5G PORTUGUESE AUCTION

5G NEW (GREAT) EXPECTATIONS

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AN UNUSUAL DELAY

A little more than 150 years ago, in 1865, the MV Great Western, at the time the largest ship ever built, set sail to lay the first transatlantic telegraphy cable across the Atlantic Ocean. In 1871, an underwater cable already connected Lisboa to the Islands of Madeira and Açores and the Portuguese telegraph network had grown from connecting Lisboa to Sintra through a 19 km experimental line, in 1856, to a public network spreading over 2000 km, merely three years later.

Fast forwarding to 2021, a country used to be one of the earliest adopters of technology, found itself at odds with a cumbersome 5G auction that dragged for nearly one year until it ended on the 27th of October 2021, leaving Portugal as the last EU Member State to grant these frequencies.

This unexpected delay meant that the implementation of 5G-powered technologies was reduced to experimental trials and field demonstrations by the main operators.

The auction began with a phase restricted to new entrants, that commenced in November, and with a main bidding phase beginning in January. Amid an unusually bitter dispute between large operators and the ANACOM, the National Regulatory Authority, this main bidding phase would have nearly 1,730 rounds until its end October 2021.

In the middle of the process, and to speed it up, in July 2021, ANACOM, amended the rules of the auction (set out in Regulation No. 987-A/2020, "Regulation") raising the number of daily rounds from seven to 12 and the minimum bidding increments from 1% to 5%.

Those market observers that, at the time, believed these changes to be insufficient were proven right with the auction continuing for another 90 days.

From the perspective of the country's Treasury, the auction was a success. For example, in the main bidding phase, which represented 459 million of the total 567 million, paid by operators, yielded 134% above the reserve price. However, the costs from the delay – namely in opportunity costs – remain to be assessed.

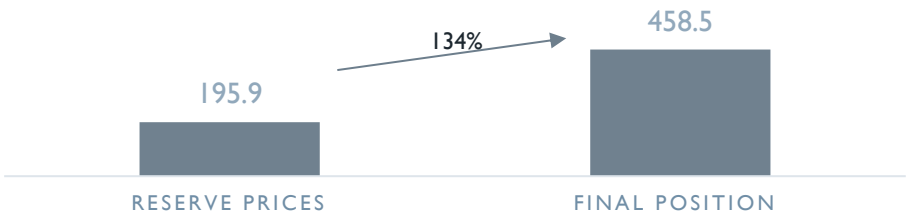

Figure 1 - Main bidding phase, reserve prices vs. final in million euro and % (source: ANACOM, analysis Macedo Vitorino)

Nevertheless, it is irrefutable that unlike its predecessors, the 3G/UMTS and 4G/LTE procedures, held in 1999 and 2011 respectively, this time, three new entrants appeared. One of which – NOWO – with a long presence in all fixed segments of the market, as well as mobile services as an MVNO. A novelty since 2000.

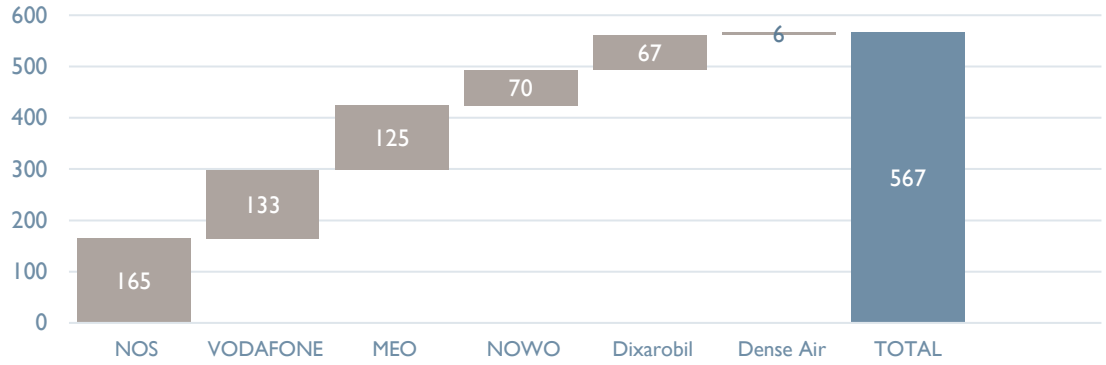

Figure 2 - Total investment by operators in million euro (source: ANACOM analysis Macedo Vitorino)

Under the 5G Auction Regulation, the objectives of the auction are, among others, to promote greater competition in the electronic communications market. To achieve this objective, the auction was designed to promote the entry of new entrants through the application of asymmetric coverage obligations and prices.

As expected, it was one of main players to invest the most in the and, subsequently, it was the company with the highest number of frequencies acquired, as we can see in the graphic below:

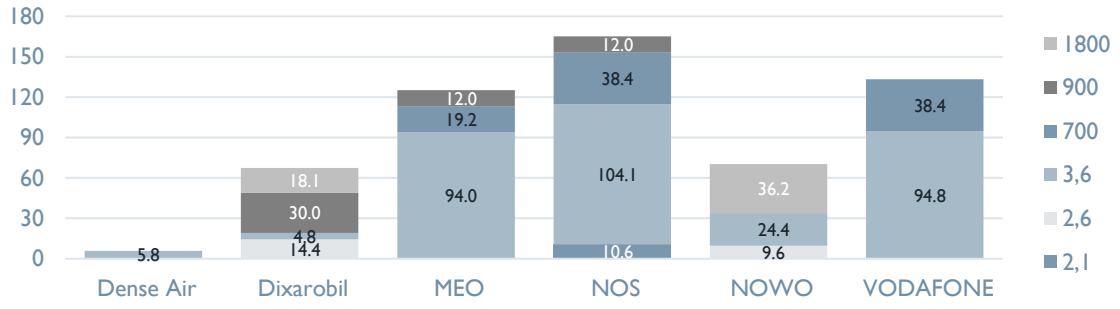

Figure 2 – In blue 5G frequencies, in gray non 5G specific frequencies. Amounts in million euro (Source: ANACOM, analysis Macedo Vitorino).

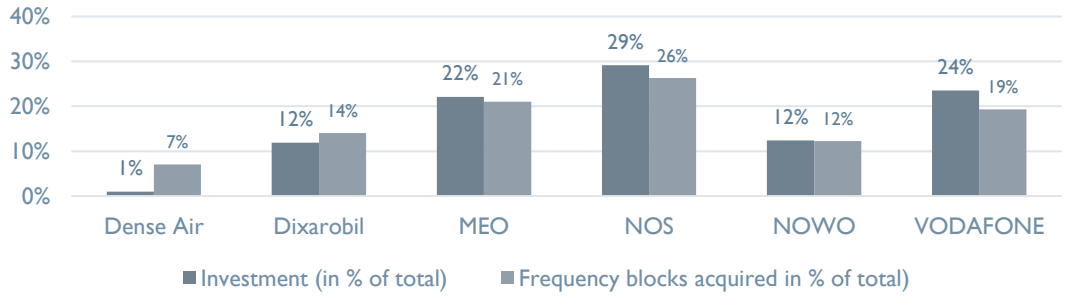

Figure 3 - Comparison investment/frequency block acquired per operator, in % of the total (source: ANACOM, analysis Macedo Vitorino)

With the bidding phase concluded, it remains to be seen what operators and consumers in the communications market can expect. For this purpose, it is important to understand the importance of the specific bidding phase for new entrants - which corresponded to the reserve price in the first phase and in subsequent phases to the value determined by ANACOM's Board of Directors.

NEW ENTRANTS AND INCUMBENTS

Allocation of radio spectrum rights

In January 2021, after merely 44 rounds, four 2 x 5MHz frequency bands in the 900MHz and 1.8 GHz were awarded for approximately 84 million euro, ensuring these entrants will be able to provide IMT2000 based services, while being permitted to bid in the main bidding stage.

The allotment of non 5G spectrum for new entrants, accompanied by low coverage obligations, unusually generous payment terms, is consistent with ANACOM's understanding that the number of mobile network providers should increase to counter what regulators have been arguing to be an excessively concentrated market. The hypothesis of excessive concentration is fiercely disputed by incumbent operators, who in general argue that the said concentration is not the result of an unfair advantage but rather of the market structure itself.

In any case, as mentioned above, it is not the first time that ANACOM tries to force the entrance of new players by what it perceives to be a levelling of the playing field.

To this end while it is providing new entrants with spectrum that allows for the immediate provision of services, it is also imposing other obligations. Thus, in the 700 MHz bands, holders of spectrum will be required to provide 25% mobile broadband service coverage by 2025:

(a) on each of the country's highways;

(b) on each of the main road routes in the country; and

(c) on each of the railway routes included in the "Atlantic Corridor", for the part relating to national territory (essentially a railway connection between the country's largest seaports from Sines in the South to Oporto), the Braga-Lisbon link, the Lisbon-Faro link and the urban and suburban links of Lisbon and Porto.

ANACOM considered it appropriate to impose on new entrants benefiting from these 'advantages', gradual coverage, and the maintenance of a level of investment which, without discouraging new entry, is also intended to contribute to the robustness of the network offer and to increase the benefits of these allocations for end users.

Access to national roaming

New entrants will also have access to the networks of incumbent operators, irrespective of the amount of spectrum acquired. For this purpose, incumbent operators will be obliged to enter into commercial agreements for national roaming with the new entrants ('roaming').

As above, new entrants benefiting from national roaming will be subject to mobile coverage obligations. For the purposes of compliance with coverage obligations in locations or buildings where only the installation of infrastructures of one of the holders of rights of use of frequencies in the 700 MHz band is permitted, the operators shall be obliged to enter into national roaming agreements, under non-discriminatory conditions, to enable other holders of rights of use of frequencies in the 700 MHz band to provide services in such locations.

Operators entering into roaming agreements will be subject to an obligation to provide mobile coverage of 25% and 50% of the national population by using the frequencies allocated to them respectively within 3 and 6 years from the conclusion of those agreements.

It should be noted that compliance with these coverage obligations may be achieved by using any frequency band assigned under the auction or consigned until the date of entry into force of the Regulation.

5G AND CONSUMERS

The holders of rights of use of frequencies are subject to compliance with the conditions of article 27 and 32 of the Electronic Communications Law, namely:

a) Transparency obligations of public communications network operators offering publicly available electronic communications services in order to ensure end-to-end connectivity;
b) Maintenance of the integrity of public networks;
c) Public authorities' terms of use for communications to the general public for warning for imminent threats and mitigating the consequences of major disasters;
d) Security of public networks against unauthorised access;
e) Providing a service or using a type of technology including, where appropriate, coverage and quality requirements; and
f) Network development and fixed voice signal augmentation.

Given the delay, it could be several months before operators' commercial offers involve 5G tariffs.

TRANSFER OR LEASE OF RIGHTS OF USE

The rights of use of frequencies may only be transferred or leased by the respective holders after 2 years from the date of commencement of the provision of publicly available electronic communications services using the frequencies assigned to them provided that ANACOM has not prohibited such transfer.

Nevertheless, there is a duty of prior communication to ANACOM of the intention to transmit or lease the rights of use of frequencies, as well as the conditions under which they intend to do so.

ANACOM has, within 45 working days, the right to prohibit the transfer or assignment if the following conditions are not met:

a) The transfer or lease does not distort competition, namely due to the accumulation of rights of use;
b) The frequencies are used efficiently and effectively;
c) The intended use of the frequencies is in line with what has been harmonised through the implementation of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 (Radio Spectrum Decision) or other EU measures; or
d) Legal restrictions in relation to radio and television broadcasting are safeguarded.

In conclusion, the need to enhance the competitiveness of the country and of all its regions associated to 5G is thus perceived. Moreover, ANACOM believes that the obligations associated with the coverage of municipalities with low population density, in the Autonomous Regions of Madeira and the Azores, may be ensured, with efficiency gains in these areas through national roaming agreements.