

Act on auctioning certain radio frequencies

(462/2009)

Section 1

Scope of application

(1) This Act lays down provisions on issuing licences through an auction process for telecommunications referred to in section 4(1) of the Communications Market Act (393/2003) within the radio spectrum of 2500—2690 MHz. The Act also includes provisions on a radio licence used within the spectrum.

(2) The objective of the Act is to promote competition and ensure efficient use of spectrum.

Section 2

Relation with other legislation

Unless otherwise provided in this Act, the provisions of Communications Market Act and the Act on Radio Frequencies and Telecommunications Equipment (1015/2001) also apply to the operations referred to in this Act.

Section 3

Technological division of the frequency band

A total of 14 frequency pairs of 5 MHz each will be auctioned within the frequency bands of 2500—2570 and 2620—2690 MHz. Radio spectrum within the frequency band of 2570—2620 MHz will be auctioned as one frequency band of 50 MHz.

Section 4

Granting of licences

(1) The Government shall grant a licence referred to in this Act to an enterprise, organisation or association that has made the highest valid bid for the frequency band or frequency pair in the auction, unless the licensing authority has especially weighty reasons to suspect that granting the licence to the applicant in question would apparently risk national security.

(2) The licence decision shall be made in accordance with the provisions of section 8(2) of the Communications Market Act. A licence has a maximum period of 20 years.

(3) One enterprise, organisation or association may be granted a maximum of 50 MHz of spectrum.

Section 5

Registration for the auction

(1) An enterprise, organisation or association wishing to participate in the auction shall inform the Finnish Communications Regulatory Authority in advance of its participation and pay a participation fee laid down in section 6. The registration shall be made by the informed date using a form certified by the Finnish Communications Regulatory Authority.

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(2) The registration shall include the following information of the enterprise, organisation or association:

1) name and Business ID or, in the case of a foreign enterprise, organisation or association, a corresponding business identity code;

2) postal address;

3) name, telephone number and email address of a contact person who is authorised to represent the enterprise, organisation or association in the auction;

4) a description of the group structure and of effective control in the enterprise, organisation or association.

(3) The Finnish Communications Regulatory Authority may issue further orders on the registration form and the deadline for the registration.

Section 6

Participation fee

(1) An enterprise, organisation or association registered for the auction shall pay a participation fee of 50,000 euros to cover the administrative costs that will accrue to the Finnish Communications Regulatory Authority for arranging the auction. The participation fee is not refunded, even if the enterprise, organisation or association made no bids in the auction.

(2) An obligation to pay the fee shall be stipulated by the Finnish Communications Regulatory Authority. An appeal may be made against a decision of the Finnish Communications Regulatory Authority concerning the stipulation of the fee as laid down in section 21.

(3) The fee may be collected without a judgement or a decision in a manner laid down in the Act on collecting taxes and payments (706/2007).

Section 7

Restriction on the right to participation

Only one enterprise of a corporate group referred to in chapter 1(6) of the Accounting Act (1336/1997) is allowed to participate in the auction.

Section 8

Prohibited collusion

No cooperation concerning the auction is allowed between parties participating in the auction. Prohibited collusion is considered to include:

1) agreements concerning the contents of the bids;

2) exchange of information concerning the contents of the bids during the auction process;

3) any other contact between the applicants with the aim to affect the process and result of the auction.

Section 9

Auction process

(1) The Government invites applications for the licence. Practical arrangements related to the auction are the responsibility of the Finnish Communications Regulatory Authority. The auction shall be unbiased, clear, open, non-discriminatory and technology and service neutral. The auction may be conducted using an electronic auction system.

(2) A starting price for the frequency bands to be auctioned is 15,000 euros per one megahertz.

(3) The auction includes one or more rounds with ascending bids. The frequency pairs and the frequency band referred to in section 3 of the Act are auctioned at the same time.

(4) All bids submitted in the auction are binding until the end of the auction. The Finnish Communications Regulatory Authority announces the auction concluded after a bidding round during which no new bids have been placed for any frequency pair or frequency band. The highest valid bid placed for each frequency pair or frequency band at the conclusion of the auction wins the auction.

Section 10

Further orders on the auction process

The Finnish Communications Regulatory Authority may issue further orders on the process and procedures applied in the auction. The orders may relate to:

- 1) placing of bids;
- 2) raising of bids;
- 3) switching of bids between frequency pairs and frequency bands;
- 4) definitions of eligibility in each bidding round;
- 5) definitions of the highest standing bid;
- 6) discontinuance or cancellation of the auction due to force majeure or other technical reason;
- 7) other similar rules and technical arrangements of the auction.

Section 11

Openness of information in the auction process

(1) The name and other information of the enterprise, organisation or association provided in the registration are not public before the conclusion of the auction process.

(2) The winning bids are disclosed after the auction process has been concluded. Other bids made by an enterprise, organisation or association are confidential. During the auction the Finnish Communications Regulatory Authority may issue the total amount in EUR of the bids placed on each round. The bidders are also provided with the information on the number of bids made for the frequencies and the amount of the highest bid in EUR.

(3) Other provisions on the openness of information are issued in the Act on the Openness of Government Activities (621/1999).

(4) Notwithstanding secrecy provisions, the Finnish Communications Regulatory Authority shall, at request, disclose information to the Ministry of Transport and Communications it has obtained while carrying out tasks under this Act necessary for supervision and control referred to in subsections 1-2.

Section 12

Rejection of bids

(1) If the effective control in the enterprise, organisation or association changes before the licence is granted so that the enterprise, organisation or association no longer meets the requirements for entering the auction laid down in section 7, the Finnish Communications Regulatory Authority shall reject the bid made by the enterprise, organisation or association.

(2) The Finnish Communications Regulatory Authority may decide to reject a bid made by an enterprise, organisation or association, if the enterprise, organisation or association has provided fundamentally incorrect information of matters significant to the auction or if it otherwise violates this Act or the regulations of the Finnish Communications Regulatory Authority and, despite being requested to do so, fails to immediately rectify its actions.

(3) The Government may decide to reject a bid made by an enterprise, organisation or association, if it has especially weighty reasons to suspect that granting a licence to the applicant would apparently risk national security.

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Section 13

Licence terms and conditions

(1) The licence to be granted shall cover the whole of Finland excluding the Region of Åland.

(2) Terms in accordance with section 10(2) of the Communications Market Act may be incorporated into a licence.

Section 14

Licence fee

(1) A telecommunications operator that has been granted a licence under section 4 shall pay a licence fee. The licence fee is the highest valid bid provided in section 4.

(2) The licence fee shall be paid annually in equal instalments during the licence period. An obligation to pay a licence shall be stipulated by the Finnish Communications Regulatory Authority. The first five instalments shall, however, be paid at once in the beginning of the licence period.

(3) The fee may be collected without a judgement or a decision in a manner laid down in the Act on collecting taxes and payments. If the fee is not settled by due date, annual interest on delayed payments is charged for the unpaid amount according to the interest rate referred to in section 4 of the Interest Act (633/1982).

Section 15

Frequency reservation and radio licence

(1) The Finnish Communications Regulatory Authority grants a frequency reservation in accordance with section 9 of the Act on Radio Frequencies and Telecommunications Equipment for all licence holders without an application.

(2) The Finnish Communications Regulatory Authority grants upon application a radio licence in accordance with section 7 of the Act on Radio Frequencies and Telecommunications Equipment to a licence holder or transferee after the licence holder has paid the first five annual instalments of the licence fee provided in section 14(2).

(3) The Finnish Communications Regulatory Authority may incorporate into a radio licence conditions necessary for efficient and appropriate use of frequencies and for prevention and removal of interference in radio communications. The Finnish Communications Regulatory Authority may change the terms of a radio licence without the consent of the licence holder, if it is necessary due to changes in the licence, radio frequency allocation scheme, frequency regulations or international agreement obligations, or if it is justified in order to prevent or remove any interference in radio communications.

(4) The Finnish Communications Regulatory Authority shall cancel a radio licence in part or in full, if the licence expires.

(5) Before the start of operations a licence holder shall inform the Finnish Communications Regulatory Authority of the technology to be used in the radio network. If the licence holder changes the technology used, it shall inform the Finnish Communications Regulatory Authority of the change before it is made.

Section 16

Licence transfers

(1) At the request of a licence holder the Government may transfer a licence, provided that it has no especially weighty reasons to suspect that the transfer might prevent competition or endanger interference-free radio communications or apparently risk national security.

(2) Changes in the effective control with regard to the licence holder are also regarded as a transfer referred to above in subsection 1. Any changes in the effective control shall immediately be reported to the licensing authority.

(3) The Government shall make a decision about a transfer within two months from the reception of a transfer application referred to in subsection 1 or of information referred to in subsection 2.

(4) A licence transfer may also apply to only a part of the frequencies included in the licence. The licence holder shall explain in the transfer application as to who would be responsible for paying the licence fee provided in section 14 after the transfer.

(5) A transfer within a corporate group between the parent company and its fully owned subsidiary shall not be regarded as a licence transfer. The Government shall be informed of such a transfer.

(6) All rights and responsibilities of the licence holder shall transfer to the new licence holder.

(7) Along with the licence transfer the related frequency reservation or radio licence shall also transfer in part or in full. The licence transferor shall immediately inform the Finnish Communications Regulatory Authority of the transfer.

Section 17

Change or cancellation of a licence

(1) Provisions on the Government's right to alter the licence are laid down in section 11 of the Communications Market Act. Provisions on consultation of the licence holder and parties representing telecommunications operators and users are laid down in section 118(2) of the Communications Market Act.

(2) The Government may cancel a licence in part or in full, if the licence holder:

1) has repeatedly and seriously violated the provisions of this Act, the Communications Market Act, Act on Radio Frequencies and Telecommunications Equipment, Act on the Protection of Privacy in Electronic Communications (516/2004) or other legislative provisions on telecommunications or licence terms referred to in section 13; or

2) has not within two years of the start of the licence period started operations in practice in accordance with the licence, unless due to technological development or overall economic conditions and by the licence holder's application the Government orders otherwise.

(3) A further requirement for cancellation is that the licence holder, despite of being requested to do so, fails to rectify its actions within a reasonable period of at least one month.

(4) The Government may cancel a licence, if the licence transfer does not meet the requirements laid down in section 16(1). A licence holder that completes a licence transfer referred to in section 16(2) may request to be informed in advance of the decision concerning the licence cancellation. The licensing authority shall issue a decision within two months of the application's arrival at the authority. If a change in the effective control concerns a company acquisition that in accordance with the Act on Competition Restrictions (480/1992) has to be reported to the Finnish Competition Authority, or in accordance with the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) has to be reported to the Commission, the decision has to be issued by the licensing authority no later than two months after the definitive decision concerning the company acquisition was made.

Section 18

Leasing of the right to use frequencies

(1) A licence holder may lease out the right to use the frequencies referred to in the licence to another enterprise, organisation or association. However, the licence holder continues to be responsible for the obligations included in the licence, the related radio licence and frequency reservation.

(2) Leasing out the right to use the frequencies is subject to Government's approval. By the licence holder's application the Government may approve the leasing of the right to frequencies, provided that it has no especially weighty reasons to suspect that the leasing would apparently risk national security. The Government shall make a decision on the approval within two months of the arrival of the application.

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Section 19

Relinquishing the licence

(1) A licence holder may relinquish the licence by informing the licensing authority about it before the end of the licence period.

(2) No licence fee for the remaining licence period shall be collected from a licence holder that has fully relinquished its licence. The licence fee of a licence holder that has partially relinquished its licence shall be reduced accordingly for the remaining licence period.

Section 20

Supplementary auction

(1) The Government may invite new applications for the licences, if frequencies that are appropriate in terms of technology and effective use are released from licences granted under this Act.

(2) The provisions of this Act apply to a supplementary auction.

Section 21

Appeal

As provided in the Administrative Judicial Procedure Act (586/1996), an appeal may be filed to the Supreme Administrative Court against a decision of the Government or a decision of the Finnish Communications Regulatory Authority issued under this Act. A decision of the Government or the Finnish Communications Regulatory Authority shall be complied with despite any appeal, unless the appellate authority orders otherwise.

Section 22

Entry into force

(1) This Act enters into force on 1 July 2009.

(2) Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.