

Procedure for the granting of rights of use for the 700 MHz, 900 MHz, 1400 MHz, 1800 MHz, 2100 MHz and 3600 MHz frequency bands

QUESTIONS AND ANSWERS

4 April 2022

Preliminary remarks

The BIPT refers to the introductory comments included in the [information memorandum](#) concerning the BIPT's liability.

Question 1.

What was the rationale for reserving spectrum for a new entrant?

The BIPT's answer:

For a detailed analysis on the issue of a fourth operator, the BIPT would like to refer you to the two following studies:

<https://www.bipt.be/operators/publication/communication-of-4-may-2021-on-the-update-of-the-2018-study-of-the-bipt-on-a-4th-mobile-operator-in-belgium>

<https://www.bipt.be/operators/topic/2021-impact-studies-of-the-bipt-and-axon-on-a-4th-mobile-operator-and-5g>

Question 2.

Will operators whose customers are not consumers (e.g. BtB player) be able to apply for that reserved spectrum?

The BIPT's answer:

Yes. Every operator fulfilling the necessary requirements (inter alia payment of the deposit) will be allowed to participate in the auction. A candidate having already introduced a notification in accordance with Article 9 of the ECA, has to include the proof thereof in the application. If only one candidate is interested in the entire reserved spectrum, the whole or part of the reserved spectrum (between 1 and 6 frequency blocks) can be automatically allocated to that candidate, if he so requests, even if there are other new entrants. For these automatically awarded lots, the new entrant has to pay a one-time fee.

Question 3.

Does this approach meet the demands of industrial and corporate networks?

The BIPT's answer:

The procedure allows for the prioritised identification of an operator willing to acquire the entire reserved package. In absence of such an operator, a B2B operator can acquire parts of or the whole of the reserved package. If there is spectrum left unsold in the 3.6 GHz band (which will be assigned at a national level during the auction), this remaining spectrum could possibly be assigned at a local level to candidate operators in order to meet further demands of industrial and corporate networks, in addition to spectrum above 3.8 GHz. However, prior to that, the necessary regulation has to be developed further to that end (confer the draft Royal Decree regarding private local broadband radio networks published on the BIPT website for consultation on 24 December 2019). The process is scheduled following the multiband auction.

Question 4.

Do you expect corporate network solutions providers will be able to compete with MNOs for 3.5 GHz licences?

The BIPT's answer:

Yes, given the fact that there is a spectrum cap of 100 MHz at 3.6 GHz and that 390 MHz will be auctioned. The maximum amount the 3 MNO's can acquire is therefore 300 MHz in total, leaving 90 MHz for one or more additional players (such as possible corporate network solutions providers). Only the existing licence holders (Citymesh and Gridmax) are allowed to bid on 20 MHz thereof (3410-3430 MHz) (Article 28, § 8, of the Royal Decree of 28 November 2021 on radio access in the 3400-3800 MHz

frequency band). In case a fourth B2C operator were to emerge, competition might occur in the auction (those 20 MHz excluded) between the B2B players and the fourth B2C player.

Question 5.

Paragraph 176 of the information memorandum: There is a mistake in the last bullet, it should be A_{β} application instead of A_{α} application.

The BIPT's answer:

Correct. It should be A_{β} application instead of A_{α} application (English version).

Question 6.

Paragraph 176 of the information memorandum. There seems to be a discrepancy between the types of candidates and the definition list in the Annex.

Bullet 2: A restricted candidate having submitted an A_{α} application file and an A_{β} application file who can bid for the A2 and A5 lots;

Bullet 4: A restricted candidate having only submitted an A_{α} application file who can bid for the A2 lots;

But: according to the Annex, a restricted candidate is a "Candidate having submitted an A_{α} application file who can only bid for the type A1, A3 and A4 lots".

The BIPT's answer:

*Correct, this should be a "Candidate having submitted an A_{α} application file who **cannot** bid for the type A1, A3 and A4 lots".*

Question 7.

Paragraph 45 of the information memorandum.

"Only full candidates (see definition in the annex) having submitted an A_{α} application file (see section 7.3) may participate in this preliminary auction. It is not necessary to submit an A_{β} application file to take part in the preliminary auction." So a new entrant that submitted only an A_{α} application can still pick up the reserved spectrum in the 700 band, is that correct? Or should there be an A_{β} application as well in order to bid for the 700 spectrum?

And the opposite: is it correct that a new entrant which submitted only an A_{β} application cannot pick up the reserved spectrum in 700 band?

The BIPT's answer:

A new entrant that submitted only an A_{α} application can acquire the reserved spectrum in the 700 band. A new entrant that submitted an A_{β} application in addition to his A_{α} application can also participate in the main auction to acquire additional spectrum in 700 band. A new entrant that submitted only an A_{β} application cannot acquire the reserved spectrum in 700 band.

Question 8.

Paragraph 248 of the information memorandum. Positioning of the lots

How much time will BIPT give to the operators to agree on a common position? Will BIPT supervise the negotiations to avoid for example collusion amongst the successful candidates?

The BIPT's answer:

This has not been decided yet. This will be decided in due time taking account of all the circumstances. Supervision by BIPT is not foreseen.

Question 9.

Paragraph 257 of the information memorandum. Bank deposit

A full candidate will need to pay a bank deposit of €10 million for the A_α and an A_β application file. What happens if this full candidate does not make any valid bid in procedure A_α and A_β?

The BIPT's answer:

The deposit linked to the A_α application file is not reimbursed in the case of Art. 60 §5, 2° of the Royal Decree 2G/3G and the deposit linked to the A_β application file is not reimbursed in the case of Art. 47 §5, 2° or 3° of the Royal Decree 700 MHz.

Can this full candidate still deduct the already paid bank deposit when paying the unique fee for the reserved spectrum in the 700/900/1800/2100 MHz bands?

The BIPT's answer:

For the reserved spectrum in the 700/900/1800/2100 MHz bands, the amount of the deposit (deposit linked to the A_α application file) and accrued interest will be set off against the unique fee. The deposit linked to the A_β application file is not paid back to the eligible candidates who have not made any regular bid during procedure A (during the preliminary auction for new entrants (Art. 47 § 5, 3° Royal Decree 700 MHz) or during the main auction (Art. 47, §5, 2° of the Royal Decree 700 MHz) (§ 196 of the information memorandum).

Question 10.

When will the detailed auction rules become available?

The BIPT's answer:

The detailed auction rules become available after the notification of the admissibility.

Question 11.

Paragraph 113 of the information memorandum states 'For procedure B, the rights of use are valid until 6 May 2040, irrespective of the starting date of the validity period. However, for the 3600 MHz band, the unique fee does not have to be paid for the period until 6 May 2025 (Article 30, § 1/1, subparagraph 3, 9° and 10°). The reserve price for lots C1, C2 and C3 must therefore be calculated based on the number of months between 7 May 2025 and 6 May 2040.'

Could BIPT confirm that the last sentence should state 'The reserve price for lots B1, B2 and B3 must therefore be calculated based on the number of months between 7 May 2025 and 6 May 2040'?

The BIPT's answer:

Correct.

Question 12.

Paragraph 188 of the information memorandum states that 'Bids made without ratcheting the deposit are null and void', whilst Paragraph 190 states that 'The candidates must send the BIPT proof of the higher deposit before making the bid that gives rise to the higher deposit'.

Consequently, the process by which deposits are ratcheted is crucial. If a mistake is made, a bidder may find that it can no longer place bids in one or more of the auction procedures. Please could the BIPT specify in detail how this process will work? This should include:

- The format in which proof of the higher deposit should be provided
- How the proof of the higher deposit should be provided (e.g. email, via the auction system)
- What confirmation the bidder will receive from the BIPT following receipt of the proof of the higher deposit
- How long will the BIPT require to provide this confirmation?

The BIPT's answer:

Bidders will be able to increase their deposit by transferring additional money to an account number of the national bank of Belgium. The account number is the account number as in the call for applicants. In such a situation, bidders are requested to send the following documents to the auction e-mail address:

-a copy of the bank transfer, delivered by the bank.

-a letter electronically signed (e-ID) by an authorised representative of the bidder declaring that a particular amount of money has been transferred for a particular auction procedure.

Bidders are also requested to send a message through the EAS (Electronic Auction System). A contact person in the national bank can verify whether or not a transfer has been executed. If this is the case the deposit will be increased. If the transfer is realised through SWIFT, this can be checked within minutes. Bidders are therefore encouraged to use SWIFT.

If BIPT is not able to verify in time (e.g., if the contact person cannot be reached in time) whether or not the transfer has been executed, BIPT will base its decisions on the electronically signed letter. The e-mail should arrive at least half an hour before the start of the next round in order to be taken into account for that round. The increase of the deposit will be visible in the EAS, which will serve as the proof of the higher deposit.

Question 13.

Paragraph 196 of the information memorandum states 'The deposit linked to the A_β application file is not paid back to the eligible candidates who have not made any regular bid during procedure A (during the preliminary auction for new entrants or during the main auction).'

In addition, footnotes 61 states 'The spectrum which can be automatically allocated to each existing operator is considered as a regular bid'

Could BIPT confirm that an existing operator that submits an A_α and A_β application will have its deposit returned / deducted from the unique fees it has to pay if:

- It applies for any spectrum reserved to existing operators (900MHz, 1800MHz or 2100MHz), or
- It submits a regular bid in procedure A for any lot type during the main stage of the auction (900MHz, 1800MHz, 2100MHz or 700MHz)

The BIPT's answer:

This cannot be confirmed. This can be confirmed if "or" is replaced by "and": in case of the first bullet, the deposit linked to the A_α application file will be set off against the unique fee due and in case of the second bullet, the deposit linked to the A_β application file will be returned / set off against the unique fee due. See also answer on question 9.

Question 14.

Paragraph 204 of the information memorandum states that the following information will be provided to eligible candidates:

Procedure A, the fictitious identity:

- of the eligible full candidates (A_{α} application file)
- of the eligible restricted candidates (A_{α} application file)
- of the eligible candidates (A_{β} application file)

Procedures B and C: number of eligible candidates

Could BIPT confirm that this information will be provided with the application results, expected in March 2022?

The BIPT's answer:

Confirmed.

It appears erroneous that the fictitious identity of eligible candidates for procedure A is provided but not for procedures B and C. Paragraph 244 of the information memorandum states that for each lot bidders will be informed 'the fictitious identity of the candidate holding the highest regular bid'. We assume that is the case for all procedures – in which case, the fictitious identity of eligible candidates for procedure B and C should be provided with the application results (i.e. in March). These fictitious identities should be consistent across all three procedures.

The BIPT's answer:

For procedure A_{α} the BIPT simultaneously informs the eligible candidates of the fictitious identity of the eligible full candidates and of the fictitious identity of the eligible restricted candidates. As for procedure A_{β} the BIPT also informs the eligible candidates of the fictitious identity of the eligible candidates (Art. 19, paragraph 3 of the Royal Decree 2G/3G). As to procedures B and C the Royal Decrees provide that the BIPT shall inform the eligible candidates of the number of eligible candidates (respectively Article 18, paragraph 3 of the Royal Decree 3600 MHz and Article 16, paragraph 3 of the Royal Decree 1400 MHz). The fictitious identities are planned to be the same for procedures A and B (that are run simultaneously). If a bidder that participates in procedures A and B also participates in procedure C, this bidder will get a different virtual identity in procedure C.

Question 15.

Paragraph 220 of the information memorandum states that 'All the candidates that are eligible for procedure A are informed of the number of lots that are automatically awarded to the existing operators before the start of the main auction. Could BIPT provide specific information about the timing of the above information?

As discussed, as the amount of spectrum in the main auction depends on the reserved spectrum allocated to existing operators, such information needs to be provided as soon as practically possible (e.g., immediately after all candidates submit their applications for the reserved spectrum).

The BIPT's answer:

The information will be provided as soon as practically possible.

Question 16.

Paragraph 234 of the information memorandum regarding the new entrant auction states 'All the eligible candidates for procedure A are informed of the amount of the highest bid and of the fictitious identity of the candidate holding that bid for each lot.'

Could BIPT confirm that existing candidates that are not part of the new entrant auction but are eligible candidates for procedure A, will be provided with the above information?

The BIPT's answer:

Confirmed.

Question 17.

Paragraph 243 of the information memorandum states that 'Each candidate can use a waiver for a maximum of three rounds.'

Could BIPT clarify that each candidate has three waivers per procedure rather than three waivers in total across procedures A, B and C?

The BIPT's answer:

Confirmed.

Question 18.

Paragraph 243 of the information memorandum states that 'Given that the three procedures are autonomous, a waiver only applies to the sole procedure for which it is used.'

Could BIPT confirm that a bidder needs to use two waivers if it does not want to make a bid in a round that includes both procedure A and B?

The BIPT's answer:

Confirmed.

In addition, for procedure A and B, could BIPT confirm that a bidder can make a regular bid in one procedure but use a waiver in the other?

The BIPT's answer:

Confirmed.

Question 19.

Paragraph 243 of the information memorandum states that 'A candidate who would otherwise be required to bid or withdraw from the auction may also use one of his waivers, allowing him to take no action in that specific round without being deemed to have withdrawn from the auction.'

In addition, in its December 2021 consultation ('Consultation on the draft Council decision of BIPT concerning the rules relating to the activity of candidates for the multi-band auction'), The BIPT also states that a bidder's activity for a round cannot be greater than its activity for the most recent round in which it did not place a waiver.

Could BIPT confirm that a bidder's activity in a round could be equal to the last round in which it did not place a waiver?

The BIPT's answer:

Confirmed.

Question 20.

Paragraph 243 of the information memorandum states that 'Using the waiver can be implicit. A candidate who has not made a bid and who has not withdrawn from the auction is considered as having used a waiver if the candidate could do it.'

There is a scenario where a bidder might prefer not to make a bid in a round but at the same time prefers not to use a waiver. For example, consider a scenario where a bidder bids for four C1 lots in procedure C. At the end of the round, it becomes a highest bidder on three lots. As prices increase, the bidder might prefer not to make a bid in the next round but at the same time prefers not to use an implicit waiver.

A potential solution to this is that the electronic system provides an option to allow a bidder to actively place 'no bid' or 'maintain' bid. By selecting this option, the bidder acknowledges that it might reduce its activity, but it does not want to use one of its waivers.

The BIPT's answer:

This is not provided for in the Royal Decrees and therefore will not be implemented in the EAS.

Question 21.

Paragraph 244 of the information memorandum states that for each lot bidders will be informed 'the fictitious identity of the candidate holding the highest regular bid'.

Could BIPT confirm that bidders will be informed about their own highest regular bids? Or that bidders will be informed of their own fictitious identity?

In addition, our understanding is that the fictitious identity of bidders will be the same across all three procedures. Could BIPT confirm this?

The BIPT's answer:

The fictitious identity of bidders is currently planned to be the same across procedures A and B. Fictitious identities in procedures C will be different from the ones used in procedures A and B. Bidders will know their own fictitious identity. Bidders will be informed about the lots for which they have the highest bids. For all other lots, bidders will be informed about the fictitious identity of the bidder holding the highest regular bid.

Question 22.

Paragraph 246 of the information memorandum states that 'At the end of the final round of each procedure, the tendering system will communicate to each successful candidate (see definition in the annex) the amount of the highest regular bid as well as the identity of the candidate holding that bid'.

Could BIPT confirm what happens if procedure A finishes before procedure B (or vice versa)? Will successful candidates be informed about the results of procedure A before the end of procedure B or will candidates be informed about the results of both procedures only after the end of procedure B?

The BIPT's answer:

Candidates will be informed after both procedures are finished (§ 263 of the information memorandum: procedures A and B will be organised at the same time).

Question 23.

Paragraph 264 of the information memorandum states that 'procedures A and B will immediately be followed by the organisation of procedure C'.

We request that a brief recess provided between the conclusion of procedures A and B and the start of procedure C, and that this is at least one clear working day.

The BIPT's answer:

BIPT takes note of the request for a recess between the conclusion of procedures A and B and the start of procedure C.

Question 24.

Paragraph 314 of the information memorandum states that the start of the assignment procedure is expected in June 2022.

There is a possibility that the auction process may take a long time to complete. Firstly, there are potentially three separate auction processes (New entrant auction, procedure A/B and procedure C). Secondly, it is possible that procedure B will take a long time to complete – with 35 generic lots and given the selected auction format (SMRA), it may take 35 rounds for the price of all lots in the band to increase by the minimum price increment. This is a similar situation to the German auction in 2019 (which was a SMRA with 27 generic lots in the 3.6GHz band), which took 497 rounds and 3 months to complete.

Given that the BIPT is proposing that the auction starts at the beginning of June, does it have any plans to pause the auction over the holiday period in July/August? If so, please could the BIPT specify the dates of the summer recess so that bidders can plan their resourcing across this period.

The BIPT's answer:

BIPT will communicate on this later (currently planned at the end of February).

Question 25.

The information memorandum provides little information regarding the timings associated with the four parts of procedures A, B & C. Notably, please could the BIPT provide information regarding:

- The time gap between providing the results of the allocation of spectrum to existing operators / the auction of reserved spectrum to entrants (when bidders will first know the quantity of spectrum to be included in the main auction) and the start of the main auction (Procedures A and B). We request that this should be a minimum of a week.

The BIPT's answer:

The time lapse between the communication of the quantity of spectrum to be included in the main auction (taking the results of the pre-auction into account) and the start of the main auction (Procedures A and B) will at least be a week.

- The time gap between the conclusion of procedures A and B and the start of procedure C. As mentioned, we request that this should be a minimum of one clear working day.

The BIPT's answer:

BIPT takes note of the request.

Question 26.

Could BIPT provide information regarding its intended schedule for each bidding day? In particular, will there be a minimum round duration and/or the maximum number of rounds per day?

The BIPT's answer:

The Auctioneer's current intentions regarding the scheduling of rounds:

- *Rounds will be scheduled between 9 a.m. and 5 p.m. on Belgium business days only. The last round of the day will start prior to 5 p.m. but may end after that time.*
- *The Auctioneer anticipates running between 4 and 8 rounds on each day.*
- *Each round will be at least 20 minutes and at most 2 hours in duration.*
- *There will be a minimum time gap of 20 minutes between rounds.*
- *Prior to 9 a.m. on a bidding day, the Auctioneer will announce an indicative schedule for that day's rounds. The start of any round may be delayed, but no round will be scheduled earlier than announced in a previously published schedule.*

Question 27.

In order to fully prepare for the auction, it is important that existing bidders are informed as early as possible of the quantity of spectrum that will be included in the main auction (or at least the quantity of spectrum reserved for entrants and the quantity of spectrum automatically allocated to existing operators).

The BIPT's answer:

The time lapse between the communication of the quantity of spectrum to be included in the main auction (taking the results of the pre-auction into account) and the start of the main auction (procedures A and B) will at least be a week.

Question 28.

I notice in Chapter 9 Timing the information memorandum mentions that in March 2022 there will be a 'Notification of the admitted candidates' Will this be a public notification? In other words, will the admitted candidates be published in March?

The BIPT's answer:

The number of eligible candidates for each procedure will be made public, at the time the notification of admissibility (early March 2022) is sent to the candidates.

The names of winning bidders for each procedure will be published together with the result of the auction (start of the auction expected in June 2022).

Question 29.

The application submission form mentions a fax number. Can BIPT clarify the need to provide such a number, taking into account the fact that this type of communication is in the meantime totally obsolete and that the installation of a fax can prove to be complicated?

The BIPT's answer:

BIPT is aware of this fact, but BIPT has to implement the Royal Decrees which prescribe the indication of a faxnumber (point 1.2 of the call for candidates).

Question 30.

The information memorandum (§ 204) provides that following the decision about the admissibility of the applications the candidates will be informed.

This communication provides for the fictitious identity of the candidates, limited to procedure A.

Is it possible to communicate the fictitious identity for procedures B and C too? If not, why not?

When does the BIPT expect this communication will probably take place?

The BIPT's answer:

The difference between procedure A on the one hand and procedures B and C on the other is based on the text of the Royal Decrees. For procedure A_α the BIPT simultaneously informs the eligible candidates of the fictitious identity of the eligible full candidates and of the fictitious identity of the eligible restricted candidates. As for procedure A_β the BIPT also informs the eligible candidates of the fictitious identity of the eligible candidates (Art. 19, paragraph 3 of the Royal Decree 2G/3G). As to procedures B and C the Royal Decrees provide that the BIPT shall inform the eligible candidates of the number of eligible candidates (respectively Article 18, paragraph 3 of the Royal Decree 3600 MHz and Article 16, paragraph 3 of the Royal Decree 1400 MHz). The current intention is for the fictitious identity of the candidates for procedure A to be the same as for procedure B, and different from that for procedure C (also see Question 21 above).

As stated in the Royal Decree provisions mentioned above this fictitious identity will be announced at the same time each candidate is informed of the BIPT decision about the admissibility of their application. As stated in the information memorandum the indicative timetable is March 2022 (§ 314).

Question 31.

I suppose that the anonymity of the party asking the question applies in any circumstances?

In order to get a picture of the questions already asked, if any: are all questions & answers always published, or is it possible to submit questions (including the answers) confidentially?

The BIPT's answer:

In the context of transparency publicity is the principle (see § 317 of the information memorandum). The BIPT also respects the confidentiality (also in accordance with § 317 of the information memorandum). Confidential questions are not published but in principle they do not get an answer in accordance with the information memorandum either.

Question 32.

Although the 900/1800/2100 MHz auction and the 700 MHz auction are combined into 1 procedure, I understand that nevertheless a separate deposit of €5 million is required for both. So, 2 x €5 million if one wants to bid for all blocks during the first procedure.

Supposing that the candidate changes his mind between 16 February 2022 and the start of the auction in June 2022 and decides to bid only for 900/1800/2100 MHz, and so does make a first bid for that, does he still get back the €5 million deposit of the 700 MHz application?

(In other words, in that case the candidate does not make a bid on the 700 MHz blocks at all, but nevertheless gets back his deposit for this 700 MHz application)

The BIPT's answer:

Confirmed.

Question 33.

Article 12 of the RD 2G/3G and Article 15 of the RD 700 MHz say that the BIPT can decide to combine the procedures of the RD 2G/3G and that of the RD 700 MHz into a single procedure. Unless we are mistaken, the BIPT has not taken such a decision yet, since there is only a draft decision of the BIPT regarding this matter, published on the multiband auction website on 25 January 2022.

Can you confirm when the BIPT will take a formal decision? We assume this should be done very soon, considering the date of 16 February 2022.

The BIPT's answer:

The decision is taken as part of the decision on the activity rules.

https://auction2022.be/sites/default/files/2022-01/Projet_de_decision_activit_FR_siteweb_0.pdf, § 41.

However, the draft decision of the BIPT Council on the rules regarding the activity of the candidates for the multiband auction, has not been formally approved yet. That decision is put on the agenda of the Council on 11 February 2022. The version sent to the Community regulators has been published though.

Question 34.

The various Royal Decrees require that an application has to include "a detailed, clear and complete view of the candidate's shareholder structure".

In the past the BIPT imposed specific requirements regarding the presentation of the shareholder structure (see for example the invitation to submit applications for the auction of the 4G licences, published on 01 June 2011, https://www.ibpt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/e3a9c72d28fad0056380694441e43551ab2441b3/3511_fr_applications4gfr.pdf).

Does the BIPT impose specific requirements as to how the shareholder structure should be represented for this auction too?

Apart from the manner of representation, we find that the requirement of the representation of the "shareholder structure" does not refer to "the relevant group". Does the representation of the shareholder structure have to include the "relevant group" or does it suffice that only shareholders of the candidate are represented?

The BIPT's answer:

No specific manner of representation is imposed. It is enough to represent the shareholders and their mutual relations. It is also pointed out that membership of a "relevant group" should be mentioned so that applications can be examined in accordance with the Royal Decrees.

Question 35.

Could the BIPT please clarify whether a new entrant candidate bidding for, and winning, A5 lots (700 MHz band) and/or A2 lots (900 MHz band), for instance in order to focus on business-to-business markets, would be subject to *population* coverage obligations? Does it make a difference if the candidate is restricted or not?

The BIPT's answer:

The roll-out of the radio access network by a 700 MHz operator who is not an existing mobile operator is subject to the population coverage levels in Belgium mentioned in Art. 11, § 2, of the Royal Decree 700 MHz as from the starting date of the user rights' validity.

The roll-out of the radio access network by a radio access operator who is not a 2G operator who has the totality of the five frequency blocks mentioned in Article 4, § 1, 2°, of the Royal Decree 2G/3G at his disposal, is subject to the population coverage levels in Belgium mentioned in Art. 10, § 2, of the Royal Decree 2G/3G as from the starting date of the user rights' validity. A restricted candidate who acquires less than 5 A2 lots, is not subject to such an obligation.

Question 36.

Could the BIPT please clarify whether a new entrant candidate bidding for, and winning, A5 lots (700 MHz band), for instance in order to focus on business-to-business markets, would be subject to the *railways* coverage obligation? Does it make a difference if the candidate is restricted or not?

The BIPT's answer:

A 700 MHz operator who is not an existing mobile operator is subject to the coverage obligations referred to in Art. 12, § 1, of the Royal Decree 700 MHz after a period of 9 years following the starting date of the user rights' validity (Art. 12, § 5 of the Royal Decree 700 MHz). It makes no difference whether the candidate is a restricted candidate or not.

Question 37.

What will be the procedure and methodology to be applied by the BIPT in order to verify and validate that coverage obligations are met?

What will be the procedure to be applied by the BIPT if the coverage obligations are deemed not to be met? Please specify what will be the rights of defense of the operator prior to, and after, a potential BIPT decision.

The BIPT's answer:

The practical methods and precise procedures for the measurements will be determined by the BIPT at a later stage (Art. 10, § 5, subsection 3 of the Royal Decree 2G/3G, Art. 11, § 5, subsection 3 and Art. 12, § 6 of the Royal Decree 700 MHz).

If the obligations are not met the procedure described in Article 21 of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors applies.

Question 38.

The law concerning electronic communications and the Royal Decrees are silent on spectrum sharing between licensed spectrum holders. The information memorandum contains only very brief elements on infrastructure sharing and spectrum sharing (paragraphs 293-295). Following the completion of the procedures described in the Information Memorandum, will winning bidders be entitled to share spectrum? If spectrum sharing would be subject to BIPT approval, what would be the procedure and timeframe for such approval? In particular, how would the BIPT assess a request for spectrum sharing, for instance with reference to the spectrum caps applicable as per the Royal Decrees?

The BIPT's answer:

In the current Royal Decrees no provisions are included that allow spectrum sharing/pooling.

Question 39.

In addition, could the BIPT please address the following scenario in its response? In case at the end of the procedures described in the Information Memorandum, there would be 2 operators with 2x10 MHz in the 700 MHz band, and 2 operators with 2x5 MHz in the 700 MHz band, will the BIPT ensure that the positioning options put forward during the positioning phase will facilitate spectrum sharing or pooling between the 2 operators with 2x5 MHz in the 700 MHz band? Will the BIPT accept a request for spectrum sharing or pooling between those 2 operators at an early enough stage to enable the most efficient spectrum usage and to enable operators to gain benefit from spectrum sharing or pooling?

The BIPT's answer:

As pooling or sharing is not allowed, this question is cancelled.

Question 40.

According to the Information Memorandum, the simultaneous organisation of procedures A and B will immediately be followed by the organisation of procedure C (paragraph 264). Could the BIPT please clarify whether this means that the full procedures A and B, including the positioning phase, must be finished before the start of procedure C?

The BIPT's answer:

This is confirmed.

Question 41.

Will the start date for 900 MHz, 1800 MHz and 2100 MHz licences necessarily be the same? (paragraph 56). Will a new entrant winning some of this spectrum be entitled to launch its network before the reorganization is completed? Given that the 700 MHz band has been cleared, and that some of the 2100 MHz spectrum is unused at this time, could a differentiated start date for various be envisaged? Given that paragraphs 28, 31 and 34 all refer to a same date for procedure A, would this mean that the start date for 700 MHz would be aligned with the other dates?

Antwoord van het BIPT:

The BIPT expects that the 900 MHz, 1800 MHz and 2100 MHz bands will need to be reorganised following the multiband auction. The Royal Decree 2G/3G (Article 60, § 2) provides that the BIPT sets the starting date of the user rights' period of validity. That starting date will be the same for those three bands. The BIPT will set this date in such a way that on the one hand sufficient time is left for the existing operators to carry out the reorganisation and that on the other access to the 900 MHz, 1800 MHz and 2100 MHz bands for a potential newcomer is not unduly delayed. The starting date of the user rights in the 700 MHz band can and will probably be different. It will also be set by the BIPT (Art. 47, § 2 of the Royal Decree 700 MHz) and will probably follow immediately after the auction.

Question 42.

Following the issues that have arisen in the United States with 5G and airports in recent months, several European NRAs or competent authorities in charge of radio spectrum have issued statements on the matter (and the Norwegian NRA has conducted a test with 3 types of altimeters¹). The statements are mainly to the effect that there are currently no material issues with altimeters. The Information Memorandum is silent on the topic. However, we have noted that the BIPT has been mentioned in the press on 20 January 2021 as follows: "At the same time the BIPT has done its homework from the start and at the end of 2020 already it recommended that operators should respect a safety and precautionary area around runways. This concerns the provisional user rights in the 3.4 GHz to 3.8 GHz frequency bands operators are allowed to use awaiting the formal auction (later this year)" (free translation). Given that no published material appears to be available from the BIPT on the topic of 5G and altimeters, it would be important for candidates to be made fully aware of any recommendations or formal measures that are in place now to protect airports/altimeters from interference. Based on the article references, only existing spectrum holders may be aware of these.

The BIPT's answer:

The BIPT agrees that all candidates should be informed about those measures. A copy of the letter sent about this matter to the mobile operators in December 2020, can be provided by the BIPT upon simple request.

Question 43.

Are measures expected to be included in spectrum licences resulting from the

procedure to protect airports/altimeters? If measures are expected to be included in spectrum licences, would this apply only to the specifically relevant licences/blocks?

The BIPT's answer:

The BIPT is currently waiting for the results of the CEPT studies. They are not expected until the beginning of 2023. If necessary the BIPT will impose measures.

Question 44.

The Royal Decrees provide that the applications should be put into sealed boxes.

Could the BIPT clarify very specifically what it means by sealed boxes?

The BIPT's answer:

The sealed boxes may also take the form of a closed envelope, provided it is clearly visible that the box (or envelope) has not been opened yet (for example by putting a signature over the top).

Question 45.

We have concerns regarding the BIPT's answer to Question 20 regarding the implementation of implicit waivers.

The Information Memorandum states that 'using the waiver can be implicit. A candidate who has not made a bid and who has not withdrawn from the auction is considered as having used a waiver if the candidate could do it.'

It is standard practice in SMRAs for bidders not to place bids in many of the rounds, but at the same time also not want to place waivers. For example:

- The bidder may be highest bidder on all of the lots that it wants at the current round prices – meaning that there is no need for it to place any new bids
- The bidder may have been outbid on a lot in the previous round, but does not want to place that bid on another lot due to prices being too high (effectively, the bidder wishes to reduce its demand)

Bidders are likely to find themselves in such circumstances in several rounds during the auction (especially example A). Given the BIPT's current proposed implementation of implicit waivers, bidders are likely to unnecessarily use all of their three waivers early in the auction. This is very concerning as waivers, in particular implicit waivers, are a crucial feature of auctions to protect bidders against unforeseen technical issues. The BIPT's proposed implementation means that in the event of a bidder being unable to place a bid due to a technical issue, it is unlikely to have any waivers remaining due to them being used unnecessarily earlier in the auction.

To resolve this issue, all that is required is a means by which a bidder can indicate that it does not wish to do any of the three actions that the Royal Decrees permit it to do in each round – i.e. to place a bid(s), to place a waiver, or to withdraw from the auction. We expect that this must be possible without contravening the Royal Decrees. We, therefore, urge the BIPT to investigate this further as the risk associated with not having waivers available during the auction is unacceptable.

The BIPT's answer:

BIPT understands the concerns and has tried to work out a solution. After careful consideration BIPT has concluded that a solution which is not in contradiction with the Royal Decrees cannot be worked out. Indeed, the texts provide that if a candidate which can bid does not make any bid, does not use any waiver and does not withdraw from the auction during the round, the candidate is deemed to have

used a waiver if it has any waivers left (art. 27 § 2 of the Royal Decree 2G3G, art. 32 § 2 of the Royal Decree 700 MHz, art. 27 § 2 of the Royal Decree 3600 MHz, art. 25 § 2 of the Royal Decree 1400 MHz).

The candidates should provide back-up possibilities at their facilities in case of loss of connections. However, if a bidder has no more waivers left and has lost the connection with the EAS, but still wants to submit a bid and is not in a position to do so, the bidder shall contact BIPT as soon as possible. BIPT will consider pausing the auction process if the demand is justified. BIPT will also carefully monitor the loss of connections.

Question 46.

If two or more parties are candidates for the spectrum package reserved beforehand, but afterwards none of the parties appears to be willing to make a bid higher than the reserve price:

- Is the package then dissolved and can only those parties bid on the partial blocks? (as in the case of only 1 candidate)
- Or is that preceding round stopped in that case and is this reserved spectrum then simply included in the main auction that follows? (in other words all other parties can also bid on the partial blocks of the reserved package)

The BIPT's answer:

If, during the first round, two or more candidates make the same bid for a given lot at the reserve price, the Institute will determine the highest regular bid by a random method (Art. 33 of the Royal Decree 2G3G).

Question 47.

After re-reading the Royal Decree 2G3G the following could be deduced in case several parties are interested in the newcomer package (single lot):

- Art. 33: In case of a tie the highest bid shall be determined by a random method. Supposing that all parties make a bid at the minimum price.
- Art. 35: Last round if no one makes a bid anymore. Supposing none of the parties wants to make a higher bid.
- So, to complete the question below: In that case 1 party is assigned the highest bid by drawing lots.

The BIPT's answer:

The BIPT shall determine the amount of the bid for each lot for each of the rounds (Article 28, § 3, of the Royal Decree 2G3G) and the amount of the bid for the first round shall be determined in accordance with Article 30 of the Act of 13 June 2005 on electronic communications (Article 28, § 5, of the Royal Decree 2G3G). During the first round, all candidates may only bid at the reserve price. There is thus a random draw among all the candidates which bid during the first round.

If no candidate wishes to make a bid exceeding the reserve price, the single lot shall indeed be allocated by random draw.

Finally, the following question: Supposing that in the case of several parties interested in the newcomer package, this package is won following a higher bid (so at a price higher than the reserve price), is the winning party then still allowed to make a selection from the 6 blocks, or does it have to buy the complete lot?

The BIPT's answer:

The winner must buy the whole single lot. Indeed, Article 29 of the Royal Decree 2G3G provides that each candidate shall be unconditionally and irrevocably bound by its bid until another candidate makes a higher regular bid for the lot.

Question 48.

In order to fully prepare for the auction, it is important that existing bidders are informed as early as possible of the quantity of spectrum that will be included in the main auction (or at least the quantity of spectrum reserved for entrants and the quantity of spectrum automatically allocated to existing operators).

Considering the quantity of spectrum reserved for entrants, the BIPT will know following the application process whether:

- no spectrum will be reserved for entrants (if there are no full entrant candidates that have submitted A α application files);
- all six lots will be reserved for entrants (if there is at least one full entrant candidate that has submitted an A α application file and has indicated that it wishes to obtain all of the reserved spectrum);
- a subset of the six lots will be reserved for entrants (if there are one or more full entrant candidates that have submitted A α application files but none indicate that they wish to obtain all of the reserved spectrum).

In the first two cases, the quantity of spectrum that will be reserved for entrants will be known following the application stage (all or none of the spectrum). We ask that this information is provided to eligible candidates with the application results (i.e. in March). This information is very important to bidders, as knowing as much as possible about the quantity of spectrum in the main auction is critical to their preparations.

The BIPT's answer:

Paragraph 204 of the information memorandum states that the following information will be provided to eligible candidates:

Procedure A, the fictitious identity:

- *of the eligible full candidates (A α application file)*
- *of the eligible restricted candidates (A α application file)*
- *of the eligible candidates (A β application file)*

In the third case – a subset of the six lots will be reserved for entrants – the final quantity of spectrum included in the main auction may not be known until after the entrant auction.

Regardless, we ask that a) the BIPT informs all candidates regarding the final quantity of spectrum in the final auction as soon as possible, and b) bidders are then given sufficient time to prepare for the main auction (we suggest a minimum of a week).

The BIPT's answer:

The information will be provided as soon as practically possible. See also question 25.

Given that knowledge of the number of entrant bidders is particularly important for the existing operators to prepare for the auction, we ask that in addition to being informed of whether candidates for Procedure A are full candidates (A α application file), restricted candidates (A α application file) or candidates (A β application file), bidders are also informed of whether these candidates are existing operators or entrants.

The BIPT's answer:

It is not foreseen in the Royal Decrees to communicate whether these candidates are existing operators or entrants.

Question 49.

Concerning paragraph 66 of the memorandum.

- A. It is mentioned that the RTBF will continue to use channels 55 and 56 on 9 sites. These transmissions may cause harmful interference on the future mobile networks using the 700 MHz band. We find it worrying that there can be no certainty concerning the end date of this possible interference.
- B. Could the BIPT obtain from the RTBF a date at which it will be guaranteed that all the transmitters of channels 55 and 56 will have been dismantled?
- C. In order to quantify the possible levels of nuisance, could the BIPT provide the technical information concerning each of these transmitters (coordinates, EIRP, emission mask)?

The BIPT's answer:

The BIPT has sent a letter to the RTBF asking for clarifications on the timing. The BIPT has not received a response as yet, and will send a reminder to the RTBF. The Institute will provide an answer as soon as it receives one.

The BIPT will examine which technical information (it has knowledge of) can be provided upon request.

Question 50.

Concerning paragraph 69 of the memorandum.

It is mentioned that it is not very likely that Norkring België request compensation. Nevertheless, could the BIPT specify who would have to pay compensation?

The BIPT's answer:

The possible compensation costs will be set off against the unique fee (Art. 8, § 3, of the Royal Decree 700 MHz).

Question 51.

Concerning paragraph 70 of the memorandum.

It is mentioned that the BIPT will publish updated information on the licence of Norkring België as soon as possible. Given that this information is essential to ensure the availability of the 700 MHz band, we find that all doubts must be dispelled prior to the main auction. Could the BIPT confirm that the full availability of the 700 MHz band will be ensured before the start of the auction?

The BIPT's answer:

The BIPT has sent a letter to the Flemish Community asking for clarifications. The BIPT has not received a response as yet, and will send a reminder to the Flemish Community. The Institute will provide an answer as soon as it receives one.

Question 52.

Concerning paragraph 137 of the memorandum.

Regarding the coverage obligation related to the railway lines, it is mentioned that the purpose is to reach a minimum speed of 10 Mbps for 98% of the locations on the aforementioned railway lines. Could the BIPT clarify if these 98% must be understood for each line or for the lines as a whole?

The BIPT's answer:

This concerns 98% of all lines.

Question 53.

Concerning paragraph 248 of the memorandum.

It is mentioned that the successful candidates can, within a period to be laid down by the BIPT, communicate to the BIPT a common proposition on the positioning of the different frequency blocks. Could the BIPT already specify the envisaged timeframe for this consultation?

The BIPT's answer:

See question 8.

Question 54.

Concerning paragraph 249 of the memorandum.

- A. It is mentioned that the BIPT might not accept the common proposition and that an additional round could then be organised.
- B. Could the BIPT clarify which are the criteria used to accept or reject the common proposition of the successful candidates?

The BIPT's answer:

The criteria laid down in the Royal Decrees (Art. 56, §2, of the Royal Decree 2G3G, Art. 43, §2, of the Royal Decree 700 MHz, Art. 38, §2 the Royal Decree 3600 MHz, or Art. 36, §2, of the Royal Decree 1400 MHz) will be taken into account. If all these criteria are met, the BIPT will not reject the common proposition. If some of these criteria are not met, the BIPT will proceed to a more in-depth examination and may reject the proposition.

Question 55.

The Royal Decree 2G3G provides that full candidates found eligible by the BIPT, and who are 2G operators, may be automatically awarded frequencies in the 2G and 3G bands (900 MHz, 1800 MHz and 2100 MHz bands). The 2G and 3G operators wishing to use this possibility must inform the BIPT within 3 days following the notification by the Institute of the eligibility of their 2G3G application.

Neither the Royal Decree 2G3G nor the memorandum specify how these requests must be addressed to the BIPT. Does this happen only by letter, signed by one of the competent representatives mentioned in the application form, or does a simple e-mail, for instance sent from the address mentioned in the application file, suffice? If a letter signed by a competent representative is required, is it allowed to hand over an electronically signed letter or a copy of the letter signed by a competent representative or to have the letter signed by a third party with presentation of an internal delegation in due form (delegation from an authorised person to a third party)? Finally, given the very short timeframe laid down in the Royal Decrees (3 days), it may also be important to ensure that the notification can be received by the operators in a way that is both secure and quick, and to possibly provide an acknowledgment of receipt.

Could the BIPT clarify how the operators are authorised to communicate their willingness to be automatically awarded the frequencies to which they are entitled? Also, could the BIPT clarify if 3

working days or 3 calendar days are meant? Finally, given the very short timeframe to send the request to be automatically awarded the 2G and 3G frequencies (3 working or calendar days), we kindly ask the BIPT to allow sufficient flexibility in the manner in which the request must be sent.

The BIPT's answer:

Given the absence of any indication in the Royal Decree 2G3G on this matter, a timeframe of 3 calendar days is applicable.

The 2G and 3G operators may inform the BIPT:

- *By letter signed by one of the competent representatives mentioned in the application file; or*
- *By e-mail from the address mentioned in the application file.*

Question 56.

Following the BIPT's answer to Question 45, we have a clarification question regarding the implicit waivers.

As indicated by the BIPT, the Royal Decrees state that "if a candidate which can bid does not make any bid, does not use any waiver and does not withdraw from the auction during the round, the candidate is deemed to have used a waiver if it has any waivers left". We would like clarification regarding whether an implicit waiver will be used if in a round a bidder is high bidder on lots equal to its maximum permitted activity. In such circumstances, the activity rules do not permit the bidder to place any further bids in that round (or withdraw from the auction). Given the bidder cannot bid in the round, we presume that an implicit waiver will not be applied (as an implicit waiver will only be applied if the bidder can place a bid).

Please could the BIPT confirm that this is the case?

The BIPT's answer:

We confirm this.

Question 57.

See question 24.

Does the BIPT intend to interrupt the auction during the holiday months of July and August? If so, could the BIPT indicate the dates of the summer recess so that the bidders can plan the allocation of their resources during that period?

The BIPT's answer:

In addition to question 24, the BIPT has decided to have a summer recess in August 2022, should the auction not be terminated by that time. The BIPT will interrupt the auction during the last three weeks of August 2022 (3 weeks as of 8/08/2022). Preferably, the auction process shall be ended at a natural time, for instance in between the Procedures A/B and C.

Question 58.

Is it correct to assume that the unique fee payable for spectrum in Procedure B will be for the full amount of the final bid round, i.e. there will be no further (discounting) adjustment of the unique fee to reflect that the unique fee is only payable from May 2025. Or, put differently, the statement in Paragraph 113 of the Information Memorandum "However, for the 3600 MHz band, the unique fee does not have to be paid for the period until 6 May 2025" only refers to the reserve price.

The BIPT's answer:

It is correct.

Question 59.

Is it correct to assume that that the unique fee payable for the 900/1800/2100 Mhz bands are only payable after the reorganization of these bands have been completed? Can BIPT provide guidance whether the payment is expected still in 2022?

The BIPT's answer:

The payment shall be made within fifteen days of the start of the validity period of the rights of use (Art. 30, § 1/3, ECA). The BIPT shall set the date of commencement of the validity of the rights of use (Art. 60, § 2, of the Royal Decree 2G3G). As mentioned in § 59 of the information memorandum, it is not imperative that the reorganisation of the 900/1800/2100 MHz bands should be completed as from the start of the validity period of the new rights of use. It is therefore perfectly possible that the payment has to be made before the end of the reorganisation of the bands.

Question 60.

In Paragraph 117 of the Information Memorandum, it is stated that " Operators may choose between two methods of payment: either they pay the unique fee as a lump sum, or they pay by annual instalments." Can this choice be made independently for spectrum in each procedure, i.e. an operator could decide to pay spectrum acquired in Procedure B as a lump sum and spectrum acquired in Procedure C by annual instalments?

The BIPT's answer:

The choice may be different for each procedure.

Can separate decisions be made for the 700MHz spectrum and the remaining spectrum in Procedure A?

The BIPT's answer:

The choice may be different for the 700 MHz band and for the other bands of Procedure A (900 MHz, 1800 MHz and 2100 MHz).

Question 61.

Is it correct to assume that the decision to pay as lump sum or by annual instalment only has to be made after the auction, i.e. once the BIPT informs a winning bidder on the amount of the unique fee that is due?

The BIPT's answer:

It is correct. The choice shall be made within two working days of the start of the validity period of the rights of use (Art. 30, § 1/ 3, subparagraph 3, ECA).

Question 62.

We would like to receive formal confirmation of the start date of the auction, i.e. the start date of the preliminary auction for the new entrants as well as the start date of the main auction in which also the existing operators may take part.

The BIPT's answer:

The auction is currently scheduled for early June as mentioned in the information memorandum. The candidates will receive more detailed information as soon as the BIPT sets a more precise timetable.

Question 63.

In response to question 54 of the Q&A, the BIPT explains that the positioning propositions submitted by the operators will be analysed by the BIPT based on the criteria laid down in the Royal Decrees, i.e. Article 56, § 2, of the Royal Decree 2G/3G, Article 43, § 3, of the Royal Decree 700 MHz, and Article 38, § 2, of the Royal Decree 3600 MHz. The BIPT adds that if these criteria are met, the Institute will certainly not reject the common proposition. However, if not all of these criteria are met, the BIPT will then proceed to a more in-depth analysis and may reject the proposition.

According to the criteria mentioned by the BIPT:

- the blocks should be adjacent; and
- the blocks for which no regular bid has been made will be positioned either in the lower part of the band (700 MHz and 2G/3G band) or in the upper part of the band (3600 MHz band).

We are surprised by this answer, particularly by the positioning of the unsold blocks in the lower or upper part of the band, depending on the situation. Indeed, when reading the Royal Decrees, we understand that this rule regarding the positioning of the unsold frequencies determines the content of the exhaustive list of positioning possibilities but is not a condition to be met during the negotiation phase.

Therefore, we would like to know whether, in the context of negotiations among operators regarding the positioning of the frequencies in the various bands, the operators are free to establish by agreement the positioning of the unsold frequencies. In other words, are the operators bound by the positioning of the unsold frequencies, in the lower or upper part of the band, as laid down in the Royal Decrees?

The BIPT's answer:

As previously mentioned, the BIPT will never reject a proposition made by the candidates which meets the criteria. If these criteria are not met, the BIPT will further analyse the proposition to verify whether it leads to an efficient use of the radio spectrum, taking account of the possible explanations of the candidates regarding the adequacy of their proposition. The candidates are thus not (totally) bound by the positioning of the unsold frequencies as set in the Royal Decrees.

This also raises the question of whether the operators, should the BIPT reject the common positioning proposition, would then have the possibility to review their common proposition and to submit a new one to the BIPT which would take account of the remarks of the Institute.

The BIPT's answer:

If a proposition is rejected, the BIPT will allow the candidates to submit another one.