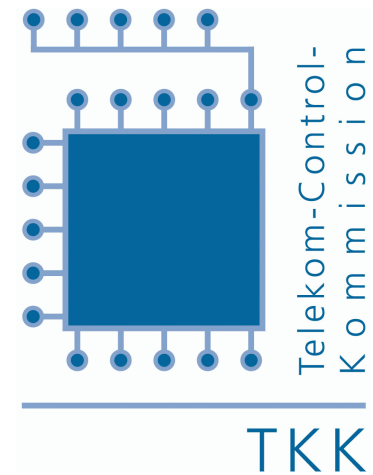


**Telekom-Control Commission  
Mariahilferstrasse 77-79  
A-1060 Vienna, Austria**

**F 3/04  
F 7/04**



**Vienna, July 14, 2004**

**Tender Documentation for Frequency Allocations  
in the GSM Frequency Range**

***NON BINDING TRANSLATION***

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Abbreviation	English
AktG	Stock Corporation Act
AVG	General Administrative Procedures Act
BörseG	Stock Exchange Act
GmbHG	Act on Limited-Liability Companies
HGB	Austrian Commercial Code
KartG	Cartel (Anti-Trust) Act
TKG 2003	Telecommunications Act 2003
ZustG	Act on the Delivery of Official Documents

## 1 Introduction

The Telekom-Control Commission is carrying out a procedure to allocate frequencies in the GSM-900 and GSM-1800 frequency ranges in accordance with § 55 of the Austrian Telecommunications Act of 2003. Four frequency packages will be allocated (see Section 3.2).

### 1.1 General Legal Terms and Conditions

This invitation to tender is being carried out on the basis of the Austrian Telecommunications Act of 2003 (TKG, BGBl. I No. 70/2003). In addition, the regulations regarding procedure in Austria are applicable, especially the General Administrative Procedures Act of 1991 (AVG, BGBl. No. 51) in its current version (BGBl. I No. 10/2004).

The Telekom-Control Commission's responsibility for allocating frequencies under § 55 TKG 2003 is set forth in § 54 Par. 3 No. 2 in conjunction with § 117 No. 10 TKG 2003. Under § 54 Par. 3 No. 2, the regulatory authority is responsible for frequency allocation as well as for changing and revoking allocations for those frequencies which are subject to a determination in the frequency usage plan under § 52 Par. 3.

This determination was made in the Ordinance of the Federal Minister of Transport, Innovation and Technology as an amendment to the Frequency Utilization Ordinance (BGBl. II No. 134/2004) and forms the basis for the Telekom-Control Commission's responsibilities in this regard.

The frequency allocation procedure carried out by the regulatory authority is governed by § 55 TKG 2003.

#### 1.1.1 Frequency Allocation Procedure

Under § 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to the applicant which fulfills the general prerequisites under Par. 2 No. 2 (§ 55 Par. 2 No. 2 TKG 2003) and ensures the most efficient use of frequencies. This will be determined by the amount of the spectrum fee offered. The frequency allocation procedure is divided into two stages:

1. Once the applications have been submitted, the regulatory authority will check whether the prerequisites have been met in accordance with § 55 Par. 2 No. 2 TKG 2003 (cf. Section 0). Those applicants who do not fulfill the prerequisites will be excluded from the frequency allocation procedure in accordance with § 55 Par. 8 TKG 2003. The rules for determining the standing high bid in the course of the auction will be defined by the Telekom-Control Commission in accordance with § 55 Par. 9 TKG 2003 and sent to the applicants at the latest 2 weeks before the start of the auction. The Telekom-Control Commission plans to publish a draft of the auction rules on the web site of the Austrian Regulatory Authority for Broadcasting and Telecommunications ([www.rtr.at](http://www.rtr.at)) in August 2004, and to send the Rules of Procedure to all applicants as soon after the application deadline as possible.
2. The second stage of the frequency allocation procedure will be carried out in the form of an auction (cf. Section 3.10.2).

## 1.2 Allocation Procedure Schedule

The table below contains the most important dates in the allocation process. The exact time of the auction will be announced to the applicants once the Telekom-Control Commission has made its decision on this matter.

<b>Activity</b>	<b>Date</b>	<b>Reference</b>
Publication of invitation to tender	July 14, 2004	
Questions answered by the Telekom Control Commission:		Section 4.4
Deadline for questions	July 26, 2004, 10:00 am (local time)	
Questions to be answered by:	August 9, 2004	
End of tender submission period	September 16, 2004 / 12:00 pm (local time)	
Decision on admission to auction	Scheduled for September 27, 2004	Section 3.8
Auction procedure	October/November 2004	Section 3.10.2
Date of frequency allocations	Within 14 days of end of auction procedure	

TABLE 1: ALLOCATION PROCEDURE SCHEDULE

Figure 1 gives a general overview of the steps involved in the allocation procedure.

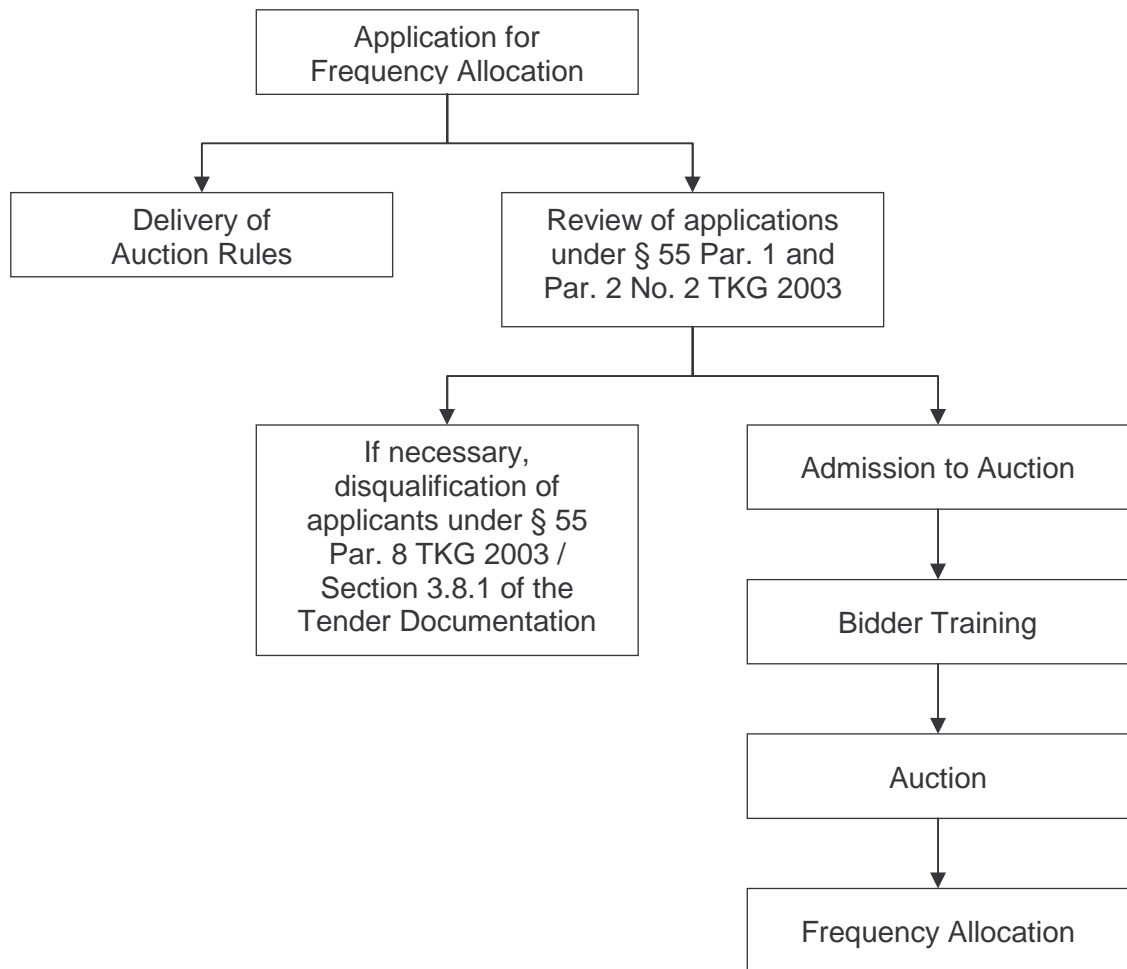


FIGURE 1: PROCEDURE STEPS

## 2 Application Documents

Under § 55 Par. 1 TKG 2003, the regulatory authority is to allocate the frequencies placed under its authority to the applicant which fulfills the prerequisites under Par. 2 No. 2 and ensures the most efficient use of the frequencies allocated.

In the case of companies applying for frequency allocation without a previously awarded license in the GSM frequency range, the application for frequency allocation is to contain the documents and information specified in Sections 2.1 – 2.4.

If an applicant has already been allocated frequencies in the GSM frequency range, then the application only has to contain the documents and information specified in Sections 2.3.2 and 2.4, unless changes have been introduced since the last application was submitted (especially those concerning the ownership structure of the company).

### 2.1 Organizational Structure

In order to determine whether applicants fulfill the prerequisites indicated in § 55 Par. 2 No. 2 TKG 2003, the Commission will require information on the applicant's organizational structure. This information includes precise indications as to the applicant's legal and financial situation as well as the applicant's ownership structure (up to the ultimate owner). In addition, due attention must be paid to the provisions stipulated in Section 3.8.1.

The applications are thus to contain the following information (wherever applicable):

#### 2.1.1 Information on the Applicant

- Excerpt from the Commercial Register;
- Type and number of capital shares, nominal value of capital shares as well as voting and dividend rights associated with any and all types of shares;
- Subscribed capital per type of capital share, precise information on the stakeholders at the time the application is submitted as well as any and all foreseeable changes in this respect;
- Number, value and rights (including conversion rights) of any and all options, certificates of entitlement, preferred stock or debt capital as well as any other securities issued by the applicant;
- The company's articles of incorporation and bylaws in their current applicable version;
- A description of the applicant's business activities;
- The audited annual accounts from the last three years;
- A summary of all essential financial data (revenue and profit data) from the last three years;
- The name of the applicant's authorized recipient (as defined in § 8a ZustG) as well as that of an authorized representative (as defined in § 10 AVG) along with his/her telephone and fax numbers as well as postal and e-mail addresses (cf. Section 4.3). These two parties can be the same person.

- Any and all other matters which, if mentioned or omitted, could substantially influence the Telekom-Control Commission's decision in the review to be carried out prior to the frequency allocation procedure in compliance with § 55 Par. 2 No. 2 TKG.

### 2.1.2 Information on the Applicant's Stakeholders

For each stakeholder, shareholder, or bearer of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the applicant, the information indicated in lit. a) to f) is to be submitted wherever applicable. In cases where the applicant has a large number of stakeholders (shareholders), the information indicated is to be provided on all major shareholders. In the case of minority shareholders owning a small portion of the company's capital (up to 5%), general information will be sufficient, unless their share is considered a significant stake as defined under §§ 91 f BörseG. In such cases, the Telekom-Control Commission will request further information as it sees necessary.

- (a) Name (company), place of incorporation (address), date and place of establishment;
- (b) A description of the stakeholder's main business activity;
- (c) The stakeholder's relationship to the applicant (e.g., number and type of capital shares or securities held), syndicate / consortium agreements;
- (d) Parent company of the group;
- (e) The audited annual accounts from the last three years;
- (f) A summary of all essential financial data (revenue and profit data) from the last three years.

In cases where capital shares or other securities issued by the applicant are held for third parties by persons acting as trustees or in another similar function, these circumstances are to be noted in the application and the aforementioned information is to be provided for the actual owner.

If a partner (shareholder) belongs to a group of companies, the group's essential financial data is also to be submitted in consolidated form.

### 2.1.3 Information on Consortia

In the case of consortia or joint ventures, the following additional information will be necessary:

- (a) The role of each member in the consortium and information on the resources, experience and expert knowledge of each member.
- (b) The type of relationship among the members as well as detailed information on:
  - Syndicate agreements, consortium agreements;
  - Joint venture agreements;
  - Declarations of intent;
  - Stakeholder agreements.



In addition, the information indicated in Section 2.1.2 is to be included in the application for all consortium members.

## **2.2 Technical Capabilities, Quality of Services**

Under § 55 Par. 2 No. 2 TKG, there must be no reason to believe that the applicant will fail to provide the planned service, especially with regard to service quality and coverage obligations.

In order to demonstrate that the applicant fulfills these requirements, applications are to include the following information:

### **2.2.1 Construction of the GSM Network**

#### **(a) Information on planned infrastructure:**

- Overview of network construction, with schedule
- Locations of essential infrastructural elements of radio and core network in electronic format (GIS) and map printouts; essential technical characteristics of each infrastructural element (frequency range, capacity, etc.)
- Connections between infrastructural elements (microwave radio links, leased lines, own lines) in electronic format (GIS) and map printouts; capacity of each connection
- Interconnection with other networks (interconnection points, capacity)

#### **(b) Planned levels of population coverage, with schedule**

#### **(c) Short description of planned services and service quality**

## **2.3 Financial Strength**

In order to demonstrate the applicants' financial strength, applications are to include the following information:

### **2.3.1 Business Plan**

Applicants are to submit a business plan based on their strategy for the business area(s) in which the requested frequencies are to be used, their overall market assessment as well as their estimate of operative business in the five years after frequency allocation. Applicants are to take into account that the frequency license fee offered in the course of the auction is to be commensurate with the financial situation of the company as described in the application and with the development of business operations to be expected.

If considered useful, additions to the information requested in Appendix A are both permitted and desired.

A bank guarantee is also to be enclosed with the application. Details on the bank guarantee can be found in Section 3.6.

### 2.3.2 Financing

Furthermore, applicants are to submit evidence that the necessary capital can be raised to cover the frequency license fee, including the following information:

- Equity financing - Schedule and sources of equity capital, including planned issues of company capital
- Debt financing - Credit lines, available collateral, credit terms and lenders for all loans in the first three years

## 2.4 Declaration of Completeness

In addition, a Declaration of Completeness (Appendix B) is to be enclosed with the application to confirm that it contains correct and complete indications of all information requested in this tender document as well as all information relevant to the Telekom-Control Commission's evaluation of the objective facts.

## 3 Frequency Allocation Procedure

### 3.1 Steps in the Procedure

As mentioned in Section 1.1.1, the frequency allocation procedure is divided into 2 stages. In the first stage, the regulatory authority will check whether the applications fulfill the criteria stipulated in § 55 Par. 2 No. 2 TKG 2003 (in accordance with § 55 Par. 1 in conjunction with Par. 2 No. 2 TKG 2003) Those applications which do not fulfill the prerequisites pursuant to § 55 Par. 2 No. 2 TKG 2003 will be excluded from the frequency allocation procedure in accordance with § 55 Par. 8 TKG 2003. In addition, the first stage will involve a review of the applicants to determine whether they are affiliated with each other through groups of companies. In case where affiliated companies apply for admission to the auction, the company that submitted its application first will be admitted to the auction.

The second stage of the frequency allocation procedure will be carried out in the form of an auction.

### 3.2 Objects of the Auction

#### 3.2.1 Frequency Packages

Four frequency packages from the ranges dedicated to the GSM public digital cellular mobile communications systems under the Austrian Frequency Utilization Ordinance (BGBl. II No. 134/2004) are to be auctioned off in this procedure. TABLE 2 shows the channel numbers assigned to these frequency packages. The frequency channels and assigned frequency ranges correspond to the Absolute Radio Frequency Channel Numbers (ARFCN) definitions in ETSI Standard TS 100 910, "Digital cellular telecommunications system (Phase 2+); Radio transmission and reception" (3GPP TS 05.05, Version 8.16.0, Release 1999)," Chapter 2: "Frequency bands and channel arrangement."

A buffer channel is provided for between each frequency package (cf. TABLE 2)

These buffer channels serve to prevent radio interference between operators, thus they are not usually allocated. In cases where a single applicant is allocated adjacent frequency packages, the buffer channels between them shown in TABLE 2 will be allocated to the applicant as well. This will also be the case when the operator was allocated one of the packages at an earlier point in time.

Frequency Package	Channel No.	Number of channels	Size
1	975-990	16	2 x 3.2 MHz
Buffer channel	991		
2	992-1007	16	2 x 3.2 MHz
Buffer channel	1008		
3	1009-1023	15	2 x 3.0 MHz
Buffer channel	0		
Buffer channel	574		
4	575-584	10	2 x 2.0 MHz
Buffer channel	585		

TABLE 2: FREQUENCY PACKAGES

### 3.2.2 Duration of Use

Under § 54 Par. 11 TKG 2003, all frequencies are to be allocated for a limited time period only. The time period is to be defined according to reasonable business criteria. The frequencies in this procedure will be allocated to the operators as follows.

If an applicant is allocated frequencies in the GSM range for the first time, the frequencies will be allocated until December 31<sup>st</sup>, 2019.

In cases where an applicant has already been allocated frequencies in the GSM range, the frequencies will be allocated for the duration of the applicant's existing frequency allocations.

### 3.2.3 Terms of Use

The frequency channels to be awarded in the course of this procedure are intended for the operation and provision of public communications networks and services under § 15 TKG 2003 in the GSM frequency ranges. The radio interface is to be implemented in accordance with the GSM standard and all applicable ETSI standards.

The technical features defined in the Radio Interface Descriptions FSB-LM002 (Appendix I) and FSB-LM020 shall apply to these GSM systems. A draft of FSB-LM002 can be found in Appendix H, and the document is expected to go into effect once the EU notification procedure has been completed in the fall of 2004.

Additional terms as well as restrictions of use can be found in Appendix D.

### 3.2.4 Coverage Requirements

In cases where frequency packages are acquired by an applicant who has not previously been allocated frequencies in the GSM-900 or GSM-1800 range, the frequencies will be allocated on the following conditions:

The public mobile communication service is to be offered commercially with the following levels of coverage:

- 25% coverage by December 31<sup>st</sup>, 2006
- 50% coverage by December 31<sup>st</sup>, 2008

The level of coverage is defined as the percentage of the resident population covered in relation to the total resident population. This level of coverage is to be offered using an independently operated network.

The definition of coverage areas will be based on simulation calculations performed by the frequency use rights' owner using recognized simulation tools. The base stations in operation as of the deadline as well as their technical parameters will be taken as the basis for these calculations. Capacity utilization levels for radio communication cells and quality parameters which are realistic and based on real measurement data are to be used as input parameters for the simulation calculations. The simulation calculations are to focus on coverage outside of buildings using standard handsets available on the consumer market.

The population units (smallest possible covered and non-covered regions) to be used are the census zones for provincial capitals, otherwise the towns specified by the Austrian Statistics Agency (*Statistik Austria*). A census zone will be considered covered if its area center is covered according to the criteria indicated above. A town will be considered covered if its centerpoint (town data is available as point data) is covered according to the criteria indicated above. The resident population covered in Austria will be calculated by adding up the populations of all census zones (for provincial capitals) and all towns (for the rest of Austria) covered. The resident population covered – expressed as a percentage of the total population of Austria – will be the resulting level of coverage.

Owners of frequency use rights are to submit the following documents to the Telekom-Control Commission in electronic format at the latest two months after the aforementioned deadlines, the reference date for all data being December 31<sup>st</sup> of the previous year:

- A list of all base stations including geocoded data (GIS format), cells and frequency channels
- Traffic figures and capacity utilization of cells
- Other essential input parameters for simulation calculations
- A map of Austria with base station locations and covered areas (Best Server Plot, GIS format)
- A list of towns and census zones covered
- The level of coverage calculated on the basis of this data

All information is to be submitted in accordance with a data model specified by the Telekom-Control Commission.

The Telekom-Control Commission will take measurements to verify coverage levels. The costs of this verification process are to be borne by the holder of the frequency use rights.

In cases where an operator fails to fulfill the above-mentioned coverage requirements, the operator will be required to pay a penalty of EUR 2,400,000.00 from December 31<sup>st</sup>, 2006 onward; this amount is based on a coverage level of 0%.

If an operator falls short of the required coverage level, the penalty will be reduced in proportion to the coverage level reached. For example, if an operator falls short of the required coverage level by 10%, the penalty will be 10% of the value indicated above.

This penalty will be due annually after December 31<sup>st</sup>, 2006, until the operator has reached the required coverage level.

### 3.3 Ratings of Frequency Packages

Each frequency package will be rated according to its frequency size. This value will be referred to as the *lot rating* throughout the procedure. This calculation yields the following values for each frequency package and region:

Frequency Package	Number of channels	Size	Lot rating points
1	16	2 x 3.2 MHz	160
2	16	2 x 3.2 MHz	160
3	15	2 x 3.0 MHz	150
4	10	2 x 2.0 MHz	100

TABLE 3: LOT RATING POINTS FOR FREQUENCY PACKAGES

### 3.4 Applications

Each applicant is to apply for bidding rights for the auction procedure using the forms provided.

No concrete frequency packages can be named in the application. Instead, applicants are to request bidding rights for the auction procedure. Each applicant's bidding entitlement must be backed by a bank guarantee provided by a bank in good credit standing. The number of bidding entitlement points applied for is equal to the total lot rating points for the maximum number of frequency packages a bidder would like to acquire. The required amount of the bank guarantee is to be calculated by multiplying the bidding entitlement points by EUR 10,000.00. Bidders can submit bids on any combination of frequency packages within the scope of their bidding entitlement.

### 3.5 Bidding Entitlement Limit

The maximum number of bidding entitlement points an applicant can apply for is 420 lot rating points.

### 3.6 Bank Guarantees

All applicants are to secure the bidding entitlement applied for by means of an abstract bank guarantee payable at first demand from a bank in good credit standing. The required amount of the bank guarantee is to be calculated by multiplying the requested bidding entitlement points by EUR 10,000.00. If the bidding entitlement applied for is not completely backed by the bank guarantee, the bidding entitlement will be reduced to the number of points actually secured by the bank guarantee.

The bank guarantee's sole purpose provision is to be for the allocation of frequencies to the applicant in the course of this tender procedure. The guarantee must name the Federal Government of the Republic of Austria as beneficiary and be valid from September 16, 2004 (at the latest) until at least December 31<sup>st</sup>, 2004. The bank guarantee is to be enclosed with the application. Table 4: Bank guarantee amount per frequency package provides an overview of the bank guarantee amounts required for each frequency package.

Frequency Package	Size	Bank Guarantee in EUR
1	2 x 3.2 MHz	1,600,000.00
2	2 x 3.2 MHz	1,600,000.00
3	2 x 3.0 MHz	1,500,000.00
4	2 x 2.0 MHz	1,000,000.00

TABLE 4: BANK GUARANTEE AMOUNT PER FREQUENCY PACKAGE

Once the procedure has been completed, bank guarantees will be returned to those applicants to whom the frequency packages applied for were not allocated. The bank guarantees will be returned to those applicants to whom frequencies were allocated in this procedure once the frequency license fee has been paid in full.

### 3.7 Opening Bids in the Auction

The auction will begin with an opening bid (the minimum bid for the first round) set by the Telekom-Control Commission. Under § 55 Par. 4 TKG 2003, the tender documents can also include information on the amount of the minimum frequency license fee to be offered. This information is to be based on the amount of the frequency allocation fees which are likely to be charged for the frequencies allocated. In § 6 of the Mobile Communications Ordinance (BGBl II No. 210/2004), frequency allocation fees amount to EUR 982.00 for every multiple (or part thereof) of 25 kHz of spectrum allocated in telephone networks under § 3 No. 18 TKG 2003 for the provision of public mobile radio communications services and for the allocation of frequencies in radio networks under § 7 by the Telecommunications Authority (§ 54 Par. 3 No. 3 TKG 2003) for deployment throughout Austria. On the basis of the fees set in the Mobile Fees Ordinance, the values shown in the table below can be calculated for the opening bid for each package (in EUR):

Frequency Package	Size	Opening Bid in EUR
1	2 x 3.2 MHz	251,000.00
2	2 x 3.2 MHz	251,000,00
3	2 x 3.0 MHz	235,000.00
4	2 x 2.0 MHz	157,000.00

TABLE 5: OPENING BID AMOUNT PER FREQUENCY PACKAGE

### 3.8 Terms of Participation

The applicant must be a physical person or legal entity that is completely capable of entering into legally binding contracts as specified in § 9 of the Austrian General Administrative Procedures Act (AVG). Applicants must have their main residence (for legal entities their place of incorporation) in a country belonging to the European Economic Area. Each company or physical person, including those belonging to consortia, will be admitted to the auction only once.

#### 3.8.1 Affiliated Companies

In this invitation to tender, only one application to participate in the frequency auction will be accepted from companies that are affiliated with one another under § 244 HGB, § 15 AktG or § 115 GmbHG, or in the form described under § 41 KartG 1988 (directly or indirectly). The same applies when applicants are affiliated with each other in another way which could lead to one applicant directly or indirectly exercising influence over another applicant in a manner that has a substantial effect on competition (e.g., by syndicate agreements, etc.). For the purposes of this invitation to tender, "influence which has a substantial effect on competition" is considered to be present where significant stakes (as specified in §§ 91ff. BörseG) are held, with the exception of purely financial stakes.

When assessing individual cases, the regulatory authority will also take into consideration whether the applicants are currently in the process of a demerger. In such cases, previous decisions made by competition authorities (on both the national and EU levels) are to be taken into special consideration (e.g., the restrictions imposed in permits regarding the execution of the demerger, etc.).

Should two or more companies that are affiliated in the manner described above apply for frequencies, the applicant who submitted the application first will be admitted to the frequency auction.

#### 3.8.2 Changes in Ownership Structure

Changes in the person submitting an application, or any and all – direct or indirect – substantial changes in the stakes held in a company submitting an application at any point in this procedure are not permitted. In all cases, a substantial change is regarded as a change in ownership (exceeding the percentage limits set forth in §§ 91ff. BörseG) or the initial acquisition of a significant stake as defined in §§ 91ff. BörseG, with the exception of purely financial stakes.

The previous paragraph does not apply to changes in ownership structure ordered by authorities for monopoly/cartel affairs or required by the proceedings of such authorities. All applicants are required to inform the Telekom-Control Commission of all proceedings of



authorities for monopoly/cartel affairs (both pending and to be expected) relating to their ownership structure and to include in their applications any and all decisions made in this context. All changes in ownership structure carried out in order to fulfill such obligations are to be reported to the Telekom-Control Commission immediately, even after submission of the application.

§ 56 Par. 2 TKG 2003 shall be applied with regard to changes in the ownership structure of companies allocated frequency use rights in a procedure under § 55.

### **3.9 Application Documents**

Properly completed written applications must contain all information requested in Section 2. In addition, a Declaration of Completeness (Appendix B) is to be enclosed with the application to confirm that it contains correct and complete indications of all information requested in this tender document as well as all information relevant to the Telekom-Control Commission's evaluation of the objective facts.

### **3.10 Auction Procedure**

#### 3.10.1 Admission to the Auction

All applicants who are not excluded from the frequency allocation procedure under § 55 Par. 8 TKG 2003 nor eliminated by official decision due to company affiliations will be admitted to the auction (cf. Section 3.8.1.).

#### 3.10.2 Auction Procedure: General Information

The auction will be carried out in an open, ascending, simultaneous, multiple-round format. In accordance with § 55 Par. 9 TKG 2003 (last sentence), the detailed rules governing the auction procedure will be delivered to the applicants participating in the auction at least two weeks before the start of the auction. The Telekom-Control Commission plans to publish a draft of the auction rules on the web site of the Austrian Regulatory Authority for Broadcasting and Telecommunications ([www.rtr.at](http://www.rtr.at)) in August 2004, and to send the Rules of Procedure to all applicants as soon after the application deadline as possible.

## **4 Practical Information**

The following sections contain information on the deadlines to be adhered to as well as other essential issues in the allocation procedure.

### **4.1 Rights to Application Documents**

In submitting an application for frequency allocation, the applicant irrevocably agrees to allow the Telekom-Control Commission to use – without restriction – all information and documents received in connection with the application for the purposes of this procedure, for the review of compliance with the official allocation decision and for all procedures otherwise associated with the frequency allocation.

### **4.2 Applications for Frequency Allocation**

Please send applications to:

Telekom-Control Commission

Mariahilferstrasse 77-79

A-1060 Vienna

Austria

The application for frequency allocation ("application") must be received by the Telekom-Control Commission in a sealed envelope or package labeled "Application for GSM Frequency Allocation" by September 16, 2004, at 12:00 pm local time. Applications received after the deadline will not be reviewed. Applications are to be submitted in writing (one original) in German language as well as in electronically readable format (Microsoft Word and/or Excel files on CD-ROM or diskette).

Changing or withdrawing applications after the application deadline will not be permitted. This does not apply to increases in the frequency license fee amount during the auction (§ 55 Par. 6 TKG 2003).

The application may be no longer than 100 pages long. However, additional enclosures, such as annual reports and maps, can be attached as necessary. These enclosures will also be accepted in English.

### **4.3 Authorized Recipient**

Applicants are required to name an authorized correspondence recipient in Austria in their applications. An unrestricted authorization of the recipient must be signed by official representatives of the company and included with the application documents. In cases where the recipient is changed, a new unrestricted authorization is to be sent to the Telekom-Control Commission immediately.

#### **4.4 Clarifications**

For the purpose of preparing their applications, interested parties who have paid the fee of EUR 200.00 for the provision of tender documentation will be allowed to pose questions to the Telekom-Control Commission regarding the tender documentation during the question-and-answer period. The Telekom-Control Commission reserves the right to decide whether questions are answered in each individual case.

Questions to the Telekom-Control Commission can be sent by e-mail only to [rtr@rtr.at](mailto:rtr@rtr.at) by July 26, 2004, at 10:00 am local time (date and time of receipt). Questions will be answered in writing by August 9, 2004 (date of dispatch).

Questions submitted to the Telekom-Control Commission will be collected and forwarded, along with their answers, to all potential bidders without disclosure of the names of the parties who posed the questions.

If the Telekom-Control Commission considers it necessary or appropriate to pose questions to applicants, the applicant irrevocably agrees in submitting the application to reply to such inquiries and submit the requested additional information within the period specified by the Telekom-Control Commission.

#### **4.5 Inquiries and Consultants**

In this tender procedure, the Telekom-Control Commission may call in consultants in the course of its inquiries and surveys (§ 55 Par. 11 TKG 2003). This also applies (but in no way exclusively) to inquiries related to the clarification issues mentioned in Section 0, to inquiries related to the review of eligibility criteria under § 55 Par. 2 No. 2 TKG 2003, and to support in the course of the auction.

#### **4.6 Inspection of Records**

Upon request, all applicants will be allowed to inspect records to the same extent. No separate appeals against the refusal to allow an inspection of records will be permitted (§ 17 AVG).

The Telekom-Control Commission acknowledges the fact that in the course of this procedure a large amount of information will be provided and that the inspection of these records may damage the legitimate interests of parties to the procedure or those of third parties. In addition, the procedure may involve information which, if viewed by one of the parties, could endanger the fulfillment of the regulatory authority's duties or frustrate the purpose of the procedure. The Telekom-Control Commission thus reserves the right to deny parties the right to inspect such parts of the records.

In order to ensure the confidentiality of the information provided by the applicants, the applicants are to label all data they regard as company and trade secrets accordingly in their applications. In addition, a copy of the application is to be submitted in which the company and trade secrets have been omitted; in this version of the application, it must be made obvious that those elements have been removed. The Telekom-Control Commission furthermore reserves the right to deny parties the right to inspect other records pursuant to § 17 Par. 3 AVG. Likewise, the Telekom-Control Commission reserves the right to allow the inspection of records which are labeled as company or trade secrets by the applicants if damage to the legitimate interests of a party or third party is not expected to arise from allowing such an inspection.

§ 125 TKG 2003 as well as the Austrian Administrative Court's ruling (Zl. 2002/03/0273) of February 25, 2004 shall be applied with regard to company or trade secrets.

The applicants undertake to use any information on other applicants obtained in the course of this procedure exclusively for the purposes of this procedure.

#### **4.7 Review and Information Obligations**

All applicants are requested to carry out a review of the information provided in the tender documents and in the attachments and to notify the Telekom-Control Commission of any and all additional (e.g., technical) remarks or corrections.

#### **4.8 Publication**

The Telekom-Control Commission intends to publish the names of the applicants in the allocation procedure. In addition, the results of the auction will be made available on the RTR web site ([www.rtr.at](http://www.rtr.at)).

#### **4.9 Annulment of the Tender, Discontinuation of the Procedure**

Under § 55 Par. 12 TKG 2003, the regulatory authority is authorized to annul the tender and discontinue the procedure at any stage for important reasons, especially if

1. the regulatory authority identifies collusive behavior on the part of the applicants and an efficient, fair and non-discriminatory procedure can not be carried out;
2. none or only one of the applicants fulfills the prerequisites pursuant to Par. 2;
3. none or only one of the applicants that fulfill the prerequisites under Par. 2 actually participates in determining the standing high bid;
4. the procedure results in the applicants requesting (in total) less frequency spectrum than that which is to be allocated.

None of these circumstances justify any claim to remuneration, government authority liability claims notwithstanding.

## **5 Fees**

### **5.1 Frequency License Fee**

In the case of frequency allocation, the frequency license fee offered in the course of the auction is to be paid within seven days after receipt of the official frequency allocation decision. In case of non-payment (including delayed or incomplete payments) of the frequency license fee, the frequency allocation will be rendered void. Notwithstanding the condition mentioned above, the Federal Republic of Austria shall have the right in such cases to draw the bank guarantee and to collect any unpaid portion of the frequency license fee by means of administrative enforcement.

### **5.2 Spectrum Fees**

In accordance with § 82 Par. 2 TKG 2003, spectrum fees are also to be paid for the use of frequencies. These fees will be prescribed by the Telecommunications Offices when the operation permit is issued.

### **5.3 Consultancy Costs**

In the course of the procedure, any and all costs arising from experts or consultants called in by the Telekom-Control Commission at any point in this procedure are to be paid on a *pro rata* basis by those applicants to whom frequencies are allocated (§ 55 Par. 11 TKG 2003). These costs will be prescribed in the official frequency allocation decision and are to be paid within 14 days of receipt of the official decision.