INFORMATION TECHNOLOGY & COMMUNICATIONS

CLIENT ALERT

FEBRUARY/2020

PUBLIC HEARING: 5G TECHNOLOGY BIDDING NOTICE

On February 4, 2020, the Brazilian government (through the Ministry of Science, Technology, Innovations and Communications - MCTIC) launched the process for the adoption of the 5G technology in Brazil, by publishing the Ordinance No. 418/20, which established the guidelines for the bidding of the spectrum bands that will be used for the implementation of this technology. Corroborating the Brazilian government's commitment to give priority to this matter in 2020, the Brazilian Telecommunications Agency (ANATEL) launched on February 17, 2020 a public hearing to discuss the draft of the Request for Proposal (RFP) related to the 5G proposed spectrum bands: 700 MHz, 2.3 GHz, 3.5 GHz and 26 GHz.

The public hearing will be available for contributions for 45 days starting from February 17 – *i.e.*, until April 2nd, 2020. During this period, the interested parties may send their contributions and suggestions to ANATEL regarding the draft RFP using an electronic form available at ANATEL's online system (SACP). Once the public hearing is concluded, the RFP will be reassessed by ANATEL in light of the contributions received and then submitted to the approval of the Federal Audit Court (TCU), before being definitively published.

The bidding is scheduled for the second half of 2020 and should be carried out in three phases: the first spectrum to be disputed should be the 700 MHz band (with lots following a division of the country into 14 regions), followed by a second phase, for the 3.5 GHz regional lots. Finally, lots in the 2.3 GHz, 3.5 GHz and 26 GHz bands will also be in dispute. The 700 Mhz and 3.5 GHZ lots that are not auctioned in the first stages of the bid may be included in the last stage again.

One of the bands destined by the MCTIC for the 5G technology is the 3.5 GHz band. Given that this band is currently used for satellite services in band C (*i.e.*, free open TV signal via satellite), and is a band that attracts great interest from potential competitors (as it requires less investment for the technology implementation), there is a special concern in ensuring the coexistence between the two services and technologies, thus avoiding harmful interferences that may affect the services' users.

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One of the solutions proposed by ANATEL to reduce the risk of interference - which is under discussion in the public hearing - is the expansion of the 3.5GHz band, which gained another 100 MHz of spectrum and, therefore, would have 400 MHz available.

Other proposed alternatives would be the use of filters for the antennas and the displacement of channels to a superior spectrum or even their transfer to the Ku Band. Although the definition of the best alternative to mitigate this potential interference has been left to the public hearing, the draft RFP proposed by ANATEL already foresees the obligation of the winners of the lots in 3,5 GHz to reimburse the satellite operators "proportionally to the minimum prices paid for the auctioned spectrum blocks".

Coverage Commitments

Regarding the coverage commitments - which, according to ANATEL, must be compatible for small and large providers - the MCTIC Ordinance had already determined that the 5G RFP should contain rules for operators to provide 4G mobile service or higher speed in locations with a population of more than 600 inhabitants, ensuring mobile broadband coverage on federal highways and providing high-speed transport networks, preferably in optical fiber, for municipalities that were not served by this infrastructure yet. For the large operators that acquire the national blocks of 5G spectrum, the obligation will be to serve with *backhaul* (optical fiber) the municipalities that currently do not have this infrastructure. For small providers, the commitment will be to serve municipalities with less than 30,000 inhabitants with 4G technology. ANATEL is also analyzing the possibility that the coverage commitments be met through another service other than the Personal Mobile Service.

Other Interesting Topics:

- **Collection:** ANATEL's intention with the proposed draft RFP is that the 5G bidding process requires less revenue/collection for the Federal Government and more investment obligations for the operators that win the bid, including fiber optic installation obligations, as mentioned above.
- **Eligible Municipalities:** in addition to evaluating the bidding for the 5G spectrum bands, the public hearing also discusses the list of locations and municipalities eligible for the 5G commitments.
- **Roaming and Infrastructure Sharing:** the operators that win the bid must ensure the that visiting users be duly served by the networks of the different operators through roaming arrangements. The bidding notice also encourages the sharing of active and passive infrastructure between service providers, including poles, towers, ducts and conduits.
- **Cybersecurity:** on February 6, 2020, the Decree No. 10.222/2020 was published, approving the National Cybersecurity Strategy. The Decree did not impose restrictions on suppliers of telecommunications infrastructure products or services, to operation in the Brazilian market. It is expected that the MCTIC will soon publish an ordinance - complementary to Decree No. 10.222/2020 - specifically regulating the security in telecommunications networks.

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