sets the reduction of annual fees for use of the frequencies over 2,200MHz, which supports the effective use of the 3.7GHz band. This proposal was approved by the Czech government on June 3, 2015 with resolution no. 421.

2.3 The support of the competition on the market of the electronic communications and establishing of the conditions for potential entry of other entities on the market

The support of the efficient and sustainable competition in the field of the electronic communications services provided through the public networks of the electronic communications in compliance with the Union Radio spectrum policy is another of the goals of the tender.

Further to the background of the tender described in chapter 2 of the Opening, the Office intends to apply the following instruments for support of the competition in the tender at the infrastructure level and at the level of the services:

- The Office defined the spectral limits so that if the interest is sufficient, the frequencies under this tender may be distributed among **at least three Applicants** to be operated **at least three nationwide radio networks of the electronic communications** using the frequencies;
- under the tender, the Applicants **assume the wholesale offer liability** for the services provided on the public communication networks using the radio frequencies allocated based on this tender so that the wholesale access to the services operated on the allocated parts of the frequencies by other parties interested in operation of the services is guaranteed to maximum extent possible.

3 THE FUNDAMENTAL PRINCIPLES OF THE TENDER

- a) The tender shall take in the form of an auction. The selected auction format is the simultaneous multiple round auction (hereinafter referred to as "SMRA") implemented through the Electronic Auction System. The principles of the Auction are described in chapter 9 of the Opening and in the Rules of the Auction attached thereto as Appendix 3.
- b) Only the interested parties complying with the participation conditions according to chapter 8 of the Opening may join the tender. To participate in the tender, an Application that unconditionally complies with the requirements of this Opening must be submitted. The Applicant is not authorized to either modify or condition the requirements in this Opening and the Application.
- c) The tender shall take place in three steps - (1) qualification step, (2) auction step, and (3) procedure step of the Office following conclusion of the Auction. The Office shall review in the first step whether the Applicants, who submit their Applications within the deadline for submission of the Applications defined in chapter 5 of the Opening, comply with the tender participation conditions in chapter 8 of the Opening. Should the Applicant do not comply with or shall not comply with the conditions at any time during the tender, the Office shall reject the Applicant from the tender. Submission of a remedy against decision on rejection from the Tender shall not have a suspensory effect. In the second step of the tender all qualified Applicants shall attend the auction. Full wording of the rules for running of the auction is given in the Rules of the Auction attached thereto as Appendix No. 3. In the third step the Office shall follow chapter 10 of the Opening.
- d) Participation in the Tender shall be at the expenses of the Applicant.
- e) The Office shall respond in writing to questions delivered within the deadline according to chapter 5 of the Opening to e-mail address aukce@ctu.cz. The delivered questions must indicate reference number of this Tender in the subject.
- f) The Office shall have right to cancel the Tender even also expiry of the deadline for submission of the Applications. Other details related to cancellation of the Tender are specified in chapter 12 of the Opening.
- g) The Office shall not bear any financial or other liabilities resulting from cancellation of the Tender.

4 ORGANIZER OF THE TENDER

Name of the Office:	Český telekomunikační úřad (Czech Telecommunication Office)
Represented by:	Mr. Jaromír Novák
Registered office:	Sokolovská 58/219 190 00 Praha 9
Address for delivery of documents in hard copies:	Český telekomunikační úřad Poštovní přihrádka 02 225 02 Praha 025
Address for delivery of documents in electronic copies:	E-mail: podatelna@ctu.cz Data box: a9qaats
Business ID:	70106975
Tax ID:	CZ70106975
Bank account for payment of the Guarantee according to chapter 8.3 of the Opening:	6015-725001/0710 kept with ČNB, Prague branch
Bank account for payment of Total price:	19-725001/0710 kept with ČNB, Prague branch

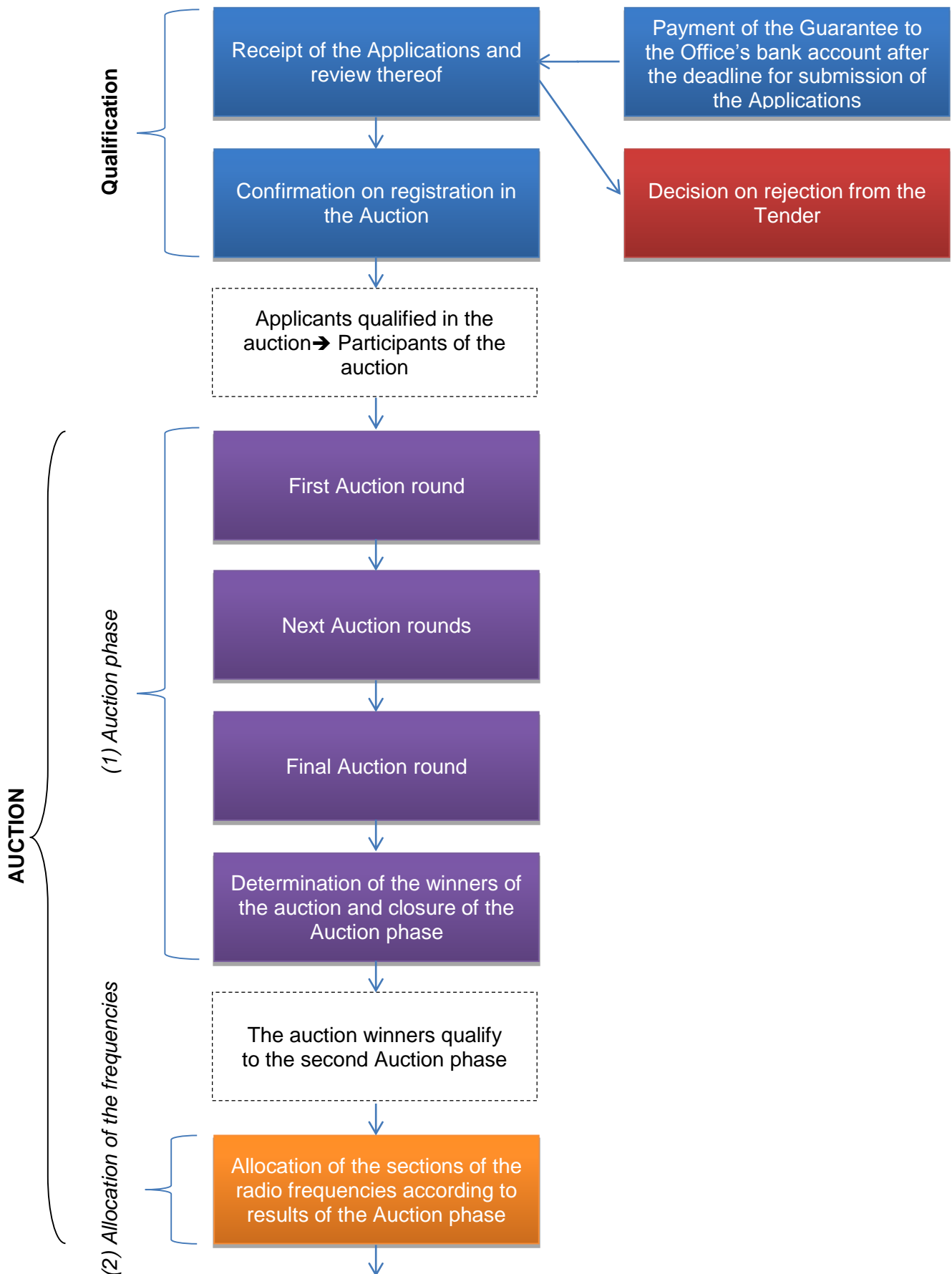
5 DEADLINES OF THE TENDER

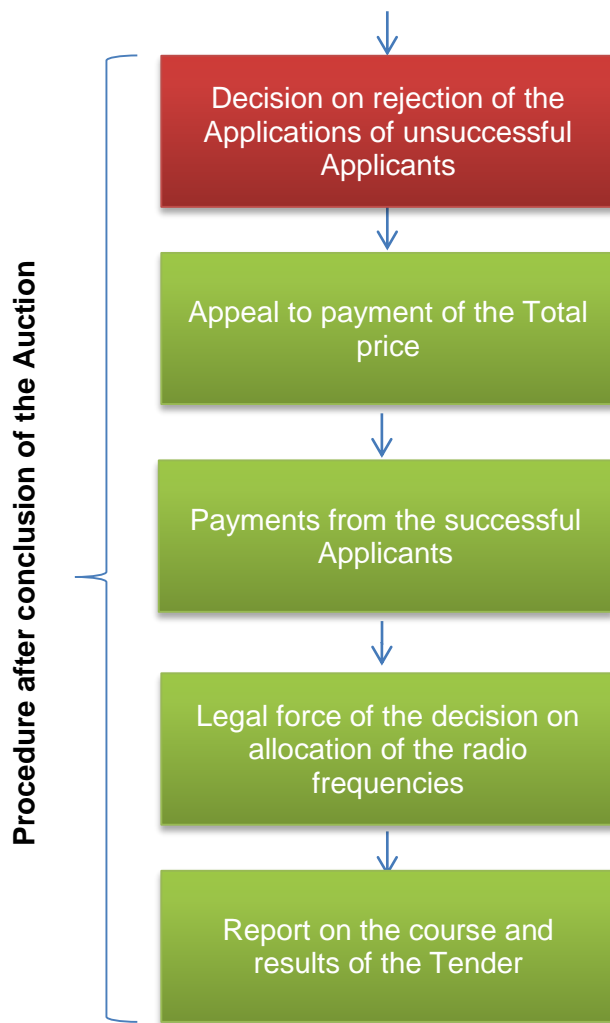
5.1 Time schedule of the Tender

Announcement	Activity	Deadline
a.	Opening of the Tender	xxxxx XX, 2016
b.	Delivery of questions according to chapter 3, clause e) of the Opening	xxxxx XX, 2016
c.	Publishing of responses to the questions according to chapter 3, clause e) of the Opening	xxxxx XX, 2016
d.	Delivery of Applications for granting of the rights to use of the radio frequencies according to chapter 8 of the Opening	xxxxx XX, 2016 before noon
e.	Opening of envelopes with the Applications	xxxxx XX, 2016 at 9 a.m. at the registered office of the Office

Updated schedule of the Tender shall be published on the Office's website (www.ctu.cz). Unless specified otherwise, provisions of § 40 of the Rules of Administrative Procedure shall be applied for counting of the deadlines during the Tender. It is particularly mentioned that the day on which the fact defining beginning of the deadline is not included in the course of the deadline. If the deadline falls on Saturday, Sunday, or public holiday, the last day of the deadline is the next closes business day. Unless stated otherwise, the deadline is based on the calendar days.

5.2 Scheme of the course of the Tender divided into the phases





6 SUBJECT OF THE TENDER:

6.1 3.7GHz band

The 3.7GHz frequency band is an unpaired band defined by the frequencies 3,600MHz - 3,800MHz. The band is intended for provision of high-speed services of the electronic communications across the territory of the Czech Republic within the mobile service under the conditions in PVRS 7.

Now, the frequency band is unused. The operation of fixed point-to-point- connections in this band was terminated in 2011, i.e. before the scheduled allocations based on this Tender. No allocations of the radio frequencies in this band has been made so far.

The radio frequencies in the 3.7GHz band shall be divided into five abstract blocks, each of 40MHz width (8 channels, 5MHz width each).

The following frequency parts shall be allocated in the tender (boundaries of the frequency channels are specified):

Radio frequency part identifier	Frequency range in MHz	Part size in MHz
A	3,600–3,640	40
B	3,640–3,680	40
C	3,680–3,720	40
D	3,720–3,760	40
E	3,760–3,800	40

To submit the bids for the radio frequencies, maximum spectral limit is defined for the Applicants, who are not the Existing operators, so that total amount of the radio frequencies allocated to such Applicant based on this Tender may not exceed 80 MHz.

To submit the bids for the radio frequencies, maximum spectral limit is defined for the Applicants, who are the Existing operators, so that total amount of the radio frequencies allocated to such Applicant based on this Tender may not exceed 40 MHz. In the case that after the evaluation of the first Auction round, no bid is submitted by an Applicant who is at the same time an Existing operator, the spectrum limit for the Existing operators will be increased to 80 MHz for all subsequent auction rounds. In such case, the maximum amount assigned to an Existing operator, shall not exceed 80 MHz.

The auction rules are described in Appendix 3 to this Opening of the Tender.

6.2 The price for granting of the rights for use of the radio frequencies (according to § 21, subsection 5, paragraph f) of the Act)

The amount of the price for granting of the rights for use of the radio frequencies to be paid by each Applicant based on this Tender shall equal to the sum of the Winning bids from the Applicant.

The amount of the Bids in the Auction phase may not be lower than minimum price of the Auction blocks specified in chapter 0 of the Opening.

Minimum price for each Auction block A to E is CZK 17,000,000.00 (in words: seventeenmillionczechcrowns).

The minimum price was determined based on the analysis (benchmark) of the prices achieved for granting of the rights for the radio frequencies in 3.4 to 3.8 GHz bands that are subject of this Tender in relevant European countries.

7 THE CONDITIONS AND OBLIGATIONS ASSOCIATED WITH GRANTING OF THE RIGHT TO USE THE RADIO FREQUENCIES

The conditions associated with granting of the right to use the radio frequencies, including the conditions of efficient use of the radio frequencies, and liabilities assumed by the Applicant during the Tender shall be defined by the Office in its decision on allocation of the radio frequencies issued based on the Tender results, and other documents issued based on the Act.

7.1 Conditions for use of the allocated radio frequencies

The radio frequencies offered in the Tender are intended for use across the territory of the Czech Republic.

In case of investigation of a complaint related to interference of the radio reception by operation of the broadcasting radio stations that use the allocations of the radio frequencies under this Tender, the procedure according to the Act shall be applied.

The conditions for use of the radio frequencies in the 3.7 GHz band are specified in PVRS and shall be reflected in IO, or other documents issued based on the Act. The public communication network or part thereof operated with the use of the 3.7 GHz band frequencies must technically comply with the conditions in the Commission Decision No. 2008/411/ES² as amended by the implementing decision No. 2014/276/EU³, in the decision ECC/DEC/(11)06⁹, and within the standard defined by the Applicant, they must comply with the conditions of ETSI standards, or other related documents of the Commission, CEPT, or ITU.

7.2 Issue of IO

The condition for start of the use of the radio frequencies allocated based on the results of the Tender is issue of the IO. The following additional conditions are defined in the process of the issue of IO:

- a) Obligation of the Allocation holders to inform the Office at EOM the ¹⁰list of currently operated base stations in a format suitable for batch coverage calculation¹¹ including all changes to data mentioned below to already operated base data from the last report. Description of the operated base stations according to these reports shall be an integral part of IO. The reports shall include the following data for each base station:
 1. District identification according to the Appendix 4 of the Opening;
 2. Municipality identification according to the Appendix 4 of the Opening;
 3. Unique name of the location (must be retained in case of change to technical parameters);
 4. Address of the location;

⁹

<http://www.erodocdb.dk/doks/filedownload.aspx?fileid=3842&fileurl=http://www.erodocdb.dk/Docs/doc98/official/pdf/ECCDEC1106.PDF>

¹⁰ This deadline may be changed upon mutual agreement with the Office.

¹¹ In the CSV format (comma used to separate columns, and decimal point for tenths), or any other format agreed with the Office.

5. Coordinates of the location (WGS 84 system, degree, minute, arc second);
 6. Altitude of the location (m);
 7. Radio frequency of the transmitter and receiver (frequency range in MHz);
 8. The aerial system centre height above the terrain (m);
 9. Beam characteristics of the aerial system (code identification according to HCM agreement, Appendix No. 6¹²;
 10. Azimuth of maximum radiation in each sector (°);
 11. Mechanically set elevation in azimuth, max radiation in each sector (°);
 12. Maximum radiated power ERP per sector (W).
- b) The IO holder shall within the report according to clause a) report the exact date of start or end of the operation of each transmission radio devices (network base stations) as well as important facts related to operation of terminals, e.g. load tests, and more.

7.3 The technologies and services for which the rights for use of the radio frequencies shall be granted

In compliance with the principle of technological neutrality the Office does not define any conditions or limitations related to the technologies the Applicant intends to use for provision of publicly available services of the electronic communications with the use of allocated radio frequencies beyond the conditions set in chapter 7.1 of the Opening. This is without prejudice to relevant provisions of PVRS 7.

All devices operated with the use of the frequencies under this Tender must comply for the term of their operation with any and all applicable technical standards and other generally applicable legal or other regulations currently in force.

7.4 The conditions for efficient use of the radio frequencies

The obligatory criteria with respect to compliance with the conditions of the efficient use of the radio frequencies awarded in this Tender are specified for the efficient use of the radio frequencies:

- start of the efficient use of the radio frequencies, i.e. start of provision of the commercial, publicly accessible communication services with the use of the public communication networks operated with the use of the radio frequencies allocated in this Tender within the deadline of 2 years of the effective date of the decision on allocation. To comply with the condition the Allocation holder does not have to use the full width of the frequency allocation; only a part thereof from this Tender may be used for provision of the publicly accessible commercial services;
- start of the use of the radio frequencies in the sense of § 22b, subsection 2 of the Act, i.e. provision of the services of the electronic communications via the public communication networks with the use of the full range of the radio frequencies allocated in this Tender within 5 years of the effective date of the decision on allocation;
- coverage of the territory with the offer of publicly accessible services of the electronic communications through the public communication networks with the use of the radio frequencies allocated in this Tender - development criteria - within the deadline and extent in case the Allocation holder holds the 80 MHz radio frequencies:

¹² http://www.hcm-agreement.eu/http/englisch/verwaltung/index_berliner_vereinbarung.htm

Size of a municipality	The development criteria valid during the period from 3 years of the legal force of the decision on allocation to 5 years of the same	The development criteria valid during the period from 5 years of the legal force of the decision on allocation for the remaining period of the effective allocation	
	Minimum number of covered municipalities in accordance with Appendix 4 of the Opening	Minimum number of covered municipalities in accordance with Appendix 4 of the Opening	Minimum number of covered districts of the Czech Republic
municipalities with population $\geq 2,000$ and $< 5,000$	—	40% of the municipalities	30 districts
municipalities with population $\geq 5,000$	10% of the municipalities	45% of the municipalities	30 districts

- coverage of the territory and population with the offer of publicly accessible services of the electronic communications through the public communication networks with the use of the radio frequencies allocated in this Tender - development criteria - within the deadline and extent in case the Allocation holder holds the radio frequencies less than 80 MHz:

Size of a municipality	The development criteria valid during the period from 3 years of the legal force of the decision on allocation to 5 years of the same	The development criteria valid during the period from 5 years of the legal force of the decision on allocation for the remaining period of the effective allocation	
	Minimum number of covered municipalities in accordance with Appendix 4 of the Opening	Minimum number of covered municipalities in accordance with Appendix 4 of the Opening	Minimum number of covered districts of the Czech Republic
municipalities with population $\geq 2,000$ and $< 5,000$	—	25% of the municipalities	20 districts
municipalities with population $\geq 5,000$	10% of the municipalities	30% of the municipalities	20 districts

The decisive date for determination of size of a municipality is 31 December 2014. The list of municipalities of the Czech Republic including the division based on the population is given in Appendix 4 of the Opening.

The coverage of a municipality of defined size means operation of at least one base stations with the valid IO according to chapter 7.2 of the Opening located in the cadastral territory of that municipality using the radio frequencies from this Tender that form a part of the public network of the electronic communications.

It must be true at the same time that throughout the performance of the development criteria it is possible to provide the service of high-speed Internet access via this part of the public network of the electronic communications so that included in the offers publicly available to the end users is at least one offer with at least 30MBit/s speed (download) offered as the public service of the electronic communications. The public service of the electronic communications must be provided with the use of the radio frequencies under this Tender either by the Allocation holder or its direct wholesale partner with which the Allocation holder concluded a wholesale contract covering any type of the wholesale cooperation at the commercial base or or according to chapter 7.9 of the Opening. These conditions may be complied with also based on lease of the radio frequencies from this Tender, provided that the parameters of the offer for the end users comply with the requirements according to this chapter 7.4 of the Opening.

The coverage of a district means coverage of at least one municipality of the defined size according to three preceding clauses of this chapter 7.4 of the Opening.

The Office shall conduct the audit of compliance with the conditions of the efficient use of the radio frequencies based on data received from the Allocation holder. The Allocation holder shall submit this information always as of the moment of meeting of the development criteria mentioned above at the latest. The Office shall have right to audit according to chapter 7.5 of the Opening, and in case of dispute between data from the Allocation holder and data found during the audit, the Office shall work on the data from its audit.

7.5 The audit of compliance with the conditions of the efficient use of the radio frequencies

The audit of compliance with the conditions of the efficient use of the radio frequencies according to chapter 7.4 of the Opening shall be conducted by the Office based on data submitted by the Allocation holder for the purpose of issuing of IO according to chapter 7.2 of the Opening.

The audit of availability of the offer with minimum defined service speed specified in chapter 7.4 of the Opening shall be conducted by the Office according to the methodology *Stanovení základních parametrů a měření kvality služby přístupu k síti internet* available on the Office's website¹³. In cases of necessity of verification of real parameters of the service, the control shall be conducted by the Office according to the data transmission speed metering methodology *Měření datových parametrů sítě pomocí TCP protokolu* available on the Office's website¹⁴. The Office shall inform the Allocation holder about the results. The audit of compliance with the conditions of the

¹³ http://www.ctu.cz/cs/download/datovy_provoz/rizeni_datoveho_provozu_stanoveni_zakladnich_parametru_18_12_2014.pdf (Czech language only)

¹⁴ http://www.ctu.cz/cs/download/datovy_provoz/rizeni_datoveho_provozu_metodika_mereni_17_12_2014_v0_4_5.pdf (Czech language only)

efficient use of the radio frequencies shall be conducted according to Act No. 255/2012 Coll. on audits (rules of inspection).

The Office shall conduct the audit of compliance with the conditions of the efficient use of the radio frequencies according to chapter 7.4 of the Opening as well as based the application from the Allocation holder.

7.6 Change to, expiration, transfer, carry over, and lease of the allocated radio frequencies

Change to, expiration, transfer, carry over, and lease of the allocated radio frequencies are stipulated in provisions of § 22a, 22c, 22d, and 23 of the Act.

In order not to breach the competition or efficient use of the radio frequencies by potential transfer of the allocated radio frequencies, the transfer of the allocation shall be possible under conditions of § 23 of the Act and in general under the following conditions:

- the smallest transferable unit shall be 5 MHz; and
- for the term of 5 years of the legal force of allocation of the radio frequencies, the entity to which the radio frequencies were allocated based on this Tender should meet the conditions set in chapter 6.1 of the Opening, i.e. if an Existing operator acquires the transferred radio frequencies, the total amount of the radio frequencies allocated based on this Tender held by the Existing operator must not exceed 40 MHz, and should the entity, which acquires the radio frequencies, is not the Existing operator, total amount of the radio frequencies allocated based on this Tender held by a single corporate consortium must not exceed 80 MHz respectively. If, based on the conditions set in Chapter 6.1 of the Opening, no bid is submitted by an Applicant who is not an Existing operator in the first Auction round, the total amount of the radio frequencies allocated based on this Tender held by an Existing operator must not exceed 80 MHz.

No changes of holders of individual authorizations to use radio frequencies that are the subject of this Tender will be allowed in accordance with section 18 para. 1 point h) of the Act. In an individual authorization to use radio frequencies that are the subject of this Tender, allowed Holder of the individual authorization to use radio frequencies that are the subject of this tender, may only be the Allocation holder.

In accordance with section 18, para. 1 point h) of the Act, in an individual authorization to use radio frequencies that are the subject of this Tender, lease of the rights arising from an individual authorization to use radio frequencies will be permitted only with prior approval of the Office.

The Office shall give permission to lease the rights arising from an individual authorization to use radio frequencies that are the subject of this Tender in case that such lease will not lead to exceeding of the spectral limits laid down in Chapter 6.1 of the Opening. For the purposes of lease limited to a specific geographic area, the spectrum limits shall be considered separately in each geographic area.

Considering the provisions of § 19, subsection 14, and §22b, subsection 1 of the Act it is necessary so that the Allocation holder (the Applicant and/or its successor, or any other person to which the allocation of the radio frequencies would be transferred, ceased, or leased) meets, or with the existing conditions not to cease compliance with some of the conditions for 5 years of the legal force based on which the radio frequencies were allocated to the Applicant. It includes meeting of the liabilities assumed according to chapter 7.9 of the Opening (wholesale offer) regardless handling with the frequencies to which the obligations relate.

In order not to breach the competition or efficient use of the radio frequencies or any other goal of the Tender and considering the provisions of § 19, subsection 14, and

§22b, subsection 1 of the Act it is necessary so that the Allocation holder (the Applicant and/or its successor, or any other person to which the allocation of the radio frequencies would be transferred, ceased, or leased) does not cease for 5 years of the legal force of allocation of the radio frequencies to meet all conditions of economic independence of the Allocation holder of the radio frequencies, and the way of participation in the Tender defined as the participation conditions in chapter 8.5 of the Opening.

The conditions of this chapter 7.6 of the Opening are without prejudice to the procedure of the Office according to § 23, subsection 5 of the Act.

7.7 Term of validity of allocation of the radio frequencies

The allocations of the radio frequencies, which are the subject of this Tender, shall be made with term of validity until **31 December 2031**.

7.8 The conditions resulting from the international treaties on use of the radio frequencies

The use of the radio frequencies is conditional upon compliance with the conditions defined in the obligatory international and bilateral treaties that coordinate the technical parameters of the transmitters on the border of the Czech Republic. The international coordination of the radio frequencies of the terrestrial mobile service and fixed service shall be governed by the HCM treaty, as amended¹³. The treaties on mutual coordination of the radio frequencies between the Czech Republic and the surrounding countries, if concluded in the future for the 3.7 GHz band, shall prevail the HCM¹³ treaty.

7.9 The wholesale offer liability assumed by the Applicant during the Tender

To use the radio spectrum efficiently, to support development of the competition on the market of the new services provided on the radio frequencies, which are subject of the Tender, and to achieve the other goals of the Tender as specified in chapter 2 of the Opening, the Applicants assume the Wholesale offer liability upon submission of their Applications for participation in the Tender.

In order to comply with the wholesale offer liability according to chapter 7.9 of the Opening, the Applicants shall agree to negotiate bona fide upon request for five years from the moment of granting of the radio frequencies coming into force with any interested party on **conclusion of an agreement on wholesale sale of the services provided at the retail level by Holder of the allocation awarded based on the Tender**, or parts of the services respecting and allowing the use of independent services of the electronic communications by the interested party. Total price for the wholesale services must particularly correspond to it (including one-off fees) and it must allow equally effective operator to achieve profit operation on the subordinated market(s).

In order to comply with the wholesale offer liability according to this chapter 7.9 of the Opening, the successful Applicants agree to offer, upon request of the interested party, the wholesale services allowing it to provide the services on the subordinated market(s) to at least identical extent and quality in which the successful Applicant provides the same to its end customers, unless the interested party asks the Applicant for either lessen extent or quality of the services based on the wholesale offer. Should the range of services the successful Applicant provide with the use of the radio frequencies allocated in this Tender to its customers either extend or otherwise change over the course of the term of the agreement on provision of the wholesale offer, the Applicant agrees upon request of the interested party to either expand or otherwise change the extent of the wholesale offer or contract concluded thereon accordingly so that the interested party has possibility at any time during term of the wholesale offer or contract concluded thereon to provide the services at least in the extent identical to the Applicant's, who is the provider of the wholesale offer, if the interested party asks for

so. In case of extension of the wholesale offer the Applicant can, if reasonable, require corresponding extension of the item price of the wholesale offer, provided that the condition of permitted profitable operation of the identically effective operator on the subordinated market(s) is adhered to.

The Applicant agrees to proceed in the sense of this liability with respect to all types of the retail services I will provide with the use of the radio frequencies allocated in this Tender.

In order to comply with the wholesale offer liability according to this chapter 7.9 of the Opening, the Applicants shall assume liability to make and appropriately publish an obligatory reference offer for the wholesale sale of the services in the form, extent, and details defined for the reference offer in the provision § 82, subsection 4 of the Act. The reference offer must comply with the conditions and requirements for performance of an assumed liability mentioned above in this chapter 7.9 of the Opening.

The reference offers for compliance with the wholesale offer liability must be made and published 6 months at the latest of the day when the Applicant starts provision of the commercial services with the use of the radio frequencies allocated based on this Tender or of the day when the Applicant starts using of the radio frequencies awarded based on this Tender for provision of its existing services.

In case that some parameters of the reference offer are unknown within the specified deadlines to the Applicant, the latter agrees to publish the reference offer based on reasonable assumptions. With respect to data for which no reasonable assumption may be made, the Applicant agrees to indicate in the reference offer full list of data the Applicant must submit together with the application for conclusion of the contract based on the reference offer in order the Applicant completes the reference offer based on this data to complete contract draft while respecting the parameters specified by the interested party. The Applicant agrees to submit the complete contract draft to all entities interested within three months of submission of the request of that interested party at the latest with all data required in the reference offer. Should the application of the interested party do not contain all matters required in the reference offer, the Applicant shall appeal it to amend the application upon my liability to the wholesale offer. In this case the three-month deadline postpones at the moment of delivery of the appeal to the eligible interested party and it resumes from the moment of delivery of the completed application to the Applicant.

The liabilities of this chapter 7.9 of the Opening do not prevent the Applicant to deal with the entities interested about any other form of the wholesale cooperation regardless the purpose and extent of the wholesale services and intended way of using thereof by the interested party.

The Applicant, which assumed the wholesale offer liability, shall be obliged to keep the conditions of the contractual relationships concluded based on the wholesale offer liability (especially the amount of the agreed prices) for the term of the contract according to the conditions of the assumed liability.

The Applicant shall assume the liability to conclude the contract based on the wholesale offer liability for the effective period not less than 2 years, unless shorter period is required by the interested party. Should the minimum two-year term of the contract exceed duration of the Applicant's liability, the Applicant agrees to conclude the contract with the effective date that lasts until the end of the effective date of its liability, unless the parties agree on longer effective date.

The Applicants agree within the wholesale offer liability and without justification, i.e. without unbiasedly justifiable reasons, not to discriminate between the interested parties and/or other persons with whom they have either entered or will enter a contract on wholesale cooperation.

The Applicants asked for submission of the wholesale offer shall inform the Office in writing about any and all demand for the wholesale offer they will receive from the party interested in the wholesale offer, and about basic parameters of each demand within 15 business days from receipt of such demand and on ongoing basis, however, at least in monthly intervals, to inform the Office in writing about course of the negotiation on provision of the wholesale offer. This liability is without prejudice to other notification obligations of the entities towards the Office.

Information provided according to previous clause may not be denied to the Office on account of their confidential nature.

Each Applicant shall assume an unconditional liability not to hinder the parties interested in the wholesale offer in the process of negotiation about the contract based on the wholesale offer liability, especially neither administrative, legal nor other obstacles, and demand compliance with conditions not necessary for the process of conclusion of the contract.

The Office prefers so that the contracts resulting from the wholesale offer liability or other forms of the wholesale cooperation are concluded based on business negotiation. To this end, the Office considered all forms of the wholesale cooperation (including leased allocation of the radio frequencies) in fulfilment of the development criteria as specified in chapter 7.4 of the Opening.

The Office is ready upon request of the parties in dispute any dispute regarding compliance of the prices agreed or of other conditions of the wholesale offer agreed above with the conditions of the wholesale offer liability according to the procedure under § 127 of the Act. Should the Office decide a dispute regarding compliance of the prices agreed above with the conditions of the wholesale offer liability, the Office shall proceed according to the pricing methodology¹⁵ based on the margin compression prohibition principle.

The breach of the wholesale offer liability shall be regarded as failure to comply with the obligations defined by the decision on the allocation in the sense of § 22b, subsection 1, paragraph b) of the Act. Should the Office find out the breach of the wholesale liability offer, the Applicant shall be appealed for remedy in the sense of § 22b, subsection 1, paragraph b) of the Act.

Should the Applicant fail to make a remedy of the breach of the wholesale offer liability within the deadline defined by the Office according to § 114 of the Act, the Office Chairman shall proceed according to § 22b of the Act.

The provisions of this chapter 7.9 of the Opening are without prejudice to the rights of the Office for use of other instruments available by laws.

¹⁵ For the latest methodology update, see www.ctu.cz/cs/download/ostatni/cenove_vyhodnocovani_postup_ctu_cj_ctu-43738_2011-611.pdf

8 THE RULES AND CONDITIONS OF PARTICIPATION IN THE TENDER (QUALIFICATION)

8.1 Qualification requirements

8.1.1 General rules for demonstration of qualification

According to provisions of § 21, subsection 2 of the Act, the Office stipulates conditions for participations in the Tender while taking into account meeting of the goals in § 5, subsection 2 to 4 of the Act, and according to the principles in § 6 of the Act.

All conditions of the participation in the tender according to chapter 8 of the Opening must be complied with as at the moment of expiration of the deadline for submission of the Applications listed in chapter 8.4 of the Opening. Should there be change to the Applicant's qualification during the Tender with real or potential non-compliance with the rules and conditions of participation according to chapter 8 of the Opening, the Applicant shall immediately, however within 7 days at the latest, inform the Office thereof. Should the Applicant cease to comply with the rules and conditions of participation in the Tender at any time thereof, the Office shall decide on rejection of the Applicant from the Tender.

The Applicant, which fails to demonstrate compliance with the participation conditions in the Tender before expiration of the submission deadline or ceases to be qualified during the Tender, shall be appealed by the Office to remedy the non-compliance and should no remedy be made during reasonable time period defined by the Office, the Applicant shall be rejected from participation in the Tender.

8.1.2 Basic conditions for participation in the Tender

Basic conditions for participation in the Tender are complied with by the Applicant:

- a) against which in last 3 years before submission of the Application or as of the Application submission date no insolvency proceeding with the bankruptcy decision or no insolvency proceeding was denied for insufficient assets for payment of the insolvency, or the bankruptcy was not cancelled for absolute insufficiency of the assets or receivership was declared according to special laws; the Applicant shall demonstrate compliance therewith by **the affirmation**;
- b) which is not in liquidation as of the Application submission date; the Applicant shall demonstrate compliance therewith by **the affirmation**;
- c) which is not registered in a register of entities to which performance of public contracts is prohibited as of the Application submission date; the Applicant shall demonstrate compliance therewith by **the affirmation**.

8.1.3 Expert and technical conditions for participation in the Tender

The expert and technical conditions for participation in the Tender are complied with by the Applicant that is authorized to run a business in the electronic communications according to § 8 a 13 of the Act as of the Application submission date; the Applicant shall demonstrate compliance therewith by **the affirmation**.

8.1.4 Economic and financial conditions for participation in the Tender

The economic and financial conditions of participation in the Tender shall be complied with by the Applicant, which not later as of the last day of the Applications submission deadline deposits according to chapter 8.4 of the Opening to the bank account of the Office for the guarantees specified in chapter 4 of the Opening the Guarantee at the amount specified in chapter 8.3 of the Opening and the same shall be **confirmed by the bank** about transfer of corresponding amount to the Office's bank account. The confirmation must specify that the Guarantee price was irreversibly debited from the

Applicant's bank account and transferred to the Office's account. According to chapter 8.4 of the Opening, the Guarantee must be credited to the Office's bank account in full amount no later than as of the last day of the deadline for submission of the bids.

8.2 The application for granting of the rights for use of the radio frequencies

8.2.1 Formal requirements on the Application

The Applications should be submitted in hard copy in 2 (two) counterparts, where one may be identified as original and the other as a copy. The Applicant is responsible for sameness of both counterparts. The original Application must have attached originals of the documents or their authenticated duplicates; normal non-authenticated copies of documents may be attached a copy of the Application. The original Application must be protected against inserting or removing of sheets. Together with the hard copy documents, the Applicant shall also submit full electronic version of the Application in the PDF format on physical data carrier protected against overwriting (e.g. CD-R, DVD-R).

If included in the Application or appendices thereto is information disclosure of which to third persons could result in damage to legitimate interests of the Applicant or the course or result of the Tender could be either endangered or spoiled, the Applicant shall attach to its Application another copy of the Application without such information so that the Office may use this version of the Application for consultation of the file in the sense of § 21, subsection 7 of the Act. In addition, the Applicant shall attach to the Application a report with well-arranged list of information to be excluded from consultation of the file according to § 21, subsection 7 of the Act with brief justification for exclusion of that parts of the Application. The Office is not bound by reservation of the information to be excluded from the consultation to file according to opinion of the Applicant according to this chapter 8.2.1 of the Opening.

The Applications shall be in Czech, the documents and other deeds attached to the Application may be in a different language with authenticated translation into Czech. Documents in Slovak attached to the Application may need not to be translated.

The Applications should be delivered to the Office's address given in chapter 4 of the Opening before expiration of the deadline for submission of the Applications in chapter 8.4 of the Opening. Both original and copy of the Application must be delivered to the Office together in a single sealed or otherwise properly closed envelope with business ID (IČO) of the Applicant, reference number of the Opening and bold letters "**DO NOT OPEN - TENDER 3.7 GHZ**" on it.

A sample of the Application and appendices thereto are contained in Appendix 1 and 2 of the Opening.

8.2.2 Required appendices to the Application

The Applicant shall attach **all documents required for qualification in participation in the Tender according to chapter 8.1 of the Opening**, and in addition:

- a) in case of legal entities, **an abstract from the commercial register** or similar register not older than 90 days before the last day of the deadline for submission of the Application according to chapter 5 of the Opening;
- b) in case of legal entities, of which Application is not signed by a person or persons authorized thereto according to the registration in the Czech commercial register, **full power of attorney** demonstrating authorization of the signed natural persons to sign the Application;
- c) in the case of Applicants who are part of a business group, a **clear graphical representation of the business group** which the Applicant is a member of, **with indication of the controlling entity and the amount of individual shares**

(participation) of all members of the business group within the Applicant in excess of 10%, regardless of whether it is share in the Applicant held directly or indirectly. If the proportion within the Applicant directly or indirectly held through one or more trusts (trust funds)¹⁶ or other similar construct in the Czech or foreign law (e. g. foundation), then the tenure or ownership is counted towards the mentioned 10% threshold, and the Applicant should specify not only the information on the person of the trustee (trustee), but also information about the person or persons for whose benefit was the trust created, respectively, who must be from the trust fulfilled ("trust beneficiary"), and that through such a "trust beneficiary" directly or indirectly, holds / has a stake in the Applicant exceeding in the aggregate 10% limit. If in the ownership structure of the Applicant or the Applicant company holding the stake above the 10% threshold is a publicly quoted company, the applicant shall state the shares in this company based on the latest available data, e. g. the last general meeting of shareholders or a report submitted to the exchange. Furthermore, the Applicant shall submit an affirmation that material provided under this paragraph corresponds to reality;

- d) **declaration on consent with the right of the Office to use all data in the Application and appendices thereto for this Tender** signed by person(s) authorized to act on behalf of or represent the Applicant;
- e) **declaration on assumption of liabilities the Applicant assumed in the course of the Tender listed in chapters 7.6 and 7.9 of the Opening** in the form of Appendix No. 2 of the Opening signed by the person(s) authorized to act on behalf to or represent the Applicant.

8.2.3 Binding effect of the Applications

The Applicant may at any time before expiration of the deadline for submission of the Applications change or withdraw its Application according to chapter 8.4 of the Opening. The Application must be signed by the person(s) authorized to act on behalf of or represent the Applicant and must be delivered to the Office's registered office given in chapter 4 of the Opening.

Upon expiry of the deadline for submission of the bids according to chapter 8.4 of the Opening no change to the Application initiated by the Applicant is permitted, and missing of an act may not be pardoned.

8.3 Guarantee

The condition for participation in the Tender according to chapter 8.1.4 of the Opening is payment of the financial Guarantee ("**the Guarantee**"). The Guarantee shall be used as a performance guarantee of the Applicant to pay the Total price and as a performance bond for the Applicant according to chapter 11 of the Opening to refrain from conduct with potential threat to or pervert the course or result of the Tender in the sense of § 21, subsection 6 of the Act.

The amount of the Applicant's Guarantee for all Applicants is set to CZK 8,000,000 (eight million Czech Crowns) and the Eligibility point score given in the Application.

The Office also determined maximum Eligibility point score limiting total number of awarded radio frequencies in the Tender to 2 points for all Applicants.

¹⁶ Trust based on foreign legislation (Trust Fund pursuant to Act 89/2012 Coll., Civil Code) and other similar types of funds, managed by the trustee (trustee) for the benefit of another person (Beneficiary / beneficial owner).

The Guarantee must be paid by bank transfer and credited on the Office's account for the Guarantee given in chapter 4 of the Opening before expiry of the deadline for submission of the Applications according to chapter 8.4 of the Opening. The Applicant shall use its IČO (or other identification data for the Applicants without IČO) in the variable field for payment of the Guarantee. The Applicant shall cover all bank fees and other costs related to payment of the Guarantee. The Applicant shall bear responsibility for crediting of the Guarantee to the Office's account in time and in full amount.

Should no Guarantee be paid in time for the Application, no payment shall be regarded as non-compliance with the participation requirements of the Tender, and the Office shall decide on rejection of the Applicant from the Tender. Submission of the remedy against the decision does not have suspensory effect. The account for the Guarantee bears no interest.

The Guarantee shall be forfeited in the following cases:

- a) The Office appeals to the successful Applicant based on the Auction results for payment of the Total price and the Applicant fails to pay the Total price or any part thereof in the deadline specified in chapter 10 of the Opening; or
- b) the Applicant conducts according to chapter 11 of the Opening.

The forfeited Guarantee according to this chapter 8.3 of the Opening is the income of the state budget of the Czech Republic.

The Guarantee shall be returned to the Applicants should there not be reasons for forfeiture:

- a) when the decision on rejection of the Applicant from the Tender according to § 21 subsection 2 of the Act or chapter 8.5 of the Opening comes into force;
- b) when the decision on rejection of the Applicant from the Tender according to § 21 subsection 2 of the Act comes into force;
- c) when denial of the Applicant of an unsuccessful Applicant according to § 21, subsection 8 of the Act comes into force;
- d) when decision of the Office on cancellation of the Tender comes into force; or
- e) after payment of the Total price according to chapter 10 of the Opening.

The Guarantee shall be returned to the Applicants back on the account from which it was credited to the Office not later than 14 days of the day when some of the facts mentioned above occurs.

The Office covers the costs related with return of the Guarantee.

8.4 The deadline for submission of the Application for the Tender

The Applications should be submitted to the Office not later than **xxxxx XX, 2016 noon**.

The Applicants may submit their Applications to the address of the Office in chapter 4 of the Opening or deliver in person at the address of the Office on weekdays from 9 a.m. to 3 p.m., and on the last day of the deadline from **9 a.m. to noon**.

8.5 Multiple participation in the Tender, participation in a Corporate consortium

Only entities not economically related each other may participate in the Tender. The Corporate consortiums may submit just one Application in this Tender through one entity.

If an Existing operator is a member of the Corporate consortium, the latter may participate through this Existing operator only.

8.6 The session of opening of the envelopes with Applications in the Tender

The session of opening of all delivered envelopes with the submitted Applications shall take place on the weekday following the day of the deadline for submission of the Applications in the Tender according to chapter 8.4 of the Opening, i.e. **xxxxxx XX, 2016 from 9.00 a.m.** at the Office's address.

A notary shall attend the envelope opening session to make a notarial deed, and the members of the Selection commission. All Applicants may participate in the session of opening of the envelopes that submitted their Application in time, one person per each Applicant authorized for this activity based on written power of attorney. In the presence of the Selection commission the Office shall open the envelopes in order of the serial number and for each envelope the compliance with **the following requirements applied on the Application** shall be checked, i.e.:

- a) whether the Application is made in Czech and whether authenticated translations of appendices to the Application in other languages are attached (does not apply to appendices in Slovak);
- b) whether the Application and all relevant appendices are signed by authorized persons; and
- c) whether the Application contains all parts and appendices required in this Opening.

Following inspection of the compliance with the requirements above for each Application the Office shall inform the present Applicants about identification of the Applicant whose Application was checked, and whether it does or does not comply with the requirements given above.

The Office may demand the Applicant to clear, correct, or complete in writing information submitted or the documents that demonstrate compliance with the requirements applicable to the Application.

The Applicant shall accommodate the demand from the Office within deadline provided for this purpose by the Office. Accommodation of the demand from the Office is the condition for further participation of the Applicant in the Tender.

The Office shall decide on rejection from participation in the Tender of the Applicants who submitted their Applications and which the Office identified non-compliance with the requirements applicable to the Application based on recommendation of the Selection commission, which remained unclear, uncorrected, or incomplete in information or documents demonstrating the compliance with the requirements mentioned above even after the demand by the Office.

After that, the Office shall publish on its website the list of Applicants with the Applications identified as complying with the requirements applicable to the Applications.

8.7 Evaluation of the Applications

Based on recommendations of the Selection commission, the Office shall evaluate whether the Applications not rejected according to previous chapter 8.6 of the Opening meet the conditions for participation in the Tender according to chapter 8.1 of the Opening.

The Office may demand the Applicants in writing to clear, correct, or complete the submitted information or documents that demonstrate compliance with the participation conditions for this Tender according to chapter 8.1 of the Opening.

The Applicant shall accommodate the demand from the Office within deadline provided for this purpose by the Office. Accommodation of the demand from the Office is the condition for further participation of the Applicant in the Tender.

The Office shall thereafter and based on the result of this review deliver to each Applicant **confirmation on registration in the Auction** or **decision on rejection from the Tender** according to § 21, subsection 2 of the Act. The Office shall always indicate the reason for rejection from the Tender according to previous sentence. Submission of the remedy against the decision does not have suspensory effect according to § 21, subsection 2 of the Act.

The Office shall then publish the list of the Applicants that may participate in the Auction. In case of doubts the Office reserves right to postpone publishing of the list of the Applicants until all doubts are cleared.

9 AUCTION

9.1 Subject of the Auction

Category of the Auction blocks	Frequency band	Frequencies [MHz]	Auction blocks	Spectral limit	Minimum price [million CZK/block]	Activity points [points/1 block]
A	3.7 GHz unpaired spectrum	3,600–3,800	5 abstract blocks, 40MHz wide each	40 MHz for the Existing operators	17	1
				In case the conditions set in chapter 6.1 are met, from the second Auction round, this shall be raised to 80 MHz		
				80 MHz for other Applicants		

9.2 Basic information

The Auction is a part of the Tender of which goal is determination of the price and the Winner of the Auction that may become the Holders of each part of the radio frequencies, which are subject of this Tender, following meeting of all requirements of the Tender.

The Auction is divided into two phases:

1. The Auction phase - the phase of the Auction that uses the SMRA method to divide the Auction blocks among the Participants, which offered the highest price in the final round of the Auction phase for each Auction block (Winners of the Auction);
2. Distribution of the frequencies - the phase of the Auction where specific parts of the offered radio spectrum are distributed among the Winners of the Auction to the extent and in the structure corresponding to their award of the Auction blocks in the Auction phase.

Full conditions of the Auction are defined in the Rules of the Auction attached thereto as Appendix No. 3 to the of the Opening.

9.3 Conclusion of the Auction

The Office shall inform all Applicants following the procedure in chapter 7 of the Rules about conclusion of the Auction and distribution of the radio frequencies to the Winners of the Auction.

10 PROCEDURE OF THE OFFICE AFTER CONCLUSION OF THE AUCTION

The Office shall decide about result of the Tender based on the recommendations from the Selection commission submitted in the form of the report from the course of the Auction and results thereof. The report shall contain the summary of all received Applications, results of the Auction, and justification. The report shall be approved by majority of votes of members of the Selection commission, signed by them, and delivered with all documents thereto to the Office within 30 days of end of the Auction.

Following delivery of the report from the Selection commission the Office shall decide about the result of the Tender according to § 21, subsection 8 of the Act.

Based on the result of the Auction contained in the report of the Selection commission the Office shall reject the Applications of unsuccessful Applicant within two months of end of the Auction. When the decision on the rejection of the Applications from the unsuccessful Applicant comes into force, the Office shall appeal the successful Applicants for payment of the Total price. Following payment of the Total price the chairman of the Office Council shall decide not later than 30 days about allocation of the radio frequencies according to § 22 of the Act.

The Total price must be paid in Czech Crowns to the account for payment of the purchase price for granting of the rights to use the radio frequencies specified in chapter 4 of the Opening. The Applicant's IČO shall be used for the variable field in the payment. The amount shall be due not later than 15 days of delivery of the payment call. The amount shall be regarded as paid upon crediting thereof to the Office's account.

Should the Applicant to which the radio frequencies should be allocated based on the result of the Auction fail to pay the Total price in 15 days of delivery of the payment call, no radio frequencies to be allocated to that Applicant shall be allocated in the Tender.

Should the Applicant pay only a part of the Total price by the end of the 15-day deadline of the payment call, the Office shall appeal the Applicant for payment of remaining part of the Total price not later than three extra days. Should the Applicant not make the remaining payment within the three extra days, the Office shall proceed as if the Applicant hadn't pay the Total price, and the already paid part of the price shall be returned to the Applicant to the account from which that part of the price was transferred. The Office shall reject the Application in case either part or full Total price is not paid within the extra deadline. Without prejudice thereto are the provisions on forfeiture of the Guarantee and other sanctions that the Office may impose in this case.

The Guarantee does not set off the liability of payment of the Total price or unpaid part thereof.

The Office shall publish a report on the course and results of the Tender within one month of conclusion of the Tender and allocation of the radio frequencies. Should one or more allocations of the radio frequencies be made based on the Tender, the Office shall publish a complete record (log) of the Auction created by the Electronic Auction System within the same time period.

11 RULES OF CONDUCT OF THE PARTICIPANTS DURING THE TENDER

In the course of the Tender, the Applicants must refrain from action potentially threatening or perverting either course or result of the Tender. This conduct shall particularly include:

- a) coordination of action in the Tender with another Applicant, particularly as far as the amount of the Bids in the Auction or distribution thereof is concerned (except for the action foreseen in chapter 5 of the Rules of the Auction in the course of the frequency distribution phase);
- b) delaying or breaching of the course of the Tender;
- c) action that prevent from or threatens another entity to participate in the Tender;
- d) breaching of obligations and rules defined in this Opening, and particularly in the Rules of the Auction.

An example of the action regarded by the Office as breach of the rules of conduct in the sense of this chapter 11 of the Opening includes the action due to which a Participant submit the Bid in the Auction without being ready to award the demanded combination of the Auction blocks, which are the subject of the Bid, for the Bid price (and therefore contrary to the principle of binding effect of the Bid required in the Opening), e.g. in order to lengthen the Auction, prevent another Participant from winning the Auction blocks, or otherwise threaten or pervert either course or result of the Auction.

Another example of the action regarded by the Office as breach of the rules of conduct in the sense of this chapter 11 of the Opening includes the action when a Participant submits the Bid in the Auction phase of which amount would clearly be economically unreasonable; it particularly includes the situation when the Participant unreasonably submits the Bid with higher price for the Auction block in the Auction round despite the fact the Bid might be at lower price for that Auction block in the Auction phase.

In case of action contrary to the rules of this chapter 11 of the Opening, the Office shall decide about rejection of the Applicant from participation in the Tender according to § 21, subsection 6 of the Act. Should the Applicant conduct according to this chapter 11 of the Opening, the Applicant's Guarantee paid by the Applicant shall be forfeited according to to chapter 8.3 of the Opening.

12 CANCELLATION OF THE TENDER

According to § 21, subsection 6 of the Act, the Office may cancel and stop this Tender. The Office may do so at any time upon its own discretion. The Tender may be cancelled, among others, if the Tender is not feasible due to a technical fault or other circumstances, or an Applicant or other persons prevent from or pervert the Tender, etc.

13 COMMUNICATION IN THE COURSE OF THE TENDER

The Office defines within the Tender the possibilities of mutual communication related to the Tender in the following cases:

- General communication in the course of the Tender - the Office shall inform about the course and deadlines of the Auction on ongoing basis on its website.
- The communication in each phase of the Tender:
 1. before submission of the Application - possibility to communicate with the Office according to chapter 3 clause e) of the Opening in the form of questions and responses related to interpretation of this Opening and requirements for the Application;
 2. submission of the Application - delivery of the document titled "Application for granting of the rights for use of the radio frequencies" according to chapter 8.2 of the Opening to the Office and possibility of partaking at the envelope opening session. Upon demand of the Office, the Applicant shall in case of doubts provide additional explanation or completion to the Application;
 3. training in the Electronic Auction System and trial auctions including possibility of sending of questions related the course of the training workshops and trial auctions already conducted;
 4. Auction phase - information to the scope defined in the Rules of the Auction;
 5. negotiations for distribution of the parts of the radio spectrum.
- Information from the Office during the Tender for conclusion of each phase of the Tender and results thereof:
 1. information about start of the Tender;
 2. information about evaluation of the qualification part of the Tender and on results of the qualification;
 3. information about start of the Auction phase of the Tender;
 4. information about end of the Auction phase of the Tender, and information about results of the Auction phase
 5. information about end of the Auction and distribution of the radio frequencies to the Winners of the Auction.

The Applicant shall not disclose the facts related to their participation in this Tender. According to chapter 5 of the Rules of the Auction, the Office permits coordination of the Winners of the Auction only before negotiation about distribution of the radio frequencies based on results of the Auction with possible agreement on final distribution of the radio frequencies based on the results of the Auction.

This chapter 13 is without prejudice to provisions of the Rules of Administrative Procedure and the Act on submissions and their delivery.

14 LIST OF DEFINITIONS AND ABBREVIATIONS

Act – Act No. 127/2005 Coll. on electronic communications and on change to some related acts (electronic communications act), as amended.

Activity – the extent of the Bid from the Participant in the Auction round calculated as the sum of active points of all Auction blocks included in the Bid. Each Auction block has defined the number of 1 activity point. The Participant's Activity in the Auction round must not exceed its Eligibility.

Allocation holder – The Winner of the Auction that complied with all conditions of the Tender and to which the allocation of the radio frequencies, which are the subject of this Tender, was awarded.

Applicant – an entity that submits the Application.

Application – the application for granting of the rights for use of the radio frequencies according to § 21 of the Act.

Auction – the form for evaluation of the applications for granting of the rights to use the radio frequencies. The Auction is a part of the Tender in order to grant the rights to use the radio frequencies that are subject of this Tender. The purpose of the Auction is determination of prices and holders of each part of the radio frequencies. The Auction takes place in two phases: Auction phase and the phase of distribution of frequencies.

Auction block – a block of the radio spectrum offered in the Auction. Each block of the radio spectrum corresponds to the parts of the radio frequencies that are subject of the Tender. Whereas they are abstract Auction blocks, each block has assigned unspecified part of the radio frequencies of defined size; a specific part of the radio frequencies shall be allocated to the block only based on the second phase of the Auction - distribution of the frequencies.

Auction category – see Category of the Auction blocks.

Auction phase – the phases of the Auction where the SMRA method is used to distribute the Auction blocks among Participants. The Auction phase is divided in to several Auction rounds.

Auction round – in each Auction round the Participants may offer the price for each Auction block offered in the Auction. Each Participant may submit just one Bid in each Auction round. At the end of the Auction round the Electronic Auction System defines the Highest bid holder according to the rules defined in Appendix No. 3 of the Opening, and amount of the Highest bid for all offered Auction blocks.

Bid – obligatory price bid submitted by the Participant in the Auction round for selected combination of the Auction blocks.

CEPT – European Conference of Postal and Telecommunication Administrations

Commission – the European Commission is one of the supreme bodies of the European Union that represents and defends interests of the Union as a whole. The Commission prepares bills for the new European legal regulations and deals with implementation of the EU policies and use of the financial funds of the EU.

Corporate consortium – complies with the definition for the corporate consortiums according to § 71 et sequentia of the Business Corporations and Cooperatives Act No. 90/2012 (Business corporations act), i.e. controlling and controlled entity, controlling and controlled entity forming a concern, influenced entities, or entities acting in concord. The persons in whose favour a trust fund was established or other similar construct of

a foreign laws (e.g. foundation)¹⁷, or to which performance should be made in their favour, are regarded as members of the Corporate consortium member of which the Applicant is.

Digitální Česko – the document titled “Státní politiky v elektronických komunikacích – Digitální Česko” purpose of which is evaluation of current status of availability and development of the selected areas of the electronic communications in the Czech Republic with the highest growth potential, and draft of the instruments needed to meet the real goals to provide an appropriate support of the economic, cultural, and social development of the Czech society. The document was approved by the Czech government based on the resolution of the government of 19 January 2011 No. 50. The document was updated by “Digitální Česko v. 2.0, Cesta k digitální ekonomice” approved by the Czech government based on the resolution of the government of 20 March 2013 No. 203.

Distribution of the frequencies – a phase of the Auction aimed at allocation of specific parts of the radio frequencies to the Winners of the Auction.

Electronic Auction System / EAS – the information system to organize and ensure due course of the Auction phase via remote access.

Eligibility – authorization of the Participant to make a Bid in the Auction round. The Eligibility point score define maximum number of the activity points usable for submission of the Bid in the Auction round.

ETSI – European Telecommunications Standards Institute.

EU – the European Union.

Existing operator – a legal or natural person who is as of the last day of the deadline for submission of the Applications in chapter 8.4 of the Opening the allocation holder of the radio frequencies in the 800MHz, 900MHz, 1,800MHz, 2,100MHz, or 2,600MHz band.

Guarantee – a cash guarantee paid by the Applicant according to conditions in chapter 8.3 of the Opening. Payment of the Guarantee is the condition for participation in the Auction.

Highest bid – the bid of the highest price per the Auction block in an Auction round.

Highest bid holder – A Participant in the Auction that submitted the Highest bid within the Auction round for the Auction block and identified as the Highest bid holder for the Auction block based on the evaluation of the Auction round according to the Rules of the Auction.

IO – the individual authorization to use the radio frequencies.

ITU – International Telecommunication Union.

Legitimate interested party in the wholesale offer – the party interested in access to the network based on the Wholesale offer liability meeting the conditions in chapter 7.9 of the Opening.

Office – Český telekomunikační úřad. Established by law as of 1 May 2005 as the central administrative authority for execution of the state administration in the matters defined by the Act, including regulation of the market and determination of the

¹⁷ The trust means a structure according to foreign laws (trust fund in the sense of act No. 89/2012 Coll., Civil Code) and other funds of similar type administered by a trustee in favour of a beneficiary / beneficial owner.

conditions for running a business in the field of the electronic communications and postal services.

Opening – document titled “Opening of the Tender for granting of rights to use radio frequencies for provision of the electronic communications networks in the 3.7GHz frequency band”

Participant – the Applicant that met the qualification requirements according to chapter 8 of the Opening and received a confirmation about registration in the Auction from the Office.

PVRS 7 – a part of the plan for use of the radio spectrum No. PV-P/7/06.2015-4 for the 2,700–4,200MHz frequency band. The plan for use of the radio spectrum is published by Český telekomunikační úřad as the relevant body of the state administration according to § 108, subsection 1, paragraph b) of the Act based on the public consultation made according to § 130 of the act, decision of the Office Council according to § 107, subsection 8, paragraph b), clause 2 and to execution of § 16, subsection 2 of the act by the measures of general nature.

Qualification – the phase of the Tender that reviews whether the Applicants meet the rules of and conditions for participation in the Tender defined in chapter 8 of the Opening.

Radio spectrum policy – decision of the European Parliament and of the Council on multi-year programme of the radio spectrum policy.

RSC – Radio Spectrum Committee (a Commission body).

RSPG – Radio Spectrum Policy Group (a Commission body).

Rules of Administrative Procedure – Act No. 500/2004 Coll. on rules of administrative procedure, as amended.

Rules of the Auction – the document defining the rules of the Auction phase and the phase of distribution of the frequencies. This document forms Appendix No. 3 of the Opening.

Selection commission – a consulting body of three members for the Office, appointed by chairman of the Office Council in order to recommend an appropriate procedure of the Office according to § 146, subsection 6 of the Rules of Administrative Procedure. The Selection commission is appointed before opening of the Tender.

SMRA – Simultaneous Multiple Round Auction (SMRA).

TDD – Time Division Duplex.

Tender – the tender to grant the rights for provision of the electronic communications networks in the 3.7GHz frequency band, opened by this Opening.

Total price – the sum of the Winning bids from the Applicant.

Wholesale offer liability – the liability of the Applicant to provide the access to the public communication network operated by the Applicant with the use of the radio frequencies awarded based on this Tender to the party interested in access to the network for provision of its electronic communications services via the Applicant's network, according to the conditions in chapter 7.9 of the Opening.

Winner of the Auction – the Participant who is the Highest bid holder of the Auction block after the final Auction round according to the conditions of the Rules.

Winning bid – the bid submitted by the Winner of the Auction in the final Auction round.

15 LIST OF APPENDICES

Appendix 1 - Sample form *Application for granting of rights to use of radio frequencies*

Appendix 2 - Declaration on assumption of liabilities by the Applicant

Appendix 3 - Rules of the Auction

Appendix 4 – List of municipalities of the Czech Republic including the division based on the population criterion

Mr. Jaromír Novák
Chairman of the Council of
Český telekomunikační úřad