

Tender for the allocation of radio frequencies launched. Green light for a fourth operator?

With some delay, the Czech Telecommunication Office (the "CTO") has at last made available the final form of the tender rules regarding the allocation of radio frequencies. In this tender the CTO will auction off frequencies in the 800 MHz, 1800 MHz and 2600 MHz bands hoping to attract a fourth telecommunications operator to the Czech telecommunications market and thereby increase competition.

This note briefly describes the key aspects of the tendering procedure, the obligations of successful bidders and current market expectations.

As indicated in our previous client note (please see [More competition or more regulation? Amended Act on electronic communication](#)) the purpose of the tender, which was originally supposed to kick off by the end of March 2012, is to increase competition on the Czech telecommunications market, incentivise technological innovation, stimulate the development of new telecommunication services and achieve the government's objective of "digitalisation across the country".

Maximisation of the proceeds from the tender has been declared less important, as evidenced by a decrease in the initial bidding price.

The final wording of the tender rules is the product of public consultation between the CTO and the expert community and potential bidders, who generally fall into two groups. The first are telecommunications providers

established on the Czech market and the second are various investors, experts and their advisors.

Tendering procedure

Qualification for participation in the tender

Bidders have to submit their applications for participation in the tender by 10 September 2012 which is generally viewed as a tight deadline. Participation in the tender is contingent on the deposit of a financial warranty of between CZK 80 million and CZK 250 million. Bidders are then allocated "eligibility points" based on their financial warranty.

Bidders also have to meet certain formal, professional and technical requirements and conditions.

Bidders who meet all these qualification requirements and deposit the financial warranty may then take part in the simultaneous multiple round auction planned for November. The results of the tender should finally be available in January 2013.

Key topics

- Bids due 10 September 2012 at 12:00 CET (noon)
- Auction process
- National roaming
- Wholesale offer obligation
- Disputed attractiveness for new telecommunications providers

Auction

The purpose of the auction is to distribute the blocks on offer among auction participants offering the highest prices for the individual blocks, doing so as far as possible while still respecting the spectral limits for each frequency band and distributing the blocks in accordance with the individual auction participants' eligibility points.

The auction will be a simultaneous multiple-round auction, arranged as an ascending open auction with the option to withdraw the highest bid.

This means that all the auction blocks on offer will be available for auction purposes at the same time in a system of successive rounds. In principle the price of each block will increase in each round. Information about the highest bid prices for certain blocks will be available to the participants in each round, but the identity of auction participants will not be disclosed.

The tender rules provide for the possibility to withdraw the highest bid if the participant is unable to realise the entire auction portfolio and there is a risk that it would acquire an unwanted combination of auction blocks.

The auction will be divided into 2 phases:

1. Auction phase – phase in which the abstract blocks will be distributed among bidders on the basis of the highest offers (auction winners);
2. Frequency distribution phase – phase in which specific segments of the radio spectrum will be allocated to auction winners to the extent and in the structure corresponding to the results of the auction phase.

During the auction all blocks will be available at the same time and bidders may concurrently submit bids for all of them. Nevertheless, they will be limited by the number of eligibility points available in each round.

In the first auction round bidders will have 8 to 25 eligibility points according to their financial warranty deposited. However, bidders can lose points if they are not active enough in the auction. This is to ensure that participants do not employ wait-and-see tactics and that the auction proceeds in a timely manner.

To ensure the proper course of both phases of the auction process, the CTO will provide an electronic auction system.

Obligations of the auction winners

Auction winners will have to meet a specific set of conditions referred to as development criteria, and will have to accept the obligation to provide "national roaming". They will also have to take on a "wholesale offer obligation".

Development criteria

To use the radio frequencies acquired in the auction effectively their holders have to meet the development criteria. The development criteria compel the auction winners to cover a certain percentage of the population of the Czech Republic with a network allowing high speed connection to the internet. The required percentage varies based on what frequency the auction winner obtains through the auction. The development criteria also have to be fulfilled within a specified time period.

By means of the development criteria the CTO is clearly aiming at preventing the auction winners from "sitting on" their newly acquired frequencies and geared towards enhancing the process of nationwide digitalisation.

National roaming

The national roaming obligation means that the auction winners will have to open their network to interested parties that (i) acquire in the auction a radio frequency allocation at least 2×15 MHz in size in the 1800 MHz band or at least 2×20 MHz in the 2600 MHz band, without acquiring, at the same time, a radio frequency allocation in the 800 MHz band and without holding radio frequency allocations in the 900 MHz band, and (ii) acquire a radio frequency allocation in the 800 MHz band without holding, at the same time, a radio frequency allocation in the 900 MHz band.

Parties interested in obtaining national roaming from the auction winners have to cover at least 20% of the population of the Czech Republic before they can apply for national roaming. This condition is regarded as discouraging, because of the initial outlay required before the commencement of the service and income generation.

Auction winners will be obliged to conclude at least 2-year national roaming contracts with eligible interested parties within the 10 years following the acquisition of the relevant frequencies. The CTO believes this should be enough time for potential investors interested in entering the Czech market to develop their own network.

Since the terms and conditions under which national roaming has to be

provided are defined rather generally (including the price of national roaming) it remains to be seen how this will work in practice (access terms have to be negotiated by the parties in good faith).

Wholesale offer obligation

The aim of the wholesale offer obligation is to enable virtual operators to effectively function in the Czech market. Any auction winner will have to enter into good faith negotiations with interested parties (potential virtual operators) for agreements on access to the public communications network operated with the use of the radio frequencies acquired in the tender.

This obligation is binding on auction winners for 12 years from obtaining radio frequencies in the tender. Agreements are to be concluded for a period of at least two years. That gives the potential virtual operators a period of 14 years of effective functioning.

Attractive enough?

The CTO has tried to balance the requirements and interests of existing operators and potential newcomers. The tender rules have been slightly tipped in favour of new entrants but most potential investors have already indicated that this will not be enough.

It has to be noted that the position of the three current operators is very strong and they have a lot to lose in the auction. It is therefore expected that they will do their utmost to defend their positions, which will make the entrance of a new operator challenging at best.

It is believed that the main obstacle is the absence of a reserved lot for new entrants in the 800 MHz band that

would enable the establishment of a robust foundation for a new network at reasonable cost, and in combination with the other frequencies acquired in the tender, etc. the provision of services based on LTE (advanced) technology. It was argued that a joint spectrum cap (for 800 MHz and 900 MHz bands) of 2 x 20 MHz would cause disproportions on the market due to the existing allocation of frequencies and the auction would be challenged by established operators.

Regardless, the result of the tender is bound to influence the landscape of the Czech telecommunications market for a significant period of time.

Frequencies offered

800 MHz band:

6 channels of 2 x 5 MHz each with a joint spectrum cap for 800 MHz and 900 MHz bands enabling each of the existing operators to acquire 2 x 10 MHz;

1800 MHz band:

One continuous lot of 2 x 15,6 MHz reserved for new entrants only through a spectrum cap

One lot of 2 x 0,2 MHz

Nine lots of 2 x 1 MHz each

2600 MHz band:

14 lots of 2 x 5 MHz FDD, 2 lots are reserved for new entrants only through a spectrum cap of 2 x 20 MHz

9 lots of 5 MHz TDD with no spectrum cap

Contacts



Tomáš Doležil

Counsel

E: tomas.dolezil@cliffordchance.com



Tomáš Bayer

Junior lawyer

E: tomas.bayer@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Jungmannova Plaza, Jungmannova 24, 110 00 Prague 1, Czech Republic
© Clifford Chance LLP Sdružení Advokátů 2012

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.