



## **Media background material dated 31.5.2011 concerning the continuation of the tender procedure for mobile spectrum**

### **1. Background**

Since 2008, the Federal Communications Commission (ComCom) has been working on the award of free mobile radio frequencies and frequencies which will become free due to expiry of licences in 2014 (GSM) and 2017 (UMTS). In this context, it has developed different scenarios and has instructed the Federal Office of Communications (OFCOM) to put up for discussion possible procedural variants within the framework of a public consultation. On the basis of this extensive preliminary work and other in-depth analyses, ComCom has finally decided on an award in a single auction of all currently available frequencies and all frequencies which will become free from 2014 to 2017.

On 26.11.2010 ComCom launched the invitation to tender for the corresponding mobile radio frequencies. In an initial phase, interested companies had an opportunity to ask questions about the procedure. Since responding to the questions which were received required more time than originally planned, ComCom decided to extend the deadline for submitting candidature documents, which was originally scheduled for 18 March 2011. To clarify individual aspects, ComCom also held a consultation session on 28 February 2011 for interested companies.

Following this consultation, ComCom discussed various points of the tender and took a close look at possible changes. It came to the conclusion that the chosen procedure will in principle be retained. Particularly for reasons of an open, transparent and non-discriminatory allocation of frequencies, an overall award within the framework of a single auction will be retained. This will give bidders an opportunity to acquire a future-proof spectrum portfolio which corresponds to their business models. However, ComCom is taking into account a number of concerns made by potential candidates. These relate in particular to adjustments of bidding restrictions, the migration phase for transfers of frequencies to other operators and the bank guarantee which must be submitted in order to be admitted to the auction.

### **2. Amendments**

#### **Bidding restrictions (spectrum caps)**

In order to prevent undesirable auction results which could endanger competition in the mobile telephony market, ComCom has imposed spectrum caps, i.e. bidding restrictions within individual frequency bands. Spectrum caps lay down the maximum size of the frequencies which one bidder can acquire in the corresponding frequency band. The spectrum caps have been defined in such a way that on the one hand competitive bidding can take place in the auction and on the other hand the operators taking part in the auction have an opportunity to acquire adequate spectrum. In this regard, ComCom has decided on the following amendments to the design of the auction:

- An "overall cap" is being introduced to prevent one bidder from acquiring more than 50% of all duplex frequencies (FDD) which are particularly important.
  - The spectrum cap applicable to the attractive frequency bands below 1 GHz (800 MHz and 900 MHz) is being reduced from the original 2 x 30 MHz to a total of 2 x 25 MHz across both frequency bands.
  - The spectrum cap in the 1800 MHz frequency range will be increased from the current 2 x 30 MHz to 2 x 35 MHz.
-

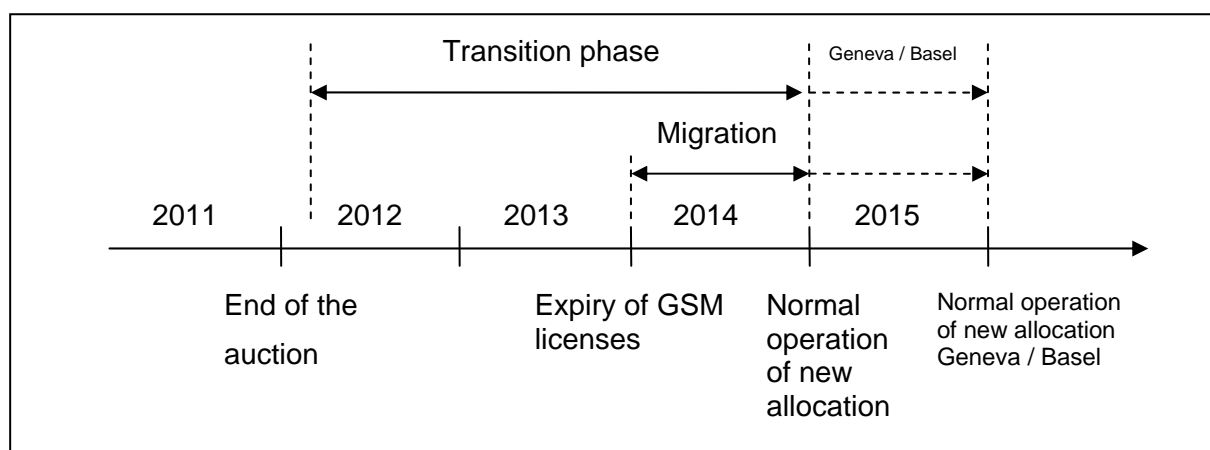
The new bidding restrictions will therefore apply:

- maximum 2 x 25 MHz in the bands below 1 GHz (restriction in total across the combined 800 MHz and 900 MHz bands)
- maximum 2 x 20 MHz in the 900 MHz band
- maximum 2 x 35 MHz in the 1800 MHz band
- maximum 2 x 30 MHz in the 2100 MHz band
- maximum 2 x 135 MHz of the total available FDD spectrum (duplex frequencies).

The aim of these adjustments is to ensure that bidders can acquire sufficient spectrum in all frequency bands and that a financially strong bidder cannot buy up the largest part of the spectrum. In particular, this will also reduce the continuity risk for potential bidders – an issue which was raised during the consultation.

### Migration phase

Depending on the outcome of the auction, there is a possibility that after the expiry of the current licences, existing operators will no longer be able to use certain frequencies which they are currently using. This relates in particular to the current GSM frequencies (900 MHz/ 1800 MHz). In order to allow sufficient time for any necessary network conversion, ComCom has extended the time frame for this network conversion work. Given the basic provision of a migration phase of one year, operators will still benefit from a transitional phase of almost 3 years after the auction is concluded. To reflect the special circumstances in the border regions, ComCom has also specified an extended migration period of 2 years in the cities of Basel and Geneva.



Existing operators who may have to surrender frequencies in the 900 MHz and 1800 MHz band and make adjustments to networks because of the outcome of the auction, will benefit from the additional security provided by these transition phases.

### Terms of payment

Within the framework of the auction, both free frequencies and those frequencies which cannot be used until a later point in time will be assigned, since the latter will continue to be allocated under the ongoing GSM and UMTS licences (900/1800 MHz until the end of 2013, 2.1 GHz until the end of 2016). There will therefore be a discrepancy between the time the licence is awarded – after the auction – and the commencement of utilisation of the frequen-

cies. However, it will be possible to use more than 80% of all frequencies within 1-2 years of award of the licence.

The Ordinance on Frequency Management and Radiocommunications Licences (OGC/FKV art. 23 para. 2) prescribes that the auction price for the auctioned frequencies must be paid in a single instalment immediately after the award of the licences. This is intended to promote rational bidding behaviour among the participants in the auction. It will also ensure that the state is not exposed to the risk of a possible default on payment.

When submitting the candidature dossier, candidates must indicate the (maximum) spectrum they would like to purchase in which frequency bands. The original tender documents dated 26 November 2010 obliged candidates to submit, along with the candidature, a bank guarantee in the amount of the minimum bid for the frequencies for which they were applying. On the occasion of the hearing of 28 February 2011, a change in the terms of payment and in the requirement for a bank guarantee was requested, because these imposed too great a financial burden.

ComCom examined various options relating to an amendment of the terms of payment, in particular a phased payment of the auction price. After weighing all the pros and cons, it came to the conclusion that the legal risks of such a procedure would be too great and could endanger the proper conduct of the award process. It therefore decided to insist on an award of licences after the conclusion of the auction and on a one-off payment of the auction price. To reduce the financial burden on candidates, ComCom has, however, reduced the amount of the bank guarantee to be submitted as part of the candidature to 50% of the minimum price of the frequencies applied for.

### **3. Further points which have been examined**

ComCom has examined further points raised in the questions which were submitted and during the consultation session. These related in particular to a change in the format of the auction, an extension of the existing GSM licences to the end of 2016, adjustments to the configuration of the spectrum blocks and the level of the minimum prices, a reduction in the term of the licences and the possibilities of reserving individual frequency ranges for possible newcomers. ComCom came to the conclusion that adjustments to these points are not expedient and in some cases could be associated with high legal risks or could delay the roll-out of LTE technology.

However, when they draw up the definitive rules for the auction, ComCom and OFCOM will take into account various concerns of interested companies concerning the conduct of the auction (e.g. sufficient time during the auction, simulations). Training for bidders and a trial auction are an integral part of the award process.

Further information on the procedure is available in the media background material dated 26.11.2010:

<http://www.comcom.admin.ch/aktuell/00429/00457/00560/index.html?lang=en&msg-id=36440>