



Belgian Institute for Postal Services
and Telecommunications

Procedure for the granting of rights of use for the 3410- 3430 MHz band

Information memorandum

Version 2 – 19 April 2024

INTRODUCTORY COMMENTS

This memorandum has been drafted by the BIPT within the framework of a procedure for the granting of rights of use for the 3410-3430 MHz band.

The terms and expressions used in this memorandum are defined in the Annex.

This memorandum is meant for information purposes only. It is made available to the market for the sole purpose of informing those considering a possible participation in the allocation procedure (see definitions in the annex). This memorandum has no binding legal effect.

This memorandum summarises the applicable regulation concerning the allocation procedure. It describes how the allocation procedure will take place. It also reminds the rights holders of the obligations imposed on them. However, it should be clear that the ECA, the Royal Decree 3600 MHz (see definitions in the annex) and any other Belgian or European law or regulation relevant in this matter prevail over the content of this memorandum.

Each recipient must make his own independent assessment of the potential value of an allocation of spectrum in the 3600 MHz band. The candidates decide themselves what amounts they are prepared to propose, based on their own calculations. The BIPT will not provide any help or assistance in this matter.

The memorandum has no contractual or pre-contractual value and does not commit the BIPT in any way. It cannot be used as a legal foundation for any appeals that could be lodged concerning the allocation procedure or the granting of rights of use, nor as a support for any claims for damages or any other proceedings instituted against the BIPT.

Corrected versions of the memorandum will be published if appropriate.

All the information in this memorandum may be updated, modified or corrected during the allocation procedure, depending on the evolution of the existing normative and factual background. Any amendments will be published under the same terms as the publication of this memorandum.

The BIPT accepts no responsibility with regard to the accuracy or completeness of the information contained in the memorandum or any other information made available to the market. In particular, but without prejudice to the general scope of the foregoing, no representation or warranty is given as to any future projections, estimates, prospects or returns resulting from the rights of use.

Via this memorandum, the BIPT does not provide any financial, legal, fiscal, accounting or other advice.

The BIPT disclaims all responsibility for any prejudice that might result from the use of the memorandum by its recipients.

TABLE OF CONTENTS

Chapter 1.	Introduction	4
Chapter 2.	Existing rights of use	5
Chapter 3.	Spectrum to be allocated	7
Chapter 4.	Conditions for the exercise of the rights of use.....	8
4.1.	Notion of rights of use	8
4.2.	Validity period of the rights of use.....	8
4.3.	Technologies allowed.....	9
4.4.	International frequency coordination.....	9
4.5.	Belgium's exclusive economic zone in the North Sea.....	10
4.6.	Unique fee.....	10
4.7.	Annual fees	12
Chapter 5.	Organisation of the allocation procedure	13
5.1.	General	13
5.2.	Spectrum cap	13
5.3.	Calls for candidates.....	13
5.4.	Application files.....	13
5.5.	Relevant groups	14
5.6.	Deposits.....	14
5.6.1.	<i>Deposit interest</i>	<i>15</i>
5.6.2.	<i>Ratcheting the deposit.....</i>	<i>15</i>
5.6.3.	<i>Possible repayment of the deposit.....</i>	<i>15</i>
5.7.	Admissibility	15
5.8.	Course of the allocation procedure.....	16
5.8.1.	<i>Electronic tendering system</i>	<i>16</i>
5.8.2.	<i>Disruption to the auction.....</i>	<i>16</i>
5.8.3.	<i>Collusion</i>	<i>17</i>
5.8.4.	<i>SMRA auction.....</i>	<i>17</i>
5.8.5.	<i>Grant of rights of use.....</i>	<i>18</i>
Chapter 6.	Regulatory issues	19
6.1.	Obligations	19
6.2.	Modification of the rights of use	19
6.3.	Breach and revocation	19
6.4.	Urban planning permit and environmental exposure limits	19
6.4.1.	<i>General</i>	<i>19</i>
6.4.2.	<i>Situation in the Brussels Capital Region.....</i>	<i>20</i>
6.4.3.	<i>Situation in the Flemish Region</i>	<i>20</i>
6.4.4.	<i>Situation in the Walloon Region</i>	<i>21</i>
6.5.	Infrastructure and spectrum sharing	21
6.6.	Spectrum trading.....	22
Chapter 7.	Timetable	23
Chapter 8.	Additional information.....	24
8.1.	Request for information	24
8.2.	Availability of the memorandum.....	24
Annex.	Definitions and glossary.....	25

Chapter 1. Introduction

1. This memorandum concerns the procedure which will be organised by the BIPT for granting rights of use of 20 MHz in the 3600 MHz band (3410-3430 MHz).
2. This memorandum does on no account exempt candidates from reading the regulation concerning the allocation procedure.
3. In particular, the memorandum:
 - summarises the steps which recipients are to take in order to submit their applications and take part in the allocation procedure;
 - summarises the principles of some of the rules and the expected timetable of the allocation procedure; and
 - provides an outline of the regulatory framework.
4. The allocation procedure is governed by the ECA, among other legislation. The allocation procedure will be conducted in compliance with the provisions of the Royal Decree 3600 MHz.
5. Consolidated versions of the ECA and the Royal Decree 3600 MHz are available on the BIPT website¹.
6. Information on the currently allocated spectrum and the spectrum to be allocated is provided in Chapter 2 and Chapter 3.
7. Chapter 4 provides information on the conditions for the exercise of the rights of use.
8. Information on the organisation of the allocation procedure is provided in Chapter 5. Particularly, information about the application files is given in section 5.4.
9. Chapter 6 provides information on regulatory issues.
10. Chapter 7 provides an indicative timetable of the intended process.
11. Contact information for making enquiries or obtaining further information is provided in Chapter 8.

¹ <https://www.ibpt.be/operateurs/procedures-d-attribution>.

Chapter 2. Existing rights of use

12. The rights of use that are mentioned in this chapter are not valid within national airspace, the territorial waters or Belgium's exclusive economic zone in the North Sea.
13. Proximus, Orange Belgium, Telenet Group, Citymesh Mobile, NRB, Citymesh Air, Citymesh Integrator and Citymesh Safety Drones hold rights of use. The allocated frequencies are shown in Table 1.

Band	Operator	Uplink (MHz)	Downlink (MHz)	Expiration date
700 MHz	Proximus	723-733	778-788	31/08/2042
	Orange Belgium	713-723	768-778	31/08/2042
	Telenet Group	708-713	763-768	31/08/2042
	Citymesh Mobile	703-708	758-763	31/08/2042
800 MHz	Proximus	842-852	801-811	29/11/2033
	Orange Belgium	852-862	811-821	29/11/2033
	Telenet Group	832-842	791-801	29/11/2033
900 MHz	Proximus	895-905	940-950	31/12/2042
	Orange Belgium	905-915	950-960	31/12/2042
	Telenet Group	880-890	925-935	31/12/2042
	Citymesh Mobile	890-895	935-940	31/12/2042
1400 MHz	Proximus	-	1472-1517	30/06/2043
	Orange Belgium	-	1427-1457	30/06/2043
	Telenet Group	-	1457-1472	30/06/2043
1800 MHz	Proximus	1710-1735	1805-1830	31/12/2042
	Orange Belgium	1735-1750	1830-1845	31/12/2042
	Telenet Group	1765-1785	1860-1880	31/12/2042
	Citymesh Mobile	1750-1765	1845-1860	31/12/2042
2100 MHz	Proximus	1920-1945	2110-2135	31/12/2042
	Orange Belgium	1965-1980	2155-2170	31/12/2042
	Telenet Group	1945-1960	2135-2150	31/12/2042
	Citymesh Mobile	1960-1965	2150-2155	31/12/2042
2600 MHz	Proximus	2500-2520	2620-2640	30/06/2027
	Orange Belgium	2550-2570	2670-2690	30/06/2027
	Telenet Group	2535-2550	2655-2670	30/06/2027
	Citymesh Mobile	2520-2535	2640-2655	30/09/2035
	Citymesh Air	2575-2620	2575-2620	30/06/2027
3600 MHz	Proximus	3700-3800	3700-3800	06/05/2040
	Orange Belgium	3600-3700	3600-3700	06/05/2040
	Telenet Group	3480-3580	3480-3580	06/05/2040
	Citymesh Mobile	3430-3480	3430-3480	06/05/2040

Band	Operator	Uplink (MHz)	Downlink (MHz)	Expiration date
	NRB	3580-3600	3580-3600	06/05/2040
	Citymesh Integrator	3410-3430	3410-3430	06/05/2025
	Citymesh Safety Drones	3410-3430	3410-3430	06/05/2025

Table 1 Existing rights

14. With the exception of the rights of use of Citymesh Integrator and Citymesh Safety Drones in the 3600 MHz band, the rights of use are valid throughout the national territory.
15. The 3410-3430 MHz frequency block has been allocated to Citymesh Integrator² and Citymesh Safety Drones³. Together, the rights of use of Citymesh Integrator and Citymesh Safety Drones cover the whole national terrestrial territory.
16. With the exception of the rights of use of Citymesh Integrator and Citymesh Safety Drones in the 3600 MHz band, the rights of use may be extended by the BIPT for supplementary five-year periods.
17. The existing rights of use of Citymesh Integrator and Citymesh Safety Drones for the 3600 MHz band are valid until 6 May 2025 and will not be extended⁴.
18. On 16 April 2024, the BIPT agreed to the request for the transfer of NRB's rights of use in the 3600 MHz band (3430-3450 MHz frequency block) to Proximus⁵. The effective transfer of NRB's rights of use can only take place after the publication in the Belgian Official Gazette of the new call for applications referred to in § 70.

² On the whole national terrestrial territory, except for the municipalities of Bièvre, Bouillon, Gedinne and Vresse-sur-Semois.

³ In the municipalities of Bièvre, Bouillon, Gedinne and Vresse-sur-Semois.

⁴ The Royal Decree of 24 March 2009 on radio access in the 3410-3500/3510-3600 MHz and 10150-10300/10500-10650 MHz frequency bands expires on 7 May 2025 (Article 47 of the Royal Decree 3600 MHz).

⁵ BIPT Council Decision of 16 April 2024 on the request for the lease of rights of use for the 3600 MHz band from NRB to Proximus.

Chapter 3. Spectrum to be allocated

19. During the allocation procedure, a total of two 10 MHz lots are auctioned (see Table 2). The rights of use are valid throughout the national territory but are not valid within national airspace, territorial waters or Belgium’s exclusive economic zone in the North Sea.

Lot type	Description	Number of available lots	Identifier
Specific block	3410-3420 MHz	1	3410-3420 MHz
Specific block	3420-3430 MHz	1	3420-3430 MHz

Table 2 Lots put up for auction

20. As a reminder, the existing rights of use of Citymesh Integrator and Citymesh Safety Drones in the 3410-3430 MHz sub-band are valid until 6 May 2025 (see Chapter 2). Both auctioned frequency blocks cannot be used by any other operator than Citymesh Integrator and Citymesh Safety Drones until 6 May 2025 (end of the validity of the existing rights of use of Citymesh Integrator and Citymesh Safety Drones).
21. Both auctioned frequency blocks are specific blocks. The position of the frequency block in the 3600 MHz frequency band is thus determined. However, it should be pointed out that Article 4, § 4 of the Royal Decree on 3600 MHz allows the BIPT after hearing all parties concerned to modify the distribution of the allocated frequencies, without modifying the quantity of spectrum allocated to each operator, in objectively justified cases to promote the effective, efficient and coordinated use of radio spectrum, within a reasonable time and in a proportionate manner.
22. If a frequency block is allocated to NRB, Orange Belgium, Telenet Group or Proximus, the operator would end up with two non-contiguous blocks. In that case, the BIPT would most probably modify the distribution of the allocated frequencies so that all operators have a contiguous block.

Chapter 4. Conditions for the exercise of the rights of use

4.1. Notion of rights of use

23. The ECA distinguishes two types of licences for the use of radio spectrum:
 - The “rights of use of radio spectrum” which are individual rights to use radio spectrum which are used wholly or partly for the provision of public electronic communications networks or publicly available electronic communications services;
 - The “private radio communications licences” which are licences to be able to use a radio communications station or network for purposes other than the provision of public electronic communications networks or publicly available electronic communications services.
24. The allocation procedure described in this memorandum only concerns the rights of use of radio spectrum.
25. The BIPT deems that a network can be considered as “public” or an electronic communications services can be considered as “publicly available” if it is openly offered on the market and not only to a predefined group of users. The predefined group of users corresponds to the concept of “closed user group”.
26. On the contrary, a service is not openly offered on the market when access to this service is subject to conditions which are not related to the electronic communications service itself (e.g. the requirement to have a commercial relationship with the provider or the owner of the site other than the commercial relationship resulting from the provision of the electronic communications service).
27. Another element allowing to assess the notion of “closed user group” is to examine if this concerns a community of interest which is characterised by its stability, its permanence and its anteriority to the real use of the electronic communications service.
28. Regarding private networks, it is possible to apply for private radio communications licences with the BIPT. These private radio communications licences are not the subject of the allocation procedure.

4.2. Validity period of the rights of use

29. The starting date of the validity period of the rights of use is defined by the BIPT. The end date of the initial validity period of the rights of use is 6 May 2040.
30. The BIPT will set 7 May 2025 as the starting date, unless Citymesh Integrator notifies the BIPT that it wants to put an end to its existing rights (see Chapter 2)⁶. Time will be given to Citymesh Integrator at the end of the allocation procedure to inform the BIPT. If Citymesh Integrator ends its existing rights, the rights will start within the weeks following the end of the allocation procedure.
31. The rights of use may be extended by the BIPT for supplementary periods of maximum five years. It is important to note that the BIPT has no obligation whatsoever to extend the rights of use. To this end, the BIPT must take a decision no later than two years before the period expires.
32. The criteria the BIPT must consider for extension decisions concern the following (see Article 18, § 2/1, subparagraph 3, of the ECA):
 - the need to ensure the effective and efficient use of the radio spectrum concerned;

⁶ See section 4 of the BIPT Council Decision of 4 May 2021 regarding the extension of Citymesh’s user rights in the 3.5 GHz frequency band for the provision of electronic communications services on the Belgian territory.

- the objective of reaching wireless broadband coverage of the territory and population at high quality and speed, as well as coverage of major transport paths;
 - the objective of facilitating the rapid development of new wireless communication technologies and applications;
 - the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and
 - the need to ensure undistorted competition.
33. Taking enforcement action for non-compliance with the conditions of the rights of use of radio spectrum pursuant to Article 21 of the Act of 17 January 2003 *on the status of the regulator of the Belgian postal and telecommunications sectors* (hereafter the "BIPT Act") may lead to a non-extension of the rights of use.

4.3. Technologies allowed

34. Generally speaking, all types of technologies may be used in the radio frequency bands reserved entirely or partially for publicly available electronic communications services.
35. Applicants must indicate in their applications which technology they plan to use if they obtain a right of use during the allocation procedure.
36. The operator is solely responsible for the operation of his network. He is responsible for any radio frequency interference caused by the base stations in his network to other users of the radio spectrum.
37. All radio equipment in base stations must comply with the applicable rules. In practice, this means that the equipment must comply with the requirements of the RED Directive⁷, as transposed in Articles 32 ff. of the ECA and the Royal Decree of 25 March 2016 on the making available on the market of radio equipment.
38. The BIPT retains the right to change, if need be, the technical parameters that are applicable to the radio equipment.
39. The technical and operational conditions that are necessary to prevent harmful interference are laid down by the BIPT. Regarding the 3600 MHz band, these conditions are laid down by the BIPT Council Decision of 03 November 2021 on the technical and operational conditions for the avoidance of harmful interference in the 3400-3800 MHz frequency band.

4.4. International frequency coordination

40. The BIPT has concluded an agreement on border coordination for the 3400-3800 MHz band⁸. This agreement is available on the BIPT website.
41. The entry into force of the agreement regarding the 3600 MHz band requires confirmation from the different signatory countries. To this day, only Switzerland has given its confirmation. Therefore there is no certainty for the BIPT regarding the entry into force of this agreement.

⁷ Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 *on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC*.

⁸ *Agreement between the Administrations of Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland on frequency usage and frequency coordination in border areas for terrestrial systems capable of providing electronic communications services in the frequency band 3400-3800 MHz, Brussels, 22 November 2017.*

42. This agreement lays down different coordination rules depending on whether or not the cross-border networks are synchronised. The field limits are much more restrictive in case of non-synchronisation. The DDSU frame structure⁹ ("Frame A" of ECC Recommendation (20)03¹⁰) should also be used in Germany, the Grand Duchy of Luxembourg, and the Netherlands¹¹. However, France has chosen the DDSUJDDDD frame structure ("Frame B" of ECC Recommendation (20)03). Discussions are still ongoing with the other signatory countries to facilitate the synchronisation of the cross-border networks.
43. This agreement also provides for the possibility of entering additional agreements to ensure the protection of other radio communications systems (e.g. earth stations) in neighbouring countries.
44. It is to be noted that in the absence of a specific agreement on the band, the sole limit of 41 dB μ V/m/5 MHz at a height of 10 m above ground level at the border is applicable¹², regardless of the synchronisation parameters.
45. The operator has to observe the obligations resulting from the cross-border coordination.
46. The BIPT encourages agreements between operators to improve coordination in border areas and the coverage of these areas, in compliance with the agreement¹³ regarding the approval of arrangements between operators.

4.5. Belgium's exclusive economic zone in the North Sea

47. Citymesh Integrator has rights of use for the band 3410-3510 MHz that are subject to temporary conditions for base stations located in the Belgian exclusive economic zone in the North Sea¹⁴.
48. A field limit of 32 dB μ V/m at a height of 3 m above ground level is applicable on the coast for base stations located in the Belgian exclusive economic zone in the North Sea to protect the terrestrial networks of the Belgian public mobile operators. Other sharing conditions may be used in case of an existing arrangement between all parties concerned.

4.6. Unique fee

49. The minimum bid in the first round of the auction for the different lots (or reserve price) is set by Article 30 of the ECA. Article 30 of the ECA sets an amount per allocated MHz and per month of validity of the rights of use.

⁹ Subcarrier spacing of 30 kHz, 1 frame of 10 ms (20 slots): DDSU DDSU DDSU DDSU with S = slot NR format #32 (10:2:2).

¹⁰ *Frame structures to facilitate cross-border coordination of TDD MFCN in the frequency band 3400-3800 MHz, 23 October 2020.*

¹¹ Also see Recommendation M(2021)18 of the Benelux Committee of Ministers of 15 December 2021 on the mutual coordination within the framework of the cross-border coverage and uninterrupted transfer of the 5G signal.

¹² Section 4.1 of the agreement between the administrations of Austria, Belgium, Croatia, the Czech Republic, France, Germany, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia and Switzerland on the coordination of frequencies between 29.7 MHz and 43.5 GHz for fixed services and land mobile services (HCM Agreement).

¹³ Agreement between the Administrations of Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland concerning the approval of arrangements between operators of terrestrial systems capable of providing electronic communication services, Brussels, 11 October 2011.

¹⁴ BIPT Council Decision of 27 October 2020 *on the granting to Citymesh of temporary user rights for the band 3410-3510 MHz for the establishment and operation of a transmission installation in the Belgian exclusive economic zone in the North Sea.*

50. The rights of use are valid until 6 May 2040, irrespective of the starting date of the validity period. However the unique fee does not have to be paid for the period until 6 May 2025 (Article 30, § 1/1, subparagraph 3, 9° and 10°). The reserve price for the 2 lots must therefore be calculated based on the number of months between 7 May 2025 and 6 May 2040.

Lot	Reserve price
3410-3420 MHz	€3,460,000 ¹⁵
3420-3430 MHz	€4,610,000 ¹⁶

Table 3 Reserve price of the different lots

51. Mobile operators are required, at the beginning of the validity period of the rights of use, to pay a unique fee in accordance with the conditions of Article 30, §§ 1/1 to 1/4 of the ECA. Each eligible candidate's (see definition in the annex) deposit - including accrued interest - will be offset against the fee to be paid by that candidate at the beginning of the validity period of the rights of use.
52. The revision of the ECA by the Act of 21 December 2021 clarified that the unique fee cannot be considered as capital income within the meaning of Article 17 of the Income Tax Code 1992, so that no withholding tax is due (Article 30, § 1/5, of the ECA).
53. Pursuant to Article 30, § 1/1, subparagraph 3, 9° and 10°, of the ECA, the unique fee for the 3400-3800 MHz frequency bands is nil for the part of the validity period before 7 May 2025. The nil value is only applicable to the calculation of the reserve price. During the allocation procedure, the candidates will bid to obtain frequency blocks for the whole validity period of the rights of use.
54. Operators may choose between two methods of payment: either they pay the unique fee as a lump sum, or they pay by annual instalments.
55. In case of a lump sum the operator settles the whole unique fee within 15 days following the start of the period of validity of the rights of use (see section 4.2). It should be noted for the 3600 MHz band that the validity period of the rights of use could start before 7 May 2025 (see § 30).
56. If the operator pays by instalments, he settles the unique fee as follows:
- the operator pays proportionally to the number of months remaining until the next year, within 15 days starting from the validity period of the rights of use (see section 4.2);
 - the operator pays the whole unique fee for the year to come on 15 December at the latest. If the rights of use expire in the course of the year to come, the operator pays proportionally to the number of months remaining until the rights of use expire;
 - The amount per month is calculated by dividing the total unique fee by the validity period of the rights of use expressed in months;
 - the legal interest rate is applicable as from the 16th day following the start of the validity period of the rights of use;
 - the operator pays the interest on the outstanding amount, simultaneously with the unique fee.
57. An operator who chooses to pay by annual instalments can, on each 15 November at the latest, notify the BIPT of its will to free itself with a one-time payment of the balance of the unique fee. In that case, the operator will pay the balance, on 15 December of that year at the latest, based on a settlement drawn up by the BIPT.

¹⁵ Based on Article 30 of the ECA, the reserve price would amount to €3,450,600. The minimum bid in the first round of the auction must however be a multiple of €10,000 (Article 28, § 4, of the Royal Decree 3600 MHz).

¹⁶ Based on Article 30 of the ECA, the reserve price would amount to €4,600,800. The minimum bid in the first round of the auction must however be a multiple of €10,000 (Article 28, § 4, of the Royal Decree 3600 MHz).

4.7. Annual fees

58. The operators will also be required to pay the following annual fees to the BIPT:
- Fee related to the notification as an operator (see section 6.1);
 - Annual frequency availability fees;
 - Annual fees for the use of numbers (see section 6.1).
59. The revision of the ECA by the Act of 21 December 2021 clarified that the annual fees for the availability of frequencies and the use of numbers cannot be considered as capital income within the meaning of Article 17 of the Income Tax Code 1992, so that no withholding tax is due (Article 30, § 1/5, of the ECA).
60. Regarding the 3400-3800 MHz band, the annual frequency availability fees for the year 2023 amount to €12,400 per MHz and per year¹⁷. This amount is adapted each year to the consumer price index.
61. The annual fees must be paid for all the allocated frequencies, whether they are used or not.
62. For the 3600 MHz frequency band, the annual fees are reduced by 50% during the first three years of the first validity period of the rights of use.

¹⁷ The frequency availability fee must be paid for all the allocated frequencies.

Chapter 5. Organisation of the allocation procedure

5.1. General

63. The BIPT will manage the day-to-day running of the allocation procedure. Questions in relation to the allocation procedure should be addressed to the BIPT.
64. The BIPT has the power to take all necessary measures for the smooth course and practical organisation of the allocation procedure.
65. Specifically, the BIPT can establish any infringement that may lead to the nullity of the bid or the exclusion from the allocation procedure.
66. The rules that apply from the submission of the applications until the grant of the rights of use are described in the Royal Decree 3600 MHz and the candidates should refer to it. To make the rules easier to understand, the BIPT gives the following summary. However, only the rules mentioned in the Royal Decree 3600 MHz are valid and obligatory. In the event of any discrepancy, the Royal Decree 3600 MHz takes precedence over this memorandum.

5.2. Spectrum cap

67. The spectrum cap represents the maximum quantity of spectrum that may be held by a relevant group¹⁸.
68. For the 3600 MHz frequency band, the spectrum cap was initially set at 100 MHz. Given the lack of candidates following the call for applications published on 16 November 2023 (see § 69), the spectrum cap will be raised to 120 MHz as soon as the new call for applications referred to in § 70 is published in the Belgian Official Gazette (Article 4, § 3, subparagraph 2, of the Royal Decree 3600 MHz).

5.3. Calls for candidates

69. On 16 November 2023, a call for candidates for the 3410-3430 MHz frequency band was published in the Belgian Official Gazette. Given the 100 MHz spectrum cap (Article 4, § 3, subparagraph 1, of the Royal Decree 3600 MHz), Orange Belgium, Proximus and Telenet Group could not participate in the allocation procedure related to this call for candidates. The BIPT has not received any applications.
70. The BIPT will quickly publish a new call for candidates and will set a deadline for the submission of applications. Given the 120 MHz spectrum cap (see § 68), Orange Belgium and Telenet Group can participate in the allocation procedure related to this new call for candidates. Following the transfer of NRB's rights (see § 18), Proximus will hold 120 MHz in the 3600 MHz band, the maximum amount of spectrum that a relevant group may hold.

5.4. Application files

71. During the call for candidates, the following elements will be published in the Belgian Official Gazette and on the BIPT website:
 - the deadline for the submission of the applications;
 - the bank account number into which the deposit is to be paid before the deadline for the submission of the applications;

¹⁸ See section 5.5.

- the application submission form giving guidelines regarding the content and the submission of the applications.
72. A candidate who has already made a notification, according to Article 9 of the ECA, must include the proof of it in the application.
73. A candidate who has not yet made such a notification must include the completed notification form in his application file and pay the unique fee in connection with the notification. Such a candidate will not have to pay the annual fee covering the file management and follow-up costs unless he has obtained user rights.

5.5. Relevant groups

74. The Royal Decree 3600 MHz defines the notions of "control with regard to a person"¹⁹ and "relevant group"²⁰.
75. If several candidates for the allocation procedure are part of the same relevant group in relation to a candidate, then only one is allowed to participate in the allocation procedure. At the BIPT's request, the candidates involved will have to choose from their midst the person who will participate in the allocation procedure. When no choice is made, all candidates involved will be excluded from the allocation procedure.
76. The candidates are required to notify the BIPT of any change or any proposed change to their relevant group of which they are or will be part or of which they become aware following the submission of their applications. If a change occurs, causing various candidates to belong to the same relevant group, a selection will have to be made among the candidates who are members of the same relevant group, in order to keep only one candidate. If not, all candidates concerned will be excluded from the rest of the allocation procedure.

5.6. Deposits

77. Candidates must deposit a guarantee of 1 million EUR as part of their application to the allocation procedures. Failure to provide this deposit will automatically lead to the inadmissibility of the application.
78. The deposit is to be paid into the account of the Belgian State at the National Bank of Belgium no later than on the date and time set by the BIPT for submitting the application and published in the Belgian Official Gazette.
79. Transfer commissions and all other costs or taxes incurred in transferring funds into the account must be borne by the party making the transfer. The candidates should make sure that funds are received net of any commission.

¹⁹ The legal or factual power to decisively influence the appointment of a majority of directors or general managers of this person, or the orientation of its management. The control can be exercised exclusively or jointly, directly or through an intermediary, and will be interpreted in accordance with Articles 1:14 to 1:18 of the Code of Companies and Associations, Part 1, Book 1, Title 4, Chapter 1, it being understood that where a majority is referred to, this majority will consist of 50% or more.

²⁰ With regard to a person (the "first person"):

- a) the first person, and;
- b) any person who is controlled by the first person, and;
- c) any person (the "second person") who controls the first person, and;
- d) any person who is controlled by the second person, and;
- e) any person with whom the persons referred to under a) to c) form a consortium as defined in Article 1:19 of the Code of Companies and Associations, Part 1, Book I, Title 4, Chapter 1.

5.6.1. Deposit interest

80. The deposit will yield an interest at the interest rate set in accordance with the regulations applicable to guarantee accounts opened with the National Bank of Belgium. This interest rate can be negative.
81. The funds will earn interest from the day of transfer, provided they have been paid into the account of the National Bank before the TARGET cut-off-time for clearing. The funds will earn interest up to the day prior to their refund.

5.6.2. Ratcheting the deposit

82. During the submission of bids for the allocation procedure, the corresponding deposit will have to be increased each time the total amount of the bids exceeds certain thresholds (see Table 4).

Threshold of the total amount of the bids	Minimum deposit ²¹
> €30 million	€1.5 million
> €40 million	€2 million
> €50 million	€2.5 million
> €(Nx10) million	Nx€ 0.5 million ²²

Table 4 Amount of the deposits depending on the bids

83. Bids made without ratcheting the deposit are null and void.
84. Candidates are allowed to pay the amounts of extra deposit well in advance before they reach the corresponding threshold of the bid.
85. The candidates must send the BIPT proof of the higher deposit before making the bid that gives rise to the higher deposit.
86. All information relating to the deposits will be kept strictly confidential. Information on the balance of the deposit, including the interest accrued, will be provided upon request. Candidates can only request information about their own deposits. As set out above, all deposit amounts will attract interest set in accordance with the regulations applicable to guarantee accounts opened with the National Bank of Belgium.

5.6.3. Possible repayment of the deposit

87. Deposits, including interests, will be repaid to candidates who have not been granted rights of use.
88. The deposit is not paid back to eligible candidates who have not made any regular bid during the auction procedure.

5.7. Admissibility

89. If the following requirements are not met, the application may be declared inadmissible:
 - the application must be submitted at the latest on the last day of the term for submitting applications, at the time set by the BIPT and published in the Belgian official journal;
 - the application must be submitted to the BIPT against delivery of a receipt, in two copies, with indication of an original copy signed by the candidate's competent representative(s);

²¹ The amount of the initial deposit (see § 77) is taken into account.

²² Valid for N>1.

- the deposit must be paid unconditionally and irrevocably in cleared funds in euros ultimately at the moment of submitting the application. It is paid for the benefit of the Belgian State at the National Bank of Belgium into an account, the number of which has been communicated(see § 71);
 - the application must be complete, providing all requested information in the correct form;
 - the application must be submitted by a corporate body, which must not be in a state of liquidation or bankruptcy or a similar situation, has not filed for bankruptcy and is not involved in a liquidation procedure or judicial concordat, or a similar situation or process.
90. The application cannot be submitted electronically²³. Therefore, the original cannot be signed electronically by the candidate's competent representative(s).
91. The application must be in French, Dutch or German.
92. After being submitted the applications cannot be modified.
93. If several candidates are part of the same relevant group, the BIPT will ask the candidates concerned to make a choice within the relevant group. If no choice is made, all candidates involved will be excluded from the allocation procedure.
94. Once the admissibility of the applications has been decided upon, the candidates will be informed of this fact. The candidates will be informed at the same time of the number of eligible candidates.

5.8. Course of the allocation procedure

5.8.1. Electronic tendering system

95. The auction will be ensured via an electronic tendering system, enabling candidates to bid safely over the public Internet.
96. Eligible candidates will be able to connect to the system via the public Internet by using a standard web browser. To that end, eligible candidates must have a high quality and reliable Internet connection and use a computer with a compatible web browser. It should not be necessary to install another specialised piece of hardware or software to participate in the auction. The appropriate security measures will be applied to ensure the system integrity and to maintain the confidentiality of the bids.
97. The bidding interface of the electronic tendering system will provide real-time information on the status and progress of the auction, including a timetable of the rounds, the bidding forms and the reports about the results of the rounds.
98. Eligible candidates will be provided with a guide before the start of the auction. This guide will contain all the relevant information about the electronic tendering system, including the hardware and software requirements, the login instructions and the terms of use of the bidding interface. A training session as well as a test auction will also be organised for eligible candidates shortly before the start of the actual auction.
99. It should be pointed out that if only one candidate is found eligible (see § 94), the auction will not take place by means of the electronic tendering system, but by exchange of letters.

5.8.2. Disruption to the auction

100. Any behaviour or communication that disrupts the smooth course of the allocation procedure is forbidden.

²³ The Royal Decree 3600 MHz does not provide for an electronic submission of applications.

5.8.3. Collusion

101. The candidates must not exchange any confidential information with other candidates, on penalty of being excluded. Neither are they allowed to make any form of agreement with other candidates or perform any act which could impact the result of the allocation procedure or affect competition during the allocation procedure.
102. When such a breach is established the BIPT will submit a complaint to the competition authorities and begin a procedure in civil law submitting the complaint to the examining magistrate. The BIPT will exclude these candidates from the allocation procedure in any case.

5.8.4. SMRA auction

103. The main part of the allocation procedure is an SMRA auction for 2 specific lots.
104. This section offers an overview of the format of the auction. The detailed auction rules will be provided to the eligible candidates.
105. During the auction, candidates can make several bids during each round for individual lots.
106. The selected auction format is the Simultaneous Multiple-Round Auction (SMRA). The SMRA format is "simultaneous" as it awards all the lots at the same time via one process. It is an ascending multiple-round auction as it allows candidates to make bids, in response to ascending prices, during successive rounds.
107. The 2 lots that are auctioned are described in Chapter 3.
108. Each candidate can bid for one or several lots during a round. By bidding, the candidate indicates that he wishes to buy this lot at the price he chooses within a range announced by the BIPT. A bid is binding and cannot be cancelled.
109. Article 30 of the ECA determines the minimum bid for the auction, which will be the minimum price of the different lots during the first bidding round of the auction (see section 4.6).
110. A candidate holding the highest bid for one lot is not allowed to make a new bid during the following round for that lot, nor to withdraw from the auction, unless another candidate has made a higher bid for that specific lot. However, the candidate can make a higher bid for the other lot subject to the activity rules of the auction. Unless another candidate outbids the offer that has been made for this lot, the candidate will acquire the lot, at the end of the auction, at the price subject to the payment of a unique fee equivalent to his highest bid.
111. During each round, a candidate can:
 - Make one or several bids
 - A candidate can make an offer by observing the activity rules. The bids cannot be lower than the minimum amount set by the BIPT for the round. The bids cannot be higher than the maximum amount set by the BIPT for the round.
 - Each bid must be a multiple of 10,000 EUR.
 - Use a waiver
 - A candidate who would otherwise be required to bid or withdraw from the auction may also use one of his waivers, allowing him to take no action in that specific round without being deemed to have withdrawn from the auction.
 - Using the waiver can be implicit. A candidate who has not made a bid and who has not withdrawn from the auction is considered as having used a waiver if the candidate could do it.

- It is always possible for a candidate to use a waiver as an alternative to making a bid, even if that candidate holds the highest bid for one or several frequency blocks. Each candidate can use a waiver for a maximum of three rounds.
 - Withdraw from the auction
 - A candidate who does not hold the highest bid for any block may formally withdraw from the auction. A candidate who has withdrawn is not allowed to rejoin the auction at a later stage.
 - Withdrawing from the auction can be implicit. A candidate who has not made a bid and has not used his waiver is considered as having withdrawn from the auction if the candidate could not use a waiver (if the candidate still had a waiver, he is considered to have used this waiver).
112. At the end of each round, the BIPT will communicate to all participants the information on the activity during the closed round as well as the parameters for the next round. Candidates are provided with the following information:
- The time when the next round starts and finishes;
 - For each lot:
 - the amount of the highest regular bid;
 - the fictitious identity of the candidate holding the highest regular bid;
 - amount of the minimum bid for the next round²⁴;
 - amount of the maximum bid for the next round²⁵.
113. The final round of the SMRA auction will be the round during which no new bid will be made and no waiver will be used.
114. At the end of the final round, the BIPT will communicate to each successful candidate (see definition in the annex) the amount of the highest regular bid as well as the identity of the candidate holding that bid.

5.8.5. Grant of rights of use

115. The BIPT will formally notify each successful candidate of the grant of his rights of use, and confirm the unique fee due. The unique fee paid by a candidate amounts to the sum of the highest bids for all the lots awarded to that candidate (see section 5.8.4).
116. The amount of the deposit and accrued interest will be set off against the unique fee due.
117. In case of payments by instalments (see § 56), it may be that the amount of the deposit exceeds the amount of the first payment. In that case the amount of the guarantee will be used for the full or partial payment of the following:
118. Non-payment or late or incomplete payment of the balance of the unique fee will entail the withdrawal of the rights of use.
119. Instructions for the payment of the balance will be sent in due course to the successful candidates.

²⁴ The minimum amount of the bid determined by the BIPT is equal to the highest regular bid, increased by a percentage between 0 and 10%.

²⁵ The maximum amount of the bid determined by the BIPT is equal to the highest regular bid, increased by a percentage between 0 and 50%.

Chapter 6. Regulatory issues

6.1. Obligations

120. Operators are subject to certain obligations resulting from the regulatory framework regarding electronic communications.
121. The BIPT publishes a list of obligations²⁶ on its website. However, this list is not an exhaustive listing of all the obligations an operator active on the Belgian market must fulfil.
122. Operators providing a 5G network will be subject to specific obligations arising from Article 105 of the ECA. Information regarding these obligations is available on the BIPT website²⁷.

6.2. Modification of the rights of use

123. Rights of use cannot be modified but in objectively justified cases and in a proportionate manner. The intended modification will first be submitted to the sector. The European regulatory framework²⁸ lays down that interested parties, including users and consumers, should be allowed a sufficient period of time to express their views on the proposed amendments.

6.3. Breach and revocation

124. If the BIPT establishes that the operator is not complying with the conditions for the exercise of the user rights granted to him, or does not act in compliance with the Acts and regulations the observance of which is monitored by the BIPT or with the decisions taken by the BIPT, the latter may order the operator to remedy that situation, either immediately or within the period it allows, and impose an administrative fine or a penalty in accordance with Article 21, §§ 1 to 5 of the BIPT Act. If the operator is still in breach, the BIPT may again impose an administrative fine or a penalty on the operator (Article 21, § 6, of the BIPT Act).
125. Article 21, § 7, of the BIPT Act adds that if the breach is serious or repeated and the measures taken have not remedied the breach, the BIPT may suspend or revoke the granted rights of use, or order the operation of the network or the provision of the service involved, as well as the marketing or use of any service or product concerned to be suspended entirely or partly.

6.4. Urban planning permit and environmental exposure limits

6.4.1. General

126. For the creation of sites and the installation of antennas there may be a requirement to obtain an urban planning permit. On the one hand, the Regions, i.e. the Brussels Capital Region, the Flemish Region and the Walloon Region are competent for urban planning permits. On the other hand, it is possible that an additional municipal regulation is in force. More information on urban planning requirements should be requested from the respective Regions and municipalities.
127. The installation of antennas can also be subject to obtaining an environmental permit or a certificate confirming that the regional regulation relating to an electromagnetic radiation limit is observed. These permits or certificates should be requested from the respective Regions.
128. The details about the situation in the three Regions are merely given for information.

²⁶ <https://www.bipt.be/operators/publication/list-of-obligations>.

²⁷ <https://www.bipt.be/operators/security-of-networks-and-information-systems>.

²⁸ Article 18 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 *establishing the European Electronic Communications Code (recast)*.

129. The BIPT has no competence in this matter. It can by no means be held accountable in case the authorisations or permits required by the Regions were refused, nor when the radiation limits are exceeded.

6.4.2. Situation in the Brussels Capital Region

130. The ordinance of 1 March 2007 on the protection of the environment against any harmful effects and nuisance caused by non-ionising radiation sets a cumulative limit of 0.5635 W/m² (i.e. about 14.5 V/m) outdoors and 0.2243 W/m² (i.e. about 9.2 V/m) indoors, for a frequency of 900 MHz, in areas accessible to the public. This limit varies depending on the frequency:

- 0.2497 W/m² outdoors and 0.0994 W/m² indoors, for frequencies between 0.1 and 400 MHz;
- $f/1597.28$ outdoors and $f/4012.19$ indoors (where f stands for the frequency in MHz), in W/m², for frequencies between 400 MHz and 2 GHz;
- 1.2539 W/m² outdoors and 0.4992 W/m² indoors, for frequencies between 2 GHz and 300 GHz.

131. The Decree of the Government of the Brussels Capital Region of 30 October 2009 *on certain antennas emitting electromagnetic waves* sets a quota for all of the antennas of an operator.

132. The Decree of the Government of the Brussels Capital Region of 8 October 2009 *laying down the methodology and terms for measuring the electromagnetic field emitted by some antennas* as well as the Ministerial Order of 30 June 2010 *concerning the validation of a simulation tool calculating the electric field emitted by an antenna emitting electromagnetic waves* also apply.

133. The applications for environmental permits are processed by Bruxelles Environnement/Leefmilieu Brussel, the institute for environment and energy management in the Brussels Capital Region. In addition, operators have to communicate to Bruxelles Environnement/Leefmilieu Brussel certain technical features of their installations.

134. Information is available on the website of Bruxelles Environnement²⁹.

6.4.3. Situation in the Flemish Region

135. The Decree of the Flemish Government of 1 June 1995 laying down the general and sector-bound provisions regarding environmental hygiene (VLAREM II) sets a cumulative limit of 20.6 V/m at 900 MHz. This limit varies depending on the frequency:

- $150/f^{0.7}$ for frequencies between 0.1 and 30 MHz;
- 13.7 V/m for frequencies between 30 and 400 MHz;
- $0.686 \sqrt{f}$ (where f stands for the frequency in MHz), in V/m, for frequencies between 400 MHz and 2 GHz;
- 30.7 V/m for frequencies between 2 GHz and 300 GHz.

136. The Decree of 1 June 1995 also sets a limit per operator equivalent to a fifth of the cumulative standard (i.e. 9.21 V/m for a frequency of 900 MHz) per operator in places of residence.

137. A conformity certificate is necessary for each operation and modification of a stationary transmitting antenna, proving that the standard is observed. Applications are handled by the *Departement Leefmilieu, Natuur en Energie*.

138. In addition, the Flemish town and country planning code requires that in principle an urban planning permit should be issued to erect a transmitting antenna. That permit is issued by the Flemish authority. However, the code allows for a number of exceptions to that principle.

²⁹ <https://environnement.brussels/thematiques/ondes-et-antennes>.

139. Information is available on the website of the *Departement Omgeving* of the Flemish Government³⁰.

6.4.4. Situation in the Walloon Region

140. The Decree of 3 April 2009 on the protection against any harmful effects and nuisance caused by non-ionising radiation generated by stationary transmitting antennas sets a limit per operator of 9.2 V/m and a cumulative limit of 18.4 V/m for a frequency of 900 MHz, in places of residence. These limits vary depending on the frequency:

- $67/f^{0.7}$ and $134/f^{0.7}$, for frequencies between 0.1 and 30 MHz;
- 6.1 V/m and 12.2 V/m, for frequencies between 30 and 400 MHz;
- $0.307 \sqrt{f}$ and $0.614 \sqrt{f}$ (where f stands for the frequency in MHz), in V/m, for frequencies between 400 MHz and 2 GHz;
- 13.7 V/m and 27.4 V/m for frequencies between 2 GHz and 300 GHz.

141. An application is to be submitted for each installation to the Scientific Institute for Public Services (Institut Scientifique de Service Public - ISSeP).

142. Stationary transmitting antennas for which the maximum EIRP is higher than 10 W and lower than 500 kW are also subject to prior declaration within the meaning of the Decree of 11 March 1999 *on the environmental permit* proving observance of the standard. The declaration is sent to the town council of the municipality on the territory of which the facility is situated. Antennas over 500 kW are subject to the environmental permit.

143. In addition, in principle, the *Code wallon de l'aménagement du territoire, de l'urbanisme, du patrimoine et de l'énergie* ("CWATUPE") requires an urban planning permit to erect a transmitting antenna. That permit is issued by the delegated civil servant or the Walloon Government. However, the CWATUPE allows for a number of exceptions to that principle.

144. Information is available on the website of the Institut Scientifique de Service Public (ISSeP)³¹.

6.5. Infrastructure and spectrum sharing

145. In 2012, the BIPT published a communication³² in order to clarify the main concepts associated with the shared use of mobile infrastructure, to explain the pros and cons involved, to give guidelines and to explain the BIPT's expectations as to the operators' conduct on the Belgian market.

146. Spectrum sharing is a particularly advanced form of sharing of mobile electronic communications networks. With the rise of 5G, operators are even more encouraged to pool their frequencies because of the efficiency gains that this could potentially generate.

147. In 2017, the BIPT appointed an external consultant to study infrastructure and spectrum sharing. The study was carried out by IDATE and led to the report "Infrastructure and spectrum sharing". The report has been published by the BIPT³³.

³⁰ <https://omgeving.vlaanderen.be/klimaat-en-milieu/gezonde-veilige-en-aantrekkelijke-leefomgeving/straling-zendantennes-wifi-gsm>.

³¹ <https://www.issep.be/champs-electromagnetiques/>.

³² BIPT Communication of 17 January 2012 *containing guidelines for infrastructure sharing*.

³³ BIPT Communication of 26 July 2018 *on infrastructure and spectrum sharing*.

6.6. Spectrum trading

148. Article 19 of the ECA allows an operator to transfer or lease his rights of use, if authorised by the BIPT. The BIPT allows the transfer or lease of rights of use for radio spectrum where the original conditions attached to the rights of use are maintained and without prejudice to the need to ensure the absence of a distortion of competition. The terms of the transfer or lease are laid down in the Royal Decree of 26 February 2010 *on the transfer of rights of use for radio frequencies that are used entirely or in part for publicly available electronic communications services*.
149. The operator who transfers or leases his rights of use can transfer or lease them entirely or partially. The operator to whom rights of use are transferred observes the conditions required for obtaining and exercising these transferred rights of use. The lessor remains responsible for the observance of the conditions for obtaining and exercising the leased rights of use.
150. Any request for a transfer or a lease gives rise to the payment of a €500 fee intended to cover the cost for examining the file. Within 6 weeks following the reception of the request, the BIPT may request all the additional information it needs to approve or disapprove the transfer or lease. If the BIPT did not ask for additional information, it notifies its decision within 3 months following the reception of the request. If the BIPT asked for additional information, it notifies its decision within 3 months following the reception of the information in question.

Chapter 7. Timetable

151. The current legislation imposes no timetable. Consequently, the BIPT will determine the timetable of the allocation procedure, taking account of the circumstances. However, in order to assist potential candidates in the preparation of bids, Table 5 provides an indicative timetable of the intended process. The BIPT is by no means bound by this indication and accepts no responsibility with regard to the non-observance of this indication. Definitive information will be published on the BIPT website later on.

Call for candidates	End of April 2024
Submission of applications	End of May 2024
Notification of successful candidates	Beginning of July 2024
Start of the SMRA auction	November 2024

Table 5 Indicative timetable

Chapter 8. Additional information

8.1. Request for information

152. Information on this memorandum and the allocation procedure, including during the procedure, must be requested in writing or by e-mail to the BIPT with the indication "Question 3410-3430 MHz":

Belgian Institute for Postal Services and Telecommunications
Ellipse Building - Building C
Boulevard du Roi Albert II, 35 bte 1
B-1030 Brussels
E-mail: auction2024@bipt.be

153. An acknowledgement of receipt will be sent for each request.

154. The BIPT reserves the right not to reply to questions. However, if the BIPT does give an answer, it will publish the question (in a form that does not disclose the identity of who is asking the question) and the answer on the BIPT website. Therefore, the author of the question must see to it that his/her question does not include any confidential information that should not be published. If need be, the author will draw the BIPT's attention to the confidential parts in the question and will also submit a non-confidential version of the question. This information will be treated by the BIPT in accordance with Article 23, § 3 of the BIPT Act.

8.2. Availability of the memorandum

155. This document can be downloaded in French, Dutch or English from the BIPT website. The BIPT will not provide the document in writing.

Annex. Definitions and glossary

For the purposes of this document, the following terms have the following meanings:

BIPT	Belgian Institute for Postal Services and Telecommunications
700 MHz band	703-733 MHz and 758-788 MHz frequency bands
800 MHz band	791-821 MHz and 832-862 MHz frequency bands
900 MHz band	880-915 MHz and 925-960 MHz frequency bands
1400 MHz band	1427-1517 MHz frequency band
1800 MHz band	1710-1785 MHz and 1815-1880 MHz frequency bands
2100 MHz band	1900-1980 MHz and 2110-2170 MHz frequency bands
2600 MHz band	2500-2690 MHz frequency band
3600 MHz band	Frequency band 3400-3800 MHz
ECA	Electronic Communications Act of 13 June 2005
Royal Decree 3600 MHz	Royal Decree of 28 November 2021 on radio access in the 3400-3800 MHz band
Allocation procedure	Procedure for the granting of rights of use for the 3410-3430 MHz band
Candidate	Candidate for rights of use who has submitted an application file
Eligible candidate	Candidate found eligible by the BIPT (see section 5.7)
Successful candidate	Candidate holding the highest regular offer for at least one lot