



Report on the Public Consultation of the Draft Information Memorandum,

published on APEK's website on 20 September 2013, with amendments on: 7 October 2013 (added Auction rules), 25 October 2013 (added list of settlements – Annex 6), and 22 November 2013 (added Table 6-2: Reserve prices and eligibility points).

Ljubljana, 9 December 2013

INTRODUCTION

By the deadline for submitting comments to the Draft Information Memorandum published on its website APEK received comments by the following interested parties:

- Si.mobil (received on 8 November 2013)
- Tušmobil (received on 8 November 2013)
- Telekom Slovenije (received 11 November 2013),
- T-2 (received 11 November 2013),
- SOEK (received 11 November 2013),
- Franc Jurčič (received 25 October 2013), and
- the Škofja Loka municipality (received 8 November 2013).

These comments will be summarized later on in the document, with reasons for the acceptance or rejection of each comment detailed at each topic of the Draft Information Memorandum. An overview of individual questions will follow the section on general and procedural issues of the upcoming public tender with a public auction.

APEK is interested in an open and constructive exchange of opinions on vital topics regarding the upcoming public tender with a public auction, and has therefore engaged in consultation with interested parties. According to the guidelines on the tender for mobile technology frequencies, published on APEK's website in the beginning of the year, and consulted on later (Consultation Report on APEK's guidelines regarding the tender for mobile technology frequencies, 29 May 2013), APEK presented a Draft Information Memorandum for public consultation.

As mentioned above, the document generally follows the structure of the Draft Information Memorandum. However note that some comments are not necessarily considered within the specific Chapter they relate to but, where APEK has deemed it useful, alongside the answer to a related question from another interested party. APEK will summarize individual contributions and add its comments to each contribution.

Comments on Chapter 1: Introduction

APEK received several comments from interested parties on the general issues and procedural aspects of the public tender with a public auction.

One interested party remarked that the content of this draft version was too limited, and would not meet operator's information requirements, singling out the missing parts of the Draft Information Memorandum. In particular, this interested party criticized the fact that the final version of the Auction Rules, along with reserve prices and the eligibility points, has not yet been published.

APEK is aware of these issues, and wishes to emphasize regarding the publication of final auction rules that it is actively striving to initiate and promote amendments to ZEKom-1, to

allow for a more adequate auction format. APEK is convinced that CCA is the best format for a multiband auction. Until APEK receives a different position from the relevant Ministry, it will proceed with the CCA Auction Rules as published in the revised Draft Information Memorandum. APEK believes that simultaneously publishing auction rules for two different auction formats would create unnecessary confusion and ambiguity. In any case, APEK will allow sufficient time for potential bidders to prepare for the auction. With regard to reserve prices, APEK wishes to make clear that the Government of the Republic of Slovenia (hereinafter: the Government) rather than APEK is required to approve the final reserve prices for the frequency blocks that will be the subject of the upcoming public tender, as well as payment conditions for the efficient use of limited natural resources. This means that reserve prices and payment conditions cannot be the topic of a public consultation. To facilitate the Government's decision on reserve prices, APEK has commissioned a special study on their calculation, which is still in progress. APEK would like to add that the start date of the study for the calculation of reserve prices was delayed by 6 weeks, due to an appeal against APEK's decision in the public tender procedure, which led to the commission of this study. Since the decision on eligibility points is, to a certain extent, linked to the structure of reserve prices and the estimated market value of the frequencies that are the subject of the public tender, it was not possible to publish a set of eligibility points before the reserve price study was conducted. Details on the eligibility points per lot category were published on APEK's website on 22 November 2013, and interested parties were invited to provide comments. The deadline for submitting comments expired on 2 December 2013, however APEK did not receive any comments by that date.

A further comment focuses on the procedural aspects of this consultation and on APEK's general attitude towards cooperation with interested parties. The allegations pertain to the "unreasonably prolonged procedures", the lack of allocation of available frequencies and damage to operators and end users, the inappropriateness of commenting on a Draft Information Memorandum, potential "arbitrary" decisions, the rejection of proposals without arguments, APEK's reluctance to further develop the Information Memorandum independently, and the conviction that comments will not be considered, much like as happened with contributions of operators' experts provided in the course of the expert working groups in 2012.

APEK has published the document which included the planned timetable already in February 2013, and has not deviated significantly from it. This timetable was also approved by the relevant Ministry. With a few exceptions (due to circumstances beyond APEK's control), this timetable is being upheld. The most important exception is the necessary amendment to ZEKom-1, which should allow for more appropriate and effective auction formats than foreseen in the current ZEKom-1. Considering the total duration of radio frequency allocation procedures in other EU Member States, APEK's timetable does not seem to be unreasonably long, and it is certainly not prolonging the allocation process. Accusations regarding arbitrary decisions are completely unfounded, without any concrete evidence, and put heavy pressure on APEK, with the objective of influencing the auction results. APEK is certain that all the important decisions were based on analyses and argumentation.



Furthermore, APEK finds that certain statements in the interested parties' comments seem to be the result of misunderstandings. APEK insists that consulting on a final document is not possible as the "final document" can never be the subject of further consultation, and that only a Draft Information Memorandum could be the subject of a consultation. On the other hand, the document will not be frozen once published, and further amendments will still be possible, should APEK become aware of any new information (during or after the consultation period) that suggests changes would be beneficial to the award process. Also, the development and publication of this consultation report is proof that the allegations of APEK's "arbitrary" actions in not considering and rejecting contributions without any clarification are unfounded.

One interested party has strong reservations about the design of the allocation procedure. The proposed allocation procedure is apparently not addressing the highly concentrated wholesale market. The inclusion of all available frequency bands into one allocation procedure puts a significant burden on smaller operators.

APEK has carefully considered these points in the course of developing the design of the assignment procedure. In particular, APEK has taken precautions and has set reasonable spectrum caps. In addition, it appears that the interested party is disregarding the "aggregation risk", which is particularly high for smaller operators, if the spectrum is allocated in different assignment procedures.

In a further statement, this party raises doubts on the appropriateness of the CCA format for this auction and refers to the recent Austrian multiband auction, which resulted in very high prices.

APEK cannot comment on this, as the party did not provide a detailed analysis of the Austrian auction.

Comments on Chapter 3: Subject of the Public Tender

3.2 The 900 MHz Band

APEK received three comments on the suggested block size of 5 MHz in the 900 MHz band. Although the reasoning is slightly different, the main idea is for reducing the block size to 2.5 MHz is to allow legacy GSM services to run on the existing networks using the existing bands, without the need to reconfigure them. The reasoning is mostly technical, emphasizing that with a 5 MHz block size GSM services would not function at the same quality levels, which might force some operators to restructure their networks at additional cost. In addition, certain border areas might suffer from degraded services due to a lack of preferential frequencies. One of the comments from an interested party adds a recommendation to introduce trading restrictions on the two bigger operators to prevent “overbidding”, i.e. outbidding one of the smaller operators.

APEK will not take these recommendations under consideration for the following reasons: The introduction of a 2.5 MHz block size would drastically reduce the incentive to compete for the 900 MHz spectrum, allowing the three existing operators on the 900 MHz band to perpetuate the status quo. This means that there is a high probability that this recommendation would lead to an allocation that would be equal to the current status, without any competition, or with limited competition, for frequencies in the 900 MHz frequency band. The arguments have failed to convince APEK that the 2x5 MHz blocks are not suitable for continuing to provide appropriate GSM services, and many examples of use from the EU attest to that. A potential lack of preferential frequencies is an issue which will be addressed in the assignment stage of the auction, where bidders can bid on their preferred locations of the blocks won in the main auction.

3.2/3.3: 900 MHz/1800 MHz: Payment Schedule

APEK received two comments regarding the due date for payment for 900 MHz and 1800 MHz frequencies. The comments emphasize that both frequency bands will be available on 3 January 2016, and recommend a special payment schedule for addressing this situation.

APEK will not take these recommendations under consideration for the following reasons: First, owing to the fact that in a CCA bidders are bidding on combinations of frequency blocks, it is therefore not possible to identify the amounts that are attributable to the 900 MHz and 1800 MHz bands. Second, the later date of availability will be included in the calculation of the reserve price, and bidders should be able to reflect the delay in being able to make use of these blocks in their bid amounts.

Comments on Chapter 4: Overview of the Tender Procedure and Legal Obligations

Chapter 4.1: General Provisions

There were three different comments regarding this Chapter.

The first comment has the same focus as one of the claims regarding the Chapter 1, which questions APEK's claims of not being required to take into consideration the comments on the Draft Information Memorandum it received.

As already stated above, APEK will incorporate as much information, opinions, statements, etc. as possible into the revised version of the Draft Information Memorandum, whereby it should be noted that the Draft Information Memorandum is subject to change. Also, in accordance with ZEKom-1, APEK was not obliged to use the instrument of public consultation in accordance with Article 204 in the case of the Draft Information Memorandum's publication. Nonetheless, APEK wanted to obtain the opinions of the interested parties, which it studied in detail, and for the most part considered. Therefore APEK finds the Draft Information Memorandum to be an appropriate framework for the upcoming public tender.

The second comment focused on the staggered publication of some parts of the Draft Information Memorandum, and requested that a final version of the Information Memorandum be published as early as possible to allow operators enough time to prepare for the auction.

APEK is fully aware of the complexity of the upcoming auction and will do its utmost to keep to the proposed timetable. In the event of significant changes to the auction rules, due to a change of the auction format, APEK will provide all potential participants with sufficient time to adapt to the changes. APEK is of the opinion that publishing a revised version of the Information Memorandum (including all information except for the reserve prices), along with this Consultation Report, before the Public Tender documentation gives all the parties enough time to prepare for the upcoming public auction.

The third comment includes the request that information regarding this public tender be available as quickly and as completely as possible, as bidders are facing a highly complex procedure.

APEK plans to meet these requests in its revised Information Memorandum, and consequently in the Tender Documentation according to the proposed timetable, notwithstanding changes in the auction format.

4.2.1 Confidentiality

One party expressed concern that the proposed confidentiality rules may reduce the transparency of the auction procedure.

APEK does not envisage any risk for a reduction of transparency and expressly states that the transparency rules do not preclude any communication between a candidate or bidder and APEK in cases of alleged inappropriate or discriminatory actions. If it was the party's wish to imply that the confidentiality rules allow APEK to discriminate against individual participants, APEK would like to emphasize that auction rules are clear in defining how the auction will be performed and which rules apply. In any case, every applicant has the right to legal remedy in appealing against the decision on the allocation of radio frequencies to protect its own interests.

A further comment pertains to the publication of the complete correspondence between the applicants and the auctioneer once the procedure has been concluded. With regard to providing access to all the documents, APEK will act in accordance with the legislation. This includes log files.

One party requests that the Tender Documentation should enable disclosure of an operator's information to its potential financial partners, and suggests that this be added in the documentation.

As far as an applicant's private information is concerned, APEK has no legal power and will not seek to restrict or impede the exchange of information between applicants and their financial partners. However, according to the rules in 4.2.1, there must be no disclosure of information on other applicants during the entirety of the procedure.

4.2.2 Prohibition of Collusive Behavior

One interested party recommends that APEK prepare a list of all the possible types of prohibited behavior and violations of auction rules.

After careful review, APEK finds that the different rules are well placed and will therefore not change their locations, as APEK believes that this provides the reader with a clear understanding of the relationship between the issue and the rules on behavior and the consequences of violations.

4.4 Submission of Tender Applications

Comments were received on individual subsections.

4.4.1 Information Contained in the Application File

One interested party recommends that the third indent of Chapter 4.4.1 (appointing three representatives per the applicant who will be authorized to submit tender applications) be adapted to the electronic auction procedure.

APEK has changed the third indent and replaced “tender applications” by “bids”.

4.4.1.5 Confirmation of Payment of Administrative Costs

One of the parties demands that APEK publish the fixed amount of the administrative costs sufficiently in advance and emphasizes that ZEKom-1 does not allow for all costs to be covered, merely the procedure's administrative costs, which in the case of a public auction means especially copying and posting documents, and the costs of other materials. It cannot, however, include payment for (even a share of) external consultants, renting luxurious locations for meetings at APEK's choosing, etc. In addition, the same interested party claims that APEK does not follow the rules of parsimony and expediency (“luxurious locations for meetings”) as prescribed by legal principles.

APEK will announce the estimated amount of administrative costs in the Tender Documentation, as administrative costs will also occur during the auction, and until it is concluded (e.g. working days of consultants running the auction, etc.). APEK has carefully reviewed paragraph 2 of Article 44 of ZEKom-1 and has come to the conclusion that all extra costs of running the tender procedure have to be included in the relevant administrative cost.

APEK strongly disagrees with the accusations of choosing luxurious venues for meetings, as it chose strikingly modest meeting rooms near the airport with the option of providing appropriate privacy, as is evident from the costs for these conference room locations. Making accusations of indulging in luxurious locations is a reprehensible method of putting pressure on APEK.

One interested party points at the fact that the method of conducting the auction is still unclear, as it depends on the outcome of proposed changes to ZEKom-1 in Parliament, and recommends that APEK exclude all administrative costs that have been incurred in relation to topics of an auction format that may ultimately not be used.

As stated above, administrative costs must cover all the costs connected with the public tender procedure, including the costs attributable to the preparation of the documentation, all the services, equipment, premise leasing, and other. Such a definition of administrative costs was used in accordance with the guidelines of the relevant Ministry when preparing APEK's 2013 Annual Plan and Financial Plan, as well as when preparing these plans for 2014.

A proportion of those costs are attributable to the determination of the auction format, which necessarily includes preparation of the auction rules for the specific format chosen. For these reasons, APEK cannot exclude costs for the provision of the CCA auction rules in the event ZEKom-1 is not amended in a way so as to enable such an auction format.

A further comment states that the proposed sharing of administrative costs is not proportional in the legal sense, putting higher burdens on smaller operators with a smaller market share, which may illegally allow APEK to collect more funds than necessary, and suggests that the costs should be distributed proportional to the number of lots won in the auction.

APEK has considered the problem of costs very carefully, and concludes that the costs of preparing and conducting the procedure are not dependent on market shares or the number of lots won in the auction. The costs derive from running the procedure and the number of bidders. Therefore, recovering the cost in equal shares from all bidders seems appropriate. Each bidder shall have to pay an advance to the share of estimated administrative costs in the amount of 300,000.00 EUR. Any difference in the amount paid in by successful applicants, who are to become bidders, and their actual share of costs will be invoiced within 15 days after the Decision from Article 45 of ZEKom-1 is issued. Since Administrative Costs have to be paid by the applicants in advance, there is no way of using the number of blocks won in the auction to allocate the costs between bidders. Considering the above it is not possible that APEK could make any profit from charging Administrative Costs. Regardless of the above, APEK will request that the bidders who purchase only the 2600 MHz frequency band spectrum cover only a half of the share of Administrative Costs, compared to the other bidders. Through this APEK wishes to allow smaller local operators with a business model based on providing local broadband service coverage to take part in the public auction, and to prevent the amount of Administrative Costs from becoming an insurmountable obstacle in the limited business plans of such small operators, thereby precluding their entry into the market, in contradistinction to the business plans of the larger operators who operate across the whole territory of Slovenia in multi-frequency bands.

4.4.1.6 Applicants' Statements

The received comment includes a proposal for amending the third indent of Article 4.4.1.6 so as to come in line with the current Slovenian Public Procurement Act, in particular with paragraph 10 of Article 42 therein.

APEK does not see an inconsistency between the proposed text and the provision of the relevant parts of the Public Procurement Act, as it is not the relevant act for the public tender procedure defined in ZEKom-1.

4.5.4 Issue of the Decision on the Selection of Bidders

With regard to this Chapter, one comment was received as a mere notice regarding the applicants non-fulfillment of the tender conditions and stating that reasons thereof are not sufficient to assure legal certainty. The comment stated that APEK should issue a decision regarding an applicant's non-fulfillment of tender conditions.



In the event tender conditions are not fulfilled, APEK will follow the legal framework as set by ZEKom-1.

4.6.1 Deposit

APEK received two comments regarding deposit requirements. The first comment expressed the opinion that the deposit requirements were set too high and that requesting a deposit covering the total amount of all blocks included in the initial bid is at the upper end of the options allowed by law. The other statement expressed the opinion that under given financial constraints the deposit requirement is extremely burdensome and creates disproportionately higher risks for smaller operators.

In the interest of diverting merely speculative bidders from participating in the public tender, and in recognition of the fact that the initial bid is a binding commitment for acquiring the included lots at the reserve price if no further bidding process is required, APEK will not change the requirement of full financial coverage of the initial bid.

However, APEK will change the rules on the deposit requirements during the bidding procedure as explained under Chapter 6.1.4 of the Information Memorandum. The new deposit rules will mean that in both the primary rounds and the supplementary round bidders will be required to ensure that their deposit covers at least 50% of their highest bid. However, during the primary rounds, a bidder must increase its deposit to 70% of its highest bid whenever the current deposit covers less than 50% of its highest bid.

One of the parties mentioned the possibility of there being too little demand for lots in A3 (reserved blocks) and asked for clarifications on the impact on the deposit requested for the initial bid.

As described below in the section on comments to Chapter 6 of the Draft Information Memorandum, and following the request for clarification, APEK has modified the rules for situations with too little or no demand for lots in A3. There will be three “Supply Scenarios”, and bidders are requested to submit initial bids for each of the supply scenarios. The requested deposit for the initial bid will be the maximum of the initial bids under the different supply scenarios. Chapters 6.1.1 and 6.2.1 of Information Memorandum describe the supply scenarios.

4.7 Payment Conditions

Several comments pertain to payment conditions for the “fee for the efficient use of a limited natural resource”. They all disagree with the provisions in Chapter 4.7 of the Draft Information Memorandum, which request that winning bidders pay the fee within 5 days of receiving APEK’s decision in accordance with paragraph 6 of Article 45 of ZEKom-1, and generally request an installment plan for paying this fee.

Given the amendments to the policy on deposits, which must now cover only 50% of the highest bid, and taking into account the second price rule, which is applicable in the proposed CCA format, requiring full payment does not appear overly burdensome. It is APEK's belief that extending this period would not seem to significantly improve the position of winning bidders, as they would necessarily have to pay the fee in total before receiving a decision on radio frequency allocation, according to paragraph 2 or Article 47 of ZEKom-1. Making this period longer than five working days will only result in extending the time before decisions on radio frequency allocation can be issued to winning bidders. Once again, APEK wishes to clarify that the Government is the relevant authority for approving payment conditions for the use of limited natural resources.

Three comments, partly reiterations of statements under 3.2 and 3.3 of the Draft Information Memorandum, address the availability of the blocks of the 900 MHz and 1800 MHz frequency bands by 3 January 2016 and request later payment of these frequency blocks.

APEK will not follow these recommendations, as explained above.

Comments on Chapter 5: Special Conditions and Obligations

5.1 Spectrum Caps and Reservations

One interested party strongly opposes the spectrum reservation of maximum 2 blocks of 2x5MHz (A3) for new entrants and operators with market shares of at most 15% in the 800 MHz frequency band. They emphasize: *"It appears that the stated goals of the Agency and the European Commission are not in line with each other. The approach taken by the Agency can actually have a negative effect on competition development, it may have no effect, or the effect may have a very limited contribution to competition development, however it will have a significant influence on the availability of a limited natural resource for achieving the goals of the Digital Agenda by 2020."* They do not provide any backing for this claim.

APEK strongly disagrees with these claims. After careful consideration, the spectrum reservation has been included to protect competition in the upstream market, and consequently also in the downstream markets and allow for at least three operators to acquire part of the 800MHz spectrum.

The same interested party also recommends that:

- a) APEK refrain from spectrum reservations, or
- b) make the reserved spectrum available to new entrants only, and not also existing operators, and
- c) in the event it keeps reservations for the "small" existing operators, that APEK set higher coverage obligations for them, i.e. 25% population coverage in 1 year, 50% population coverage in 2 years, 70% of population coverage 3 years. This way APEK would at least partially balance the reduced investment in the spectrum with challenges in the rollout and prove its sincere intentions to encourage infrastructure competition.

In light of the results of the market situation analysis, APEK will not change the reservation for new entrants and small operators. In addition, APEK is of the opinion that the general coverage obligations of Article 5.2.1 of the revised Draft Information Memorandum are sufficient to guarantee appropriate usage of the reserved spectrum. With the goal of ensuring efficient spectrum usage APEK has taken some recommendations into account, namely:

- operators who obtain part of the spectrum under 1 GHz must provide commercial wireless electronic communication services in each allocated band under 1 GHz:
 - For existing operators:
 - to 25% of the population of the Republic of Slovenia in the first year,
 - to 50% of the population of the Republic of Slovenia in the second year,
 - to 75% of the population of the Republic of Slovenia within three years,
 - For new entrants:
 - to 25% of the population of the Republic of Slovenia in the second year,
 - to 50% of the population of the Republic of Slovenia within three years,
 - to 75% of the population of the Republic of Slovenia within five years.

The same interested party opposes APEK's proposal regarding spectrum reservation on the grounds that the figure of 15% as the upper limit for a smaller operator is arbitrary and that the two potential beneficiaries are not small or their "smallness" might result from bad management. To support their reasoning, the interested party used a diagram of market shares in the Slovenian market and a comparison with European markets.

APEK would like to reiterate its earlier reasoning that a 15% market share is a reasonable figure, which is also used by BEREC in its Common Position on the Symmetry of Termination Rates from 2008, and the European Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates from 2009, which both set the level of a mobile operator's becoming efficient at 20% of market share. With regards to the diagram on market shares that the commenter attached, APEK would like to note that the figures are outdated, and also that they do not point to the significant market power of competitors towards the first or second biggest operator. In fact, the figures for these operators in Slovenia include all 3 service providers and two infrastructure operators. The diagram showing a comparison of the Slovenian market and the European average simply highlights that the situation in the Slovenian mobile market is significantly different from the European average, and points out that the total of the shares of the smallest operators and service providers are smaller than the market share of the second biggest mobile operator, and that they are in a rather worse position compared to the EU. Therefore, APEK concludes that neither the reasoning regarding the 15% limit nor these diagrams provide any additional insights to the requests of the interested party.

In a further statement, the same party posits a hypothetical situation where there is no demand for the reserved spectrum in the 800 MHz band (category A3) and suggests that in such a case it would be more efficient to add one block of 2x5MHz to A2 and one block of 2x5MHz to A1.

After careful evaluation of the strategic competition issues and practical implications, APEK adopted this proposal. This leads to changes in several sections of the revised Information Memorandum, in particular: Chapters: 4.4.1.4, 5.1.1, 6.1.1: rules 1 and 2 and rules 7 through 9, 6.1.2: rule 11, 6.2.1: rules 39, 40, 41, 43, 44 and Annex 5.

One party recommended dividing the special coverage obligation lot into two lots, so that two operators would be able to acquire it and share such obligations.

APEK has considered this suggestion. However, in the absence of further argumentation for the benefits of such a split, APEK cannot accept it as a better alternative to the originally proposed obligation, especially as the idea of “sharing” coverage is ambiguous. APEK does not consider that a geographic split of the coverage obligation is suitable for Slovenia, and does not believe that a shared responsibility for providing coverage is a workable solution for the country.

Another commenter suggests an additional reservation of spectrum in the 900 MHz band.

APEK has a clear responsibility to promote competition in the end user market by preventing foreclosure of the frequency market. APEK also has the responsibility of ensuring efficient frequency allocation. Consequently APEK must be sure that there is sufficient competition in the market. A further reservation would create too strict a limitation for effective competition, given the existing reservation in the 800 MHz band, and hence APEK did not adopt this recommendation.

In a further statement, one of the interested parties states that, according their understanding, *“the band reserved for new entrants and smaller operators cannot be subject to special broadband coverage obligations from Annex 2. However, additional explanation would be useful regarding this. Stricter coverage obligations in the 800 MHz band than in the 900 MHz one, where there is no broadband access obligation and where the network has already been constructed, would diminish the advantage for new entrants and smaller operators. Furthermore, the absence of a broadband signal coverage obligation in the 900 MHz band encourages the status quo with the outdated GSM technology.”*

APEK assumes that part of this statement is a result of a misunderstanding, since it is clear from the rules that the reserved spectrum is not subject to the special coverage obligation, as described in Chapter 5.2.2. Nevertheless, the winners of spectrum below 1 GHz will be subject to the general coverage obligations in Chapter 5.2.1. This Chapter requires the winners of spectrum below 1 GHz to provide commercial services. The obligation is expressly technology neutral, and does not proscribe any technology for providing these services.

In a further statement one commenter indicates that with the aforementioned reservation and spectrum caps one of the eligible operators would be in the position to obtain 2x30 MHz of the 800 MHz band, thereby foreclosing the market for the bigger operators, with detrimental consequences for the Slovenian market.

APEK believes that this is merely a hypothetical case with no practical relevance. By creating competition for the frequencies, APEK is pursuing its goal of efficient allocation. Implementing more restrictions than is required to guarantee a competitive downstream services market would simply reduce the efficiency of the allocation.

5.1.2 Spectrum Caps

There were several comments on this Chapter of the Draft Information Memorandum.

One of the interested parties stated: *“The proposed spectrum cap in the amount of 2 x 15 MHz for the 900 MHz frequency band limits the bidders in designing potential bids, especially considering the selective rules for obtaining the 800 MHz frequencies. The spectrum caps (together with the rules of the reserved spectrum) are obviously set in such a way as to allow for three players in each band – except the 2600 MHz band. Furthermore spectrum caps apply for the duration of the licenses and in this way impose tight limits on spectrum trading.”*

APEK finds that this statement correctly summarizes APEK’s conclusions from its competition analysis. However, the spectrum caps do not exclude the possibility of having more than three players. With regard to the size of the overall cap and the duration of the spectrum caps, APEK is convinced that an operator with the option of purchasing 2 x 105 MHz out of 2 x 275 MHz FDD spectrum is not unduly limited in its potential for spectrum trading.

In addition, this interested party advocates higher future flexibility regarding spectrum caps, so that operators are able to adjust the frequencies they hold to evolving technology and market conditions.

APEK will use its legal powers to adjust spectrum caps in the future if technology and/or market conditions change to the extent that the current limitations are no longer deemed appropriate for the situation and requirements.

One interested party noted that the 2x20 MHz spectrum in the 800 MHz band in A2 could be an issue if there is no interest in the reserved spectrum, concluding that this block may be too large, since legacy operators will probably need more than 10 MHz in the 900 MHz band to be able to continue providing their existing GSM services for the next years. As there is a cap of 2x30 MHz for spectrum below 1 GHz, these operators might bid for 2x15 MHz of the 900 MHz band and 2x5 MHz 800 MHz band, but not for the 20 MHz 800 MHz with the special coverage obligation.

APEK has already discussed a very similar issue above in the Chapter 5.1.1 of the Draft Information Memorandum. APEK has decided to change its original proposal so that, in the event of no demand for both lots in A3 in the initial bids, one 2x5 MHz block will be moved to A2, and in the event of a complete lack of demand in A3, the other 2x5 MHz block will be moved to A1. These changes affect several parts of the Draft Information Memorandum.

One interested party has expressed doubts regarding the suitability of the chosen CCA format for the Slovenian auction. The basic reasoning is that it would disadvantage smaller operators with restricted access to financial markets and concludes that: *“firstly, the spectrum caps must be tighter in order to block the tactic of over-bidding by larger bidders with more financial clout, who are led by anti-competitive motives and who want to exploit the short-term budgetary limitations of their weaker competitors. Secondly, the deposits and the payment terms must be set so that smaller operators can successfully take part in this mega auction in spite of their budgets.”*

APEK would like to reiterate its position on the issue of spectrum caps. The spectrum caps should not unduly restrict competition in the allocation of frequencies and thereby induce incentives for collusive behavior. Quite the opposite, spectrum caps and spectrum reservations will be implemented to promote effective competition in downstream markets. APEK is of the opinion that the chosen combination of caps and reservations achieve these two objectives in a balanced manner. The CCA format provides strong incentives for bidding to valuation, for the spectrum that an operator actually needs, and discourages strategic bidding to the detriment of competitors. All bids in the CCA are binding, meaning that bidding above valuation is risky, given that such bids may actually win and thus lead to prices that also are above the value attributed by the winner to the package in question. In particular, any bid that affects the price paid by other bidders needs to have a sufficiently high probability of winning, as it would be acceptable if one or more of the other winners did not make bids. At the same time, the CCA format removes all benefits from strategic demand reduction, allowing bidders to test their ability to win larger packages without having a detrimental impact on the prices they pay for smaller ones.

The second point has been considered and APEK has decided to change the terms for deposits to accommodate for the issues concerning limited access to financial markets. These changes have already been discussed above in the section on Chapter 4.6.1 of the Draft Information Memorandum.

The same interested party further stated:

“The proposed 2 x 10 MHz spectrum reservation is important because it makes it impossible for the first two operators to take possession of this significant frequency spectrum.” Then he mentions alternatives that APEK has discussed and rejected as being either too restrictive (only caps and no reservation) or inconsistent with the chosen lot size of 5 MHz. In addition this operator also recommends that: *“the 2x30MHz cap at 1800MHz band and overall cap of 2x105MHz in FDD are both set too high or at least too loosely. Such loose spectrum caps open up the possibility for the first two operators to use their financial clout to overrule or increase the spectrum price for these important LTE bands with the goal of excluding smaller operators from the market. We propose a spectrum cap of 2x50 MHz in the 1800 MHz and 2600 MHz FDD bands.”* Further on, the same party proposes that APEK *“introduce a two-bidder low frequency cap. APEK could introduce limitations for the winners and set CCA prices that eliminate any potential outcome in which two bidders obtain more than 2x45 MHz in the frequency bands below 1 GHz.”*

APEK once more refers to its reasoning on the importance of competition for frequencies for the efficiency of frequency allocation and the need to ensure competition in downstream markets. APEK has also considered the transactional constraints in the winner determination phase, and has come to the conclusion that this recommendation would dramatically reduce competition for the 800MHz and 900 MHz band frequencies and would increase the risk of inefficient frequency allocation.

A further comment calls for tighter caps in the bands below 1 GHz to promote infrastructure competition, after stating that caps appear reasonably arranged at first sight.

APEK points to its explanation in the above Article.

Three interested parties recommend different caps for the bands below 1 GHz. All three recommendations focus on changing the block size in the 900 MHz band to 2.5 MHz.

As already stated above, APEK considers that changing the block size is inappropriate.

5.2 Coverage Obligations and Network Deployment

5.2.1 General Coverage and Roll-out Obligations

One of the interested parties states that the wording of Chapter 5.2.1 of the Draft Information Memorandum is not clear enough.

APEK has reconsidered the text and has made small changes, which should lead to better understanding of the general coverage and roll-out obligations.

Another comment questions the legal grounds for revoking a license as a consequence of non-compliance with the general coverage and rollout conditions, while another operator observes that the consequences of non-compliance with general coverage and roll-out conditions are not in line with the general legal principle of proportionality.

APEK would like to refer to Article 58, paragraph 4, indents 2 and 3 of ZEKom-1, as coverage and roll-out conditions will affect the conditions set in the licenses on the allocation of radio frequencies. ZEKom-1 does not provide for any other options regarding non-compliance with these conditions.

5.2.2 Special Coverage Obligations in the 800 MHz Band

There were two comments on this topic, both of which criticize the extent of the coverage obligation as set too high to be feasible, and criticize the threatened consequences of non-compliance. One of the comments also criticizes the service level of 10Mbps as too ambitious and suggests reducing it to 1 Mbps. In addition, it urges the exclusion of settlements that already have fixed broadband coverage from the list. The other comment requests that APEK reduce the coverage percentage of settlements to 80%. Additionally, the interested party also emphasized the complexity and the practical issues of rolling out an 800 MHz network in areas without existing 900 MHz coverage.

APEK has reviewed these comments and recommendations and has come to the following conclusions:

1. The requirement of 10 Mbps will not be changed. The study conducted by Real Wireless, which was commissioned to analyze additional CAPEX and OPEX related to the coverage obligation, does not indicate that 10 Mbps is overambitious. The requirement for providing 10 Mbps outdoor coverage is a significantly lower level of service than 1 Mbps indoor. Hence APEK is of the opinion that, from the perspective of providing better supervision and monitoring, requiring 10 Mbps outdoor coverage is more suitable than 1 Mbps indoor.
2. The non-compliance rules are consistent with indents 2 and 3 of paragraph 4 of Article 58 of ZEKom-1. Since APEK has no discretion in this matter, the non-compliance rule will be upheld. However, APEK took this into consideration and included some amendments with regard to the fulfillment of special coverage requirements, as described in the following point.
3. APEK has studied the request regarding providing broadband coverage to white spots and underserved areas. APEK is prepared to lower the percentage of the settlements from Annex 6 The new proposal:
“Besides the general obligations on coverage and network construction, and in accordance with the Radio Frequency Spectrum Policy Program, APEK will require that the operator obtaining a block for which special obligations regarding coverage are in place in the said public tender must provide broadband mobile services with a bitrate of at least 10 Mbps from the base station to the user's mobile terminal (outdoor) to at least 95% of the population of the Republic of Slovenia within 3 years from when said radio frequencies – the block with special coverage obligations – comes in use, in accordance with the issued decision on radio frequency allocation The operator is free to fulfill this obligation using any frequency bands it has been awarded.

In accordance with Strategic Guidelines of the relevant Ministry, APEK published the list of 300 settlements or groups of settlements that either do not have or are underserved by fixed broadband network coverage.

In accordance with the list that APEK prepared in collaboration with the relevant Ministry, and in accordance with the obligations for providing basic internet access,



the operator must in the first year provide coverage to 25%, in the second to 50%, and in the third year to 75% of the settlements on the list at its own discretion. The option of selecting the settlements will give the operator the ability to optimize the execution of this obligation, providing priority to those settlements or locations that will provide better local conditions for construction. The operator must provide coverage to at least 75% of the population in each of the selected settlement or groups of settlements listed in Annex 6: List of Settlements.

The obligation of network construction is tied to this list, as the network will be providing these settlements or groups of settlements with mobile services as well as with a suitable substitute for a fixed broadband connection. The substitute for a fixed broadband connection must be provided by the operator by installing suitable indoor or outdoor CPE equipment with an antenna that would provide a download connection of at least 10 Mbps, and an upload of at least 2 Mbps. This service is obligatory only for those populated locations that do not have the option of receiving a suitable alternative broadband connection. The operator is free to use any frequency bands it has at disposal for providing the achievable or constantly available transfer speeds.

APEK will be monitoring the development of broadband networks in the country with a special focus on rural areas and, when required, amend the list, should a fixed broadband network with achievable download transfer speeds of at least 10 Mbps be constructed in any of them.

Any potential changes to the settlements on the list will be based on APEK's analyses, proposals from local communities, proposals from the public, and especially proposals from the operator with the special coverage obligation, which can thus influence how the obligations are met. APEK will be monitoring the list, however it will not remove any locations where construction procedures have already begun, and the changes will not affect the total number of settlements on the list."

Comments on Chapter 6: Auction Rules

6.1 General

One interested party requested a more detailed explanation of the technical language related to auction rules, which come from the British and American (scientific) literature.

APEK will provide necessary materials and training for the bidders to be able to participate at the auction.

6.1.1 Available Lots

Four interested parties complained that neither the reserve prices nor the eligibility points had yet been published by the end of the consultation period. Two of them also request a detailed analysis of past auction results to reach a well-reasoned proposal for the reserve prices, which takes into proper account the situation of the Slovenian mobile communication services markets. One of the interested parties emphasizes that the methodology used for calculating the one time fee for the efficient use of a limited natural resource for the extension of the 900 MHz licenses of 3 January 2013 should not be used for the reserve prices in this auction.

APEK refers to its statement in Chapter 1: Introduction, where it is explained that APEK is not the relevant authority for the final determination of reserve prices. Information on the proposed eligibility point structure has since been published, and no comments were received within the deadline.

With regard to the methodology addressed by one of the parties, APEK would like to emphasize the different purposes of the document of 3 January 2013, which was to define appropriate fees for the limited extension of frequency allocation decisions for the 900 MHz band, and the study to determine reserve prices for auctioned frequency bands.

6.1.2 Spectrum Caps: see the discussion above in the Chapter 5.1.2

6.1.3 Overview of the Process

One of the comments focuses on authorizations for submitting bids into the EAS, raising questions about the qualifications of the EAS provider, a possible change to the auction design, and the minimum technical standards as required by the Slovenian legislation.

APEK has commissioned the provision and customization of the EAS to DotEcon, which is the leading provider of services in relation to the design and conducting of spectrum auctions. DotEcon has a strong track record of conducting spectrum auctions via an electronic auction system (including most of the recent European CCAs).



One of the parties makes the criticism that some statements in the auction rules are ambiguous and may lead to misunderstandings, especially rule 21.

Although APEK does not agree with the claim that the rules are ambiguous, it has reviewed the rules carefully, and provided additional clarification where ambiguities might arise.

One interested party mentions that neither bidder training nor mock auctions are scheduled in the timetable.

Although the timetable does not explicitly specify dates for holding a mock auction pursuant to Rule 19, nor the bidder training mentioned in Appendix 8 of the Draft Information Memorandum, it is evident from the timetable that these activities can only be conducted after the decisions on bidder selection have been issued. APEK will make sure there is enough time to prepare for the auction. Bidder training and mock auctions will be conducted after the decisions on the selection of bidders are issued and well before the auction takes place. APEK will provide appropriate notifications as to the exact dates for these activities.

6.1.4 Deposit

Two interested parties criticize the requirement that all bids must be 100% covered by deposits.

Taking into account that this rule might present a greater issue for smaller operators than for bigger ones, and taking into account that in a CCA the final fees are determined by the “Second Price Rule”, APEK decided to change this rule, as discussed above.

One interested party proposes to specify the period for meeting the deposit requirements as one whole workday, while another asked for defined deadlines for providing additional deposits.

APEK will provide enough time for conducting a transaction for increasing the deposit, and notes that this time is not intended for obtaining funds for increasing the deposit, but merely for the technical execution of transferring the funds that the bidder uses for increasing their deposit.

One interested party also recommends allowing bank guarantees as a valid tender for meeting deposit requirements.

APEK has considered this proposal, but finds no reason to replace deposit requirement or allow bank guarantees as an alternative. APEK does not believe that providing a bank guarantee rather than a deposit would be less burdensome for bidders.

6.1.6 Breach of Auction Rules

One of the comments states that Rule 25 *“may in our opinion present a perverse incentive for APEK, since the amounts involved actually represent a significant percentage of the state budget”*.

APEK is bound by the legality principle, meaning that APEK cannot arbitrarily make decisions, especially due to the fact that the auction rules are clear and it is clear when someone is breaching them. Therefore, APEK will not consider these remarks further and strongly rejects any suggestion that it would behave in ways that are in conflict with the law.

In the same comment it is pointed out that *“it is not clear how the breach would be determined, what legal options are available, and how a determined breach would affect the actual allocation of frequencies in the event that a breach would be found to be without merit. We urge that these rules be defined more clearly and that punishments be proportional with the severity of the breach”*.

APEK would like to point to the legal foundations of tender procedures and to the auction rules, which define the rights and responsibilities of bidders.

Another comment includes the question of whether failing to meet the deposit requirements should be regarded as a breach of the auction rules.

According to the revised rules on deposits, this will not be classified as a breach. If a bidder fails to meet deposit requirements, they will no longer be able to bid in primary rounds, however their last bid will stand, and their bids in the supplementary round would be restricted as described in the Chapter 6.1.4 of the Auction Rule 25.

6.1.7. Communication with APEK

One interested party asked for all telephone communication between bidders and the auctioneer to be recorded.

APEK took this comment into account and amended the corresponding auction rule accordingly.

6.1.8 Exceptional Circumstances

One comment touches upon the communications provisions provided under exceptional circumstances.

In response, APEK points out that exceptional circumstances are by definition unexpected, and it is therefore impossible to provide an exhaustive list of what these circumstance might be. They include, for example, widespread technical failure, blackout, breakdown of the Internet, and the collusive behavior of bidders.

6.2 Principal Stage

6.2.1 Evaluation of Initial Bids

One operator requested clarification regarding the level of initial eligibility if the demand for A3 blocks is less than two.

APEK has changed the rules in the cases where there is insufficient demand for including two A3 blocks. The amended rules have already been discussed above and cover all of these topics. Please refer to Chapter 5.1.1 of the modified Draft Information Memorandum. One interested party would like a more detailed explanation of the rules concerning eligibility points for Category F.

In response APEK would like to refer to Chapter 3.5 of the Draft Information Memorandum and Annex 1 to the Draft Information Memorandum, “The 2600 MHz Frequency Band”. To avoid any ambiguity regarding the 2600 MHz band, APEK has amended the wording in Annex 1 of the Draft Information Memorandum, which now reads:

“Conditions for Using Blocks in the 2600 MHz (with and without limitations):

- BEM spectral masks in the 2500–2690 MHz band are specified in the Annex to the Commission Decision 2008/477/EC. Due to strict requirements for BEM, the special provisions from Chapter 6.1.2.3 Minimum Demand for Category F Lots apply;
- the difference between both types of usage conditions pertains to block BF10 from Chapter 3.5, and is as follows:
- blocks without limitation: top EIRP = dBm/5 MHz ,
- blocks with limitation: top EIRP = dBm/5 MHz.”

A further comment asked whether during the course of the auction bidders would be forbidden from surpassing the number of eligibility points they were awarded when submitting their bid.

APEK points to Chapter 6.2.2.4, where the respective rules are specified in detail.



6.2.2.1 Scheduling of Primary Rounds

One party requested a definition of the minimum round duration in connection to the definitions of Rule 46.

APEK does not expect to run primary rounds shorter than 15 minutes or longer than 2 hours, and will adjust round duration according to the auction's progress.

The same interested party asks for shorter working hours during the primary phase of the auction and recommends limiting working hours to 6 hours per day. In addition, the notification for the start time of a primary round should be earlier than 15 min.

In response, APEK would like to point out that these limitations on the scheduling of rounds do not imply that the first primary round will start at 8:30 AM and the last round of the day will start at 6:00 PM. The time frame specified in the rules allows APEK the flexibility to schedule rounds in a way it believes is most beneficial to the progress of the auction and to the bidders. APEK does not see the need to tighten the restriction on when rounds can be scheduled and unduly reduce that flexibility. APEK will also notify bidders about the planned round schedule well in advance.

6.2.2.3 Clock Prices

Two comments point to the potential increases of clock prices and suggest a reduction in the upper limit of 100%. One operator requested a limit of 2%, while the other would prefer a limit defined by the highest bid in the previous round.

Although these values only provide the limits within which APEK can set price increments, and since in particular the upper limit is unlikely to be used in practice, APEK will reduce the upper limit to 50% in order to accommodate these concerns. APEK will set price increments in a way that is deemed beneficial to the auction process. APEK cannot comment on the recommendation that the price increment should be defined by the highest bid in the previous round, as this recommendation appears to be based on a misunderstanding regarding the auction format, in which bidders express demand for parts of the spectrum at prices set by the auctioneer.

6.2.2.4 Activity Rules

Two interested parties are concerned about the number of extension rights. One recommends four instead of two extension rights, whereas the other interested party emphasizes a contradiction between rules 82 and 83, which reserves APEK the right to grant additional extension rights under special conditions specified in rule 86.

Extension rights are provided to protect bidders against technical failures or other circumstances beyond their control that prevent them from being able to submit a bid using the electronic auction system within the scheduled time. They provide bidders with additional



time to resolve the situation at their current location or find an alternative location from which they can submit a bid. However, extension rights are not provided simply to give bidders additional time to make their bid decisions. On this basis, APEK believes that two extension rights are sufficient. Additional extension rights may be granted at APEK's discretion. With regard to the potential inconsistency between rules 82 and 83 (Rules 85 and 86 of the Revised Information Memorandum), APEK believes that these rules are mutually consistent and that there has to be a possibility for reacting to special circumstances on the side of bidders.

6.2.2.7 Information Available During the Primary Rounds

Four comments criticize the limitation of information provided at the end of each primary round to:

- clock prices in the round just ended,
- their own bid during the round,
- their eligibility for the next primary round, and
- the number of extension rights they have remaining; and

request a change to also include total (aggregate) demand (or excess demand) for each category in the round just ended. They point to various recent auctions and in particular to the recent Austrian multiband auction, where the auctioneer changed the information rule to include excess demand during the primary rounds (rule 39).

APEK is prepared to follow this recommendation and provide information regarding aggregate demand for each clock round.

One party recommends that APEK *"consider disclosing the information about the number and identity of bidders before the initial round."*

APEK will not follow this recommendation, because it could lead to collusion and/or strategic bidding.



6.2.2.8 End of Primary Rounds

One interested party requested a more detailed specification of the reasons for the early termination of primary rounds.

APEK will terminate primary rounds only if it is in the general interest of running an efficient award process. This would include a situation with a slow decrease of excess demand at a very low level of excess demand.

One interested party requests that APEK disclose excess demand/total demand for all categories in all primary rounds at the end of each primary round.

APEK would like to emphasize that disclosing this information was envisaged under the rules as proposed in the Draft Information Memorandum, but that in any case the issue has become obsolete in light of the proposed changes to the information policy discussed above.

6.2.3.1 Schedule of the Supplementary Round

Two interested parties strongly argue for extending the period between the end of primary rounds and the supplementary round to at least 3 full business days.

Although the auction rules do not limit said period, APEK will include the interested parties' recommendation.

In a further comment, the duration of the supplementary round is criticized, and it was suggested that it be rescheduled.

APEK sees no extra value in rescheduling the duration of the supplementary round, in particular given the changes to the time between the end of the primary rounds and the start of the supplementary round that will allow bidders additional time to prepare their supplementary bids.

6.2.3.2 Bid Submission in the Supplementary Round

One comment proposes to increase the number of bids per bidder in the supplementary round from 1000 to 3000 to better accommodate the complexity of this multiband auction and to allow bidders to better express their preferences.

APEK will change the number of bids to 3000.

6.2.3.5 Winner Determination

One of the parties requested to change the provision for unsold lots and proposes to value them at zero and not at the reserve price, as is currently planned.

APEK does not see any reason for changing this provision.

6.2.3.6 Determining Base Prices

One comment emphasizes the relation between reserve prices, transparency, and the final outcome of the auction, represented by base prices. It recommends carefully designing the reserve prices and providing sufficient information to bidders so as to allow informed bidding.

APEK is well aware of these critical issues. It has therefore commissioned a study to analyze reserve prices and has slightly revised the information rules during the primary rounds.

One interested party requests a more detailed description of the procedure for determining base prices.

APEK has included in the Draft Information Memorandum an example for the determination of base prices as well as an example for the determination of the winning combination of bids.

Two interested parties address the provision of the software for choosing the winner and determining prices to the bidders. One of the parties recommends providing this software at least three months before the auction.

APEK has considered this request and will provide access to this software in the scope of training and the mock auction after its decision on the selection of bidders, and only to those applicants who are admitted. APEK will provide further information on system requirements regarding EAS and the use of the winner determination software in due course.

6.2.4 End of the Principal Stage

One comment requests that each bidder be informed about all other bidders' base prices.

APEK will not consider this suggestion and refers to Chapter 6.4 End of the Auction, where all information on base prices and additional prices will be disclosed.

One comment requests clarification regarding unsold blocks.

APEK refers to Article 46 of ZEKom-1, which describes the legal provision for this case.