

Explanatory Notes to Regulation 64 B

Regulation on auctioning of the 3410–3800 MHz frequency range

MPS 64B

Content

Content	2
PART A KEY CHANGES	4
1 Changes	4
2 Legislation	4
3 Effects	5
3.1 Grounds for the proposal	5
3.2 Comparison of alternatives.....	5
3.3 Impact on information society	5
3.4 Financial impact.....	5
3.5 Effects on authorities.....	5
PART B SECTION-SPECIFIC EXPLANATIONS AND GUIDELINES FOR APPLICATION	6
Section 1 Scope of application	6
Section 2 Registration period.....	6
Section 3 Information to be submitted at registration.....	6
Section 4 Contact person	8
Section 5 The auction system.....	8
Section 6 Frequency bands	9
Section 7 Eligibility.....	9
Section 8 Commencement of auction	10
Section 9 Bid increments	11
Section 10 Placing and switching bids.....	12
Section 11 The standing high bid	13
Section 12 Cancelling bids	13
Section 13 The right to play a waiver	14
Section 14 Conclusion of auction	14
Section 15 Impact of disqualified bids	15
Section 16 Interruption of auction.....	16

Section 17 Entry into force.....	16
Section 18 Information and publication.....	17
4 List of references	17
5 Annexes.....	17

PART A KEY CHANGES

1 Changes

There have been three previous spectrum auctions in Finland, in 2009, 2013 and 2016. Regulation on 2500-2690 MHz spectrum auction (60/2009 M) provided for the auction in 2009. Regulation on auctioning of the 791–821 MHz and 832–862 MHz bands (64/2013 M) concerned the auction in 2013. Regulation 64 A on auctioning of network licences in the 703-733 MHz and 758-788 MHz bands was submitted for comments on June 21, 2016. The first two regulations were issued by virtue of the Act on Auctioning Certain Radio Frequencies (462/2009). Regulation 64A was issued under the Information Society Code (917/2014), which repealed the Act on Auctioning Certain Radio Frequencies.

The Regulation on auctioning of the 3410–3800 MHz frequency range has been issued under the Act on Electronic Communications Services (917/2014) (the new title of the Information Society Code as of June 1, 2018). The most significant change affecting the auctioning process compared to the previous regulation is that the frequency range to be auctioned has been divided into three equal frequency bands instead of paired frequency blocks. The rules of the auction are in most part the same for both frequency ranges as in the previous frequency auction.

2 Legislation

Chapter 3 of the Act on Electronic Communications Services contains provisions on issuing mobile network licences by auction. Government Decree on Radio Spectrum Auctions within the 3410–3800 MHz Spectrum issued by virtue of section 11, paragraph 3 of the Act on Electronic Communications Services contains provisions regarding the number of frequency bands to be granted, the maximum number of frequencies to be allocated to an enterprise or organisation, the auction model to be used and the starting bids for the frequency bands to be auctioned. FICORA Regulation on auctioning of the 3410–3800 MHz frequency range is based on section 12 of the Act on Electronic Communications Services. This authorising provision contains further details on the applicable auction process and registration.

3 Effects

3.1 Grounds for the proposal

This Regulation lays down further provisions on registration for the auction and the auction process by virtue of section 12 of the authorising provision of the Act on Electronic Communications Services.

3.2 Comparison of alternatives

The auction model of the Regulation is based on section 3 of the Government Decree on spectrum auction, which provides for a so-called SMRA auction (simultaneous multiround auction). For this reason, the preparation of the FICORA Regulation did not involve a comparison between the SMRA model and other auction models.

3.3 Impact on information society

The objectives of the Regulation are the same as those of the Government Decree on spectrum auction. The Regulation aims at ensuring the efficient use of new frequencies assigned for mobile communications. It also aims at promoting fair competition in mobile communications services. Furthermore, issuing licences through an auction process improves the availability, quality and capacity of fast wireless broadband connections. The auctioned frequency range will be used in implementing the 5G network, the key features of which are high capacity, short delays and low energy consumption.

3.4 Financial impact

The Regulation does not have material economic impacts on its own. It only supports and strengthens the economic impacts of the Decree on spectrum auction. If all frequency bands intended for auctioning are sold, the State will receive at least EUR 65 million in revenues from the auction.

3.5 Effects on authorities

FICORA collects licence fees based on the winning bids from the winners and pays them to the State. Therefore, this Regulation

has no economic impact on FICORA's operations. The participation fees only cover the costs incurred by FICORA for arranging the auction. The impact of the Regulation on FICORA's human resources is only temporary during the preparation and organisation phase of the auction.

PART B SECTION-SPECIFIC EXPLANATIONS AND GUIDELINES FOR APPLICATION

Section 1 Scope of application

The regulation is applied to the auctioning of licences for the 3410–3800 MHz frequency range. The regulation lays down provisions on registration for the auction and the auction process. The licences to be auctioned grant their holders the right to practise public telecommunications in a mobile network on terms determined in detail by the licence and the related radio licence.

Section 2 Registration period

The deadline for registration is August 17, 2018 at 4:15 pm. The registrations must arrive at FICORA's registry by the deadline. Registration forms arriving late will be disqualified. The company or organisation concerned is responsible for ensuring that the registration arrives at FICORA by the deadline.

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Section 3 Information to be submitted at registration

Registration for the auction is done by filling in the form in Annex 1 of the Regulation and attaching the required documents to it and delivering the documents to FICORA. All sections of the form must be filled in and the form must be signed. The registration form must be signed by an authorised signatory in

MPS 64B

the company or organisation. The authority to sign must be clearly indicated in the extract from the trade register, in a corresponding foreign document, or in a separate power of attorney.

The following documents must be attached to the registration form:

- Extract from the trade register or a corresponding foreign registry document indicating authorised signatory status;
- Power of attorney, if the authorised signatory is not clearly stated in the extract from the trade register;
- Information on all companies and other organisations belonging to the same group referred to in Chapter 1 section 6 of the Accounting Act (1336/1997) as the registrant.

The information on companies and other organisations belonging to the same group must be submitted in writing and include all companies and organisations belonging to the same group as the company registering for the auction. According to chapter 1, section 6 the Accounting Act, a parent undertaking along with its subsidiaries constitutes a group. If a reporting organisation has control over an object undertaking as described in section 5 of the Accounting Act, the former is a parent undertaking and the latter is a subsidiary.

According to section 13 of the Act on Electronic Communications Services, only one company from a given group of companies, as defined in chapter 1, section 6 of the Accounting Act, may participate in the auction. If two or more companies from the same group as referred to in chapter 1, section 6 of the Accounting Act register for the auction, they must indicate at FICORA's request, which company will participate in the auction. If this notification is not submitted by the deadline, FICORA may bar all companies belonging to the same group from the auction.

The requested documents must be submitted in Finnish, Swedish, or English. If an original document is drawn up in another language, a Finnish, Swedish, or English translation must be provided. The registering company will cover all costs of such translations.

All changes to the information given in the registration form must be reported to FICORA without delay. If the company or

other organisation submits fundamentally incorrect, it may lead to disqualification as stipulated in section 15 of the Act on Electronic Communications Services.

FICORA will notify the company whether the registration has been accepted or not.

In accordance with sections 13 and 286 of the Act on Electronic Communications Services, an enterprise, organisation or association registered to participate in the auction shall pay a participation fee to FICORA. The participation fee according to the Government Decree is 40,000 euros. According to Section 13 of the Act on Electronic Communications Services, the fee must be paid before the auction starts. Only those undertakings that have paid the registration fee by the start of the auction may participate in the auction.

Section 4 Contact person

FICORA will send the documents and other correspondence related to the auction only to the contact person named on the registration form. Therefore, it is most important to make sure that the contact information is correct and up-to-date and that the contact person is available from the date of registration until the end of the auction.

FICORA must be notified immediately if the bidder wants to change the contact person or if there are any changes to the contact person's contact information. Notifications of a change of contact person can be sent to FICORA before the auction for example by e-mail to spectrum.auction@ficora.fi. Once the auction has begun, these changes may also be submitted via the auction system.

Section 5 The auction system

The auction will be conducted via an electronic auction system over the internet. The bidder is responsible for arranging an internet connection, including hardware and web browser. The bidders are not required to acquire any special hardware or software.

The auction system can be run on all major browsers. FICORA recommends using the latest browser software. The use of the auction system also requires downloading the latest version of the Java software.

FICORA will deliver the certificates, log-in information and passwords or other identification methods required for accessing the auction system to the contact person of the bidder referred to in section 4. The bidder is responsible for storing the passwords in the appropriate manner and ensuring that only authorised persons have access to them. Bids placed using passwords are binding on the bidder.

The auction system is used for placing bids and for exchange of information between the bidder and FICORA. During the auction, FICORA will make all announcements concerning the auction primarily through the auction system. FICORA will contact the bidders by e-mail or telephone only if the auction system is temporarily out of order for technical or other reasons. If a bidder cannot access the auction system, they can contact FICORA by e-mail or phone. FICORA will deliver contact details and detailed instructions for disturbance situations to registered bidders.

After registration, FICORA will deliver detailed user instructions regarding the auction system to the bidders. The bidders will have the opportunity to familiarise themselves with the auction system in a trial auction to be held approximately two weeks prior to the start of the actual auction. FICORA will communicate the trial auction date to the bidders after registration.

Section 6 Frequency bands

The division of the frequency range into the frequency bands to be auctioned is based on the Government Decree on Radio Spectrum Auctions within the 3410–3800 MHz Spectrum. The 3410–3800 MHz frequencies have been divided into three 130 MHz frequency bands in the auction. The frequency bands are 3410 - 3540 MHz, 3540 - 3670 MHz and 3670 - 3800 MHz. They have been given identifiers A, B and C. The sole purpose of these identifiers is to identify the frequency bands.

Section 7 Eligibility

A bidder's right to place bids in each bidding round is called eligibility. The bidder's eligibility (bidder's eligibility points) determines how many bids each bidder may place in each of the bidding rounds.

Eligibility is calculated separately for each bidding round. Eligibility is calculated on the basis of the bidder's actions in the previous bidding round.

MPS 64B

In the first bidding round, the bidder's eligibility is one point. Bidders who do not place a bid on any bands on a frequency range in the first bidding round lose their eligibility permanently.

In order to retain eligibility in the second round and consequent rounds, the bidder must

- keep the standing high bid unchanged;
- raise its bid, if it is not the high standing bid;
- switch its earlier bid to another frequency band, or
- play a waiver in accordance with section 13.

If a bidder loses their eligibility, their last bid remains standing. Eligibility can only be recovered through reactivation of a bid – i.e., when a previously placed standing bid becomes the standing high bid because another bidder's bid has been switched or disqualified.

At the beginning of each bidding round, the bidders receive information of their current eligibility via the auction system.

Section 8 Commencement of auction

FICORA will announce the starting date and time of the first bidding round to the bidder's contact person, referred to in section 4, no later than a week before the start of the auction.

Bidding rounds will take place on weekdays. FICORA will announce the starting and end times of the bidding rounds to the bidders in advance and primarily through the auction system. If the auction will go on for several days, the next day's schedule will be announced at the end of the last bidding round of the day. The length of the bidding rounds may vary. If necessary, FICORA may change the duration and schedule of the bidding rounds during the auction. Bidders will be notified of all changes primarily via the auction system.

Section 9 Bid increments

During the first bidding round, bids are placed on all frequency bands at the defined starting price. The starting bid is determined on the basis of the Government Decree.

From the second bidding round onward, FICORA will determine the bid increments for each frequency band. FICORA will raise the price of a frequency band when bids have been made.

The bid increment is no more than 6% higher than the standing high bid placed on the frequency band. Bid increments must be proportionally the same for all frequency bands and all bidders during the same bidding round. If no new bids were placed on the frequency band during the previous bidding round, the going price remains the same in the following round, unless the going price of a frequency band is changed as a result of a commonly applied percentage increment for the following round. This is based on the provision of the Regulation under which the bid increments must be proportionally the same for all frequency bands and all bidders during the same bidding round. FICORA may accelerate or slow down the auction by impacting the size of the increments.

The going price of a frequency band may be lower if a bidder has switched its standing high bid to another frequency band. If one or more bidders remove their bids on a frequency band, leaving no standing bids for that band, the price of the frequency band will return, at the lowest, to the starting price of the first bidding round. However, if a bidder has placed a higher bid on a frequency band in one of the previous bidding rounds, the going price is no more than 6% higher for the bidder as the highest bid placed by the bidder on the frequency band in the previous round. The going price may decrease also in cases where the going price of a frequency band has changed as a result of a commonly applied percentage increment for the following round.

Prices may differ from bidder to bidder and frequency band to frequency band even though the increments must be proportionally the same in the same bidding round.

The going prices for each frequency band will be announced to bidders via the auction system at the start of the bidding round.

Section 10 Placing and switching bids

By making a bid on a frequency band, the bidder commits to pay for it the amount stated in the bid.

Placing bids means:

- 1) Placing bids in the first round;
- 2) Raising bids in subsequent rounds;
- 3) Switching bids in subsequent rounds.

Bids are placed through an electronic auction system. Bids must be registered before the bidding round is closed. Bids arriving late will not be accepted. FICORA recommends that the bidders submit bids in good time before the end of a round. Submitting a bid at the last minute may be risky, since the submission may fail on account of an internet connection failure or some other technical failure. The system will inform the bidder of whether the bid was successfully submitted and registered in the system.

If, because of an internet traffic failure, a technical difficulty or some other reason, a bidder is unable to place bids via the auction system, bids can be placed by encrypted email. In special circumstances where the bidder cannot use an encrypted email, FICORA may approve bidding by telephone. A bid may not be placed by email or telephone without the explicit advance permission of FICORA. FICORA registers bids submitted by encrypted email or telephone in the auction system. Registration can only be performed if the bidder provides FICORA with the single-use password reserved for the bidder for registration purposes. Even bids placed by email or telephone must arrive at FICORA before the end of the bidding round. If a bid is placed using such a method and it arrives at the very end of a bidding round, the bidding round may be exceptionally extended for technical reasons.

During the bidding phase, the bidder may change a placed bid by registering a new bid in the system. There is no limit to the number of times a bid can be altered. The bid that has been submitted most recently at the time the bidding round ends remains valid. Bids must be placed according to the Regulation. If a bid is placed by email or telephone, the bidder is responsible for ensuring that the bid corresponds to the auction rules.

In the first bidding round, bidders can only place a bid on one frequency band.

In subsequent bidding rounds, the bidder can place a bid if they have not lost their eligibility. The bidder's eligibility is determined in accordance with section 7.

A bidder cannot raise a bid if it is the standing high bid on a frequency band.

A bidder can switch a bid from one frequency band to another during the auction. However, a standing high bid cannot be switched if no other bidder has placed or switched a bid during the previous round in accordance with section 10, or if none of the bidders has played a waiver in accordance with section 13. If a bid cannot be switched, the auction system prompts the bidder accordingly.

If the standing high bid on a frequency band is switched, a new standing high bid will be determined for the band. The next highest bid or, if more than one bid has been placed on the same amount, the one that is ranked highest by allotment, will become the standing high bid. If there are no standing bids on a given frequency band, the going price for the band will return to its starting price in the next round as referred to in the Government Decree; however, the going price for the bidder must be at the minimum the bid placed by the bidder on the frequency band in a previous bidding round plus an increase of 6% at the maximum.

Section 11 The standing high bid

After each bidding round, the auction system determines the standing high bid on each frequency band. The standing high bid on a frequency band is the bid that has the highest value. If there are several equal bids on the same frequency band, the standing high bid and the mutual ranking of the bids are established by the random number generator of the auction system.

Section 12 Cancelling bids

According to section 11 of the Electronic Communications Act, all bids placed during the auction are binding. In this regulation, cancelling a bid is a technical term related to switching and raising bids. A bid on a frequency band may only be cancelled:

MPS 64B

- a) by raising a bid placed for the same frequency band in accordance with section 10, or
- b) by switching the bid to another frequency band in accordance with section 10.

The bidder can stop bidding, but withdrawing previously-placed bids from the auction is not permitted.

Section 13 The right to play a waiver

Each bidder has the right to play a waiver in a maximum of three bidding rounds without eligibility being reduced. The aim of this rule is to give the bidder the opportunity to gain more time for reflection and preparation for example in a situation where the person making the bids on behalf of the bidder needs to exceed their mandate. The provision also prevents reduction of eligibility due to technical difficulties.

If a bidder has not placed any bids during a bidding round, a waiver will be played on the bidder's behalf to avoid reduction of eligibility (passive waiver). The system performs this automatically. However, the bidder may also indicate in the system that they are not playing a waiver to purposefully reduce eligibility.

Instead of a passive waiver, a bidder can also play an active waiver by announcing their intent. The bidder must make the announcement before the end of the bidding phase where the waiver is used. If a bidder decides to play a waiver in any given round, it cannot place any bids in that bidding round.

However, a bidder cannot play a waiver in the first round of the auction. A bidder that does not place a bid in the first round of the auction loses their eligibility for bidding in the auction permanently.

Section 14 Conclusion of auction

After a bidding round during which no new bids are placed or active or passive waivers are played as stated in sections 10 and 13, respectively, FICORA announces the auction concluded.

If a bidder with a right to play a waiver announces that it will not play a waiver in a round and no bids have been placed or switched during the round, the auction ends after that round.

The auction concludes at the same time for all frequency bands. FICORA announces the conclusion of the auction to bidders and the auction system gives an automatic notice of conclusion. The auction is concluded only after FICORA has made the separate announcement.

After the last bidding round, the standing high bids become winning bids. The winner of the licences for the auctioned frequency bands is the bidder that has a standing high bid at the conclusion of the auction.

According to Section 287 of the Act on Electronic Communications Services, the winner of the auction must pay a licence fee corresponding to the winning bid. The licence fee must be paid annually in instalments during the licence period. The payment schedule will be given by Government Decree. The fee is collected by FICORA.

After the conclusion of the auction, FICORA informs the Ministry of Transport and Communications of the result of the auction. Following this, the government grants the licences to the auction winners in accordance with the Act on Electronic Communications Services, and FICORA collects the first instalment of the licence fee in accordance with section 287 of the Act on Electronic Communications Services. In accordance with section 45 of the Act on Electronic Communications Services, FICORA will grant the telecom operator holding the licence a frequency reservation without application upon the validity of the licence. The auctioned frequency bands may be brought into use only once FICORA has granted a radio licence. The radio licence is granted on application pursuant to section 40(4) of the Act on Electronic Communications Services after the licence holder has paid the first instalment of the licence fee referred to in section 287.

Section 15 Impact of disqualified bids

FICORA and the Finnish government may disqualify a bidder's bid in certain circumstances, specified in section 15 of the Act on Electronic Communications Services. A bid can be disqualified during or after the auction.

If a bid is disqualified according to section 15 of the Act on Electronic Communications Services before FICORA has an-

nounced the auction concluded, and if the disqualified bid has been the standing high bid on a certain frequency band, a new, standing high bid will be determined for the frequency band in question. The new, standing high bid is the second highest bid.

If the winning bid placed by the bidder is disqualified only after the auction is concluded, all winning bids placed by the bidder are annulled. A bidder whose winning bids have been disqualified is not entitled to obtain a licence. In other respects, the outcome of the auction remains unchanged. The frequency bands whose winning bids have been disqualified can be re-auctioned in accordance with Section 11 of the Act on Electronic Communications Services. The government makes the decisions concerning the organisation and time of any auction.

Section 16 Interruption of auction

FICORA may interrupt the auction, if an external, urgent incident occurs during the auction, preventing or essentially harming the auctioning in accordance with the auction process referred to in the Act on Electronic Communications Services or FICORA Regulation. These incidents similar to force majeure include extensive power cuts, disruption of internet connections, and technical failure of the auction system. Moreover, FICORA may interrupt the auction if there is reason to suspect prohibited collusion between bidders as referred to in paragraph 3 of section 13 of the Act on Electronic Communications Services or bidding only to prevent the auction from concluding.

The auction may be resumed directly from the point at which it was interrupted. For an unavoidable reason, FICORA may annul one or more bidding rounds, in which case the auction will be resumed from the round preceding the annulled bidding round. Annulling a bidding round may be necessary, for instance, in a situation in which the auction system has crashed during a bidding round in a manner leaving some bidders unable to register their bids. In extreme circumstances, FICORA may annul all bidding rounds, in which case the auction will start from the beginning.

Section 17 Entry into force

This Regulation enters into force on July 11, 2018 and will remain valid until further notice.

Section 18 Information and publication

The Regulation is included in the Series of Regulations issued by the Finnish Communications Regulatory Authority and can be obtained from the FICORA Customer Service Office.

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4 List of references

1) Act on Electronic Communications Services (917/2014);

<http://www.finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>

[2] Accounting Act (1336/1997)

<https://www.finlex.fi/fi/laki/kaannokset/1997/en19971336>

[3] Government Decree on Radio Spectrum Auctions within the 3410–3800 MHz Spectrum:

[Linkki asetukseen tulossa myöhemmin](#)

[4] Government Decree on Radio Frequency Usage and the Frequency Plan (839/2016):

[Linkki asetukseen tulossa myöhemmin](#)

5 Annexes

Annex 1: Registration form (Annex to Regulation)