



F 1/22

NON-BINDING TRANSLATION

Annex 2

to the

Consultation on the

Tender Conditions

**in the procedure for awarding
spectrum**

in the 3600 MHz and 26 GHz ranges

Vienna, 3 July 2023

Telekom-Control-Kommission (TKK)

bei der Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)

Mariahilfer Straße 77–79

1060 WIEN, ÖSTERREICH

www.rtr.at

E: rtr@rtr.at

T: +43 1 58058-0

F: +43 1 58058-9191

FN 208312t, HG Wien



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1 Goals of the award procedure

A position paper on infrastructure sharing was published in 2018, with spectrum use rights in the 3410–3800 MHz range subsequently awarded in 2019, and in the 700, 1500 and 2100 MHz ranges in 2020. The currently planned spectrum award represents another advance in 5G deployment in Austria, encompassing the 3600 MHz subranges that had remained unsold in 2019, as well as spectrum in the 26 GHz range, allocated now for the first time ever for mobile communications and broadband use.

The basis of any award procedure is firstly to define the goals pursued by the regulatory authority in carrying out the specific procedure. This process follows provisions of law. Considering the specific properties of spectrum in the 3600 MHz range and especially in the 26 GHz range (unsuited to wide-area usage, multiple feasible business models etc.), the regulatory authority is not only orienting this spectrum award towards legal certainty, safeguarding and promoting effective competition, and promoting coverage (the central award objective for the 2020 multiband auction) but is also focusing in particular on the efficient use of spectrum as well as the promotion of innovation and business development.

Maximising revenue is expressly ruled out as an award objective, as is actively supporting new market entrants by means of actions such as reserving spectrum.

2 General legal conditions

In accordance with Art. 15 and Art. 16 of the Telecommunications Act 2021 (TKG 2021), the Telekom-Control-Kommission (TKK) is conducting a procedure for awarding spectrum in the 3600 MHz and 26 GHz frequency ranges.

2.1 General conditions under Austrian law

The current invitation to tender is based on the Telecommunications Act 2021 (TKG 2021), Federal Law Gazette (FLG) I No. 190/2021 as most recently amended. Current provisions of Austrian procedural law also apply, in particular the General Administrative Procedure Act 1991 (AVG), FLG No. 51/1991 as most recently amended.

The TKK's competence for the awarding of spectrum as set out in Art. 15 and Art. 16 TKG 2021 results from Art. 13 Par. 7 No. 2 in conjunction with Art. 198 No. 1 and 3 TKG 2021. Pursuant to Art. 13 Par. 7 No. 2 TKG 2021, the regulatory authority is responsible for spectrum award as well as for any modification or revocation of a licence relating to spectra for which a specification has been made in the spectrum use plan as referred to in Art. 11 Par. 3 TKG 2021 (transfer of ECS spectrum to the regulatory authority for the administration of mobile and broadband use).

For the frequency range considered here, such a provision was made by the Federal Minister for Finance with an amendment (Federal Law Gazette II No. 61/2023) to the Frequency Utilisation Ordinance (Frequenznutzungsverordnung, FNV 2013), Federal Law Gazette II No. 63/2014.

The frequency award procedure pursuant to Art. 16 TKG 2021 is applicable, since the frequency sub-ranges considered here that are to be awarded were specified as being limited by number in an RTR ordinance concerning the limitation by number of frequency awards issued by the regulatory authority (ZaBe-V 2023), Federal Law Gazette II No. 138/2023, which was issued based on Art. 14 Par. 1 TKG. The justification for this specification can be found in the explanatory notes to this ordinance.¹

Furthermore, an ordinance issued by the TKK to specify the selection procedure in cases where rights of use for radio spectrum are awarded by the regulatory authority (Auswahl-V 2023), Federal Law Gazette II No. 186/2023, which was issued based on Art. 15 Par. 1 TKG 2021, specifies that the frequency sub-ranges considered here are to be awarded during the course of a competitive selection procedure (auction). The justification for this specification can be found in the explanatory notes to this ordinance.²

¹Available (in German) from the RTR website at:

https://www.rtr.at/TKP/aktuelles/veroeffentlichungen/veroeffentlichungen/Verordnungen/zabe-v_2023.de.html.

² Available (in German) at

https://www.rtr.at/TKP/aktuelles/veroeffentlichungen/veroeffentlichungen/Verordnungen/auswahl-vo_2023.de.html

Mention is also made here of the Ordinance of the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH) concerning obligations for operators of electronic communications networks and providers of electronic communications services relating to minimum security requirements in the context of 5G networks as well as reporting obligations in the event of security incidents—Telecommunications Networks Security Ordinance 2020 (TK-NSiV 2020), FLG II No. 301/2020.³

2.2 Spectrum award procedure

Art. 16 Par. 1 TKG 2021 requires the regulatory authority to award the spectrum that is transferred to the authority and is limited by number to that applicant who meets the general requirements set out in Art. 16 Par. 2 No. 2 TKG 2021 and who ensures the most efficient usage of the spectrum. In the case of a competitive award procedure, as is applicable here, this is determined based on the amount of the spectrum licence fee that is offered.

Pursuant to Art. 16 Par. 2 TKG 2021, the regulatory authority has the duty to award spectrum in accordance with the principles of an open, fair and non-discriminatory procedure, as well as standards of economic efficiency. In planning the procedure, the authority has to consider the regulatory aims set out in Art. 1 TKG 2021 and the aspects listed in Art. 15 Par. 3 TKG 2021, especially competition. Essentially, any auction procedure must be designed to be simple, clear and comprehensible. One important way in which these requirements can be met is to ensure that bidders submit their bids in full knowledge of the maximum payment obligation that results from doing so.

The spectrum award procedure consists of two steps:

1. Once the applications have been received, the regulatory authority verifies whether the requirements set out in Art. 16 Par. 2 No. 2 TKG 2021 have been met. Any applicants not meeting the requirements are excluded from the spectrum award procedure, in accordance with Art. 16 Par. 9 TKG 2021.
2. The second step is carried out in the form of an auction.

2.3 Collusion

In the context of procedures for awarding spectrum, the Telecommunications Act refers repeatedly to the possibility of collusion.

Art. 16 Par. 9 TKG 2021 in conjunction with Art. 16 Par. 10 TKG 2021 lays down the principle that collusion of applicants prior to or during the auction procedure can lead to exclusion of those applicants from further procedures.

The regulatory authority is additionally empowered to cancel the invitation to tender and to terminate the procedure if collusive behaviour is identified on the part of

³ Available at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011212>

applicants and an efficient, fair and non-discriminatory procedure cannot be conducted (Art. 16 Par. 13 No. 1 TKG 2021). Other potential grounds for exclusion from the procedure are threats against competitors as well as disclosure of participation in the auction, of bids, or of bidding strategies, even prior to the auction procedure.

The auctioneer will take all suitable measures to prevent collusive behaviour. Specific mention is made here of the obligation of bidders to allow a staff member of the regulatory authority to be present in the bidders' office space at any time during the auction.

In connection with possible infringements of collusion provisions, reference is made here to provisions of general competition law and to Art. 168b of the Austrian Criminal Code (Strafgesetzbuch).

2.4 Cancellation of the invitation to tender and termination of the procedure

Art. 16 Par. 13 TKG 2021 authorises the regulatory authority to cancel the invitation to tender and to terminate the procedure at any stage, in either case where there is good cause, and in particular under one of the following conditions:

1. the regulatory authority identifies collusive behaviour among applicants and/or an efficient, fair and non-discriminatory procedure cannot be conducted;
2. no or only one applicant meets the requirements set out in Art. 16 Par. 2 TKG 2021;
3. no or only one applicant meeting the requirements set out in Art. 16 Par. 2 TKG 2021 actually participates in the procedure for determining the highest bid;
4. the procedure results in the applicants requesting less frequency spectrum than has been specified for assignment.

None of these conditions justifies any claim to compensation; claims based on official liability remain unaffected thereby.

In the view of the authority calling for tenders, a 'good cause' may exist where procedures are currently pending that relate to a change in ownership structure of market participants involved in the tender procedure and, as a result, an open, fair and non-discriminatory procedure cannot be guaranteed.

2.5 Spectrum award

Spectrum is usually awarded within one month of when the TTK publishes the outcome of the auction.

2.6 Transfer of spectrum

Art. 16 Par. 5 TKG 2021 expressly envisages an option allowing spectrum winners to transfer frequency usage rights awarded in such a procedure. An undertaking to which spectrum is assigned by the TTK in the course of this award is entitled to use a

procedure pursuant to Art. 20 TKG 2021 to transfer the usage rights for this spectrum to other providers of communications services or operators of communications networks, either for the entire term of use or for a specified period.

Pursuant to Art. 20 Par. 1 TKG 2021, such a transfer of spectrum usage rights must first be approved by the TKK. The transfer may constitute a transfer solely of rights of use or may also involve the transfer of the assignment notice itself to a third party. The regulatory authority shall make public both the transfer application and the decision authorising the transfer. In making its decision, the regulatory authority has to consider the transfer's technical implications on a case-by-case basis and the impact on competition in particular. The authorisation may include any ancillary provisions as are considered necessary in order to avoid adverse effects on competition. Authorisation shall be refused in all cases where, despite the imposition of ancillary provisions, an adverse effect on competition is likely as a result of the transfer.

2.7 Co-use under TKG 2021

As set out in Art. 64 TKG 2021, providers of public communications networks are entitled to co-use of antenna masts and high-voltage masts. With regard to other co-use rights, reference is made here to the rules specified in Articles 60 et seq. TKG 2021. Reference is additionally made in this context to section 5 (on infrastructure sharing).

2.8 Secondary usage pursuant to Art. 13 Par. 18 in conjunction with Art. 16 Par. 6 TKG 2021

The regulatory authority may make provisions in the tender terms and conditions to ensure that, for the spectrum to be assigned, secondary usage as defined in TKG 2021 Art. 13 Par. 18 is permitted for these frequencies. In the present award procedure, a secondary usage of this kind is expressly envisaged only under the terms set out in section 3.4.

2.9 Duration of rights pursuant to Art. 18 TKG 2021

Where the regulatory authority assigns spectrum for a period other than the one specified in Art. 18 Par. 1 TKG 2021, the regulatory authority must ensure that the assignment is granted for a period that is appropriate in light of the objectives pursued in accordance with Art. 16 TKG 2021, taking due account of the need to ensure competition, as well as, in particular, the effective and efficient use of radio spectrum, and to promote innovation and efficient investments, including by allowing for an appropriate period for investment amortisation. Where the regulatory authority assigns spectrum for which harmonised conditions have been set by technical implementing measures in accordance with Decision No 676/2002/EC, in order to enable its use for wireless broadband communications services ('wireless broadband services'), the regulatory authority must ensure regulatory predictability for rights holders over a period of at least 20 years regarding conditions for investment in infrastructure that relies on the use of such radio spectrum, taking account of the requirements as set out in Art. 18 Par. 3 TKG 2021.



The foregoing is subject, where relevant, to any modification of the conditions attached to those assignments in accordance with Art. 21 TKG 2021.

For the reason referred to in Art. 18 Par. 4 TKG 2021, it must be ensured that such rights are valid for a duration of at least 15 years and, where necessary to comply with the conditions laid down in this provision, an extension not exceeding ten years is to be included. No extension is possible if this period is at least 20 years. In accordance with Art. 18 Par. 10 TKG 2021, the regulatory authority may adjust the duration of spectrum assignment to ensure simultaneous expiry in one or several bands, provided that reassignment is expected to significantly enhance the efficiency of spectrum use. The TKK is utilising this option in its specification of a period of use for assignments in the 3600 MHz range.

3 Goods under auction

3.1 Frequency spectrum available

The following spectrum is to be awarded:

26 GHz band

- 25.5–25.9 GHz (in all of Austria)
- 26.5–27.5 GHz (in all of Austria)

3600 MHz band

- 3410–3450 MHz (in the A1u region)
- 3440–3450 MHz (in the A1r region)
- 3410–3470 MHz (in den regions A4u, A4r, A5u and A5r)
- 3460–3470 MHz (in the A6u region)

The regions are specified in the digital annex G.1 (GIS file in GeoPackage format).

A map of these regions is provided in the figure below:

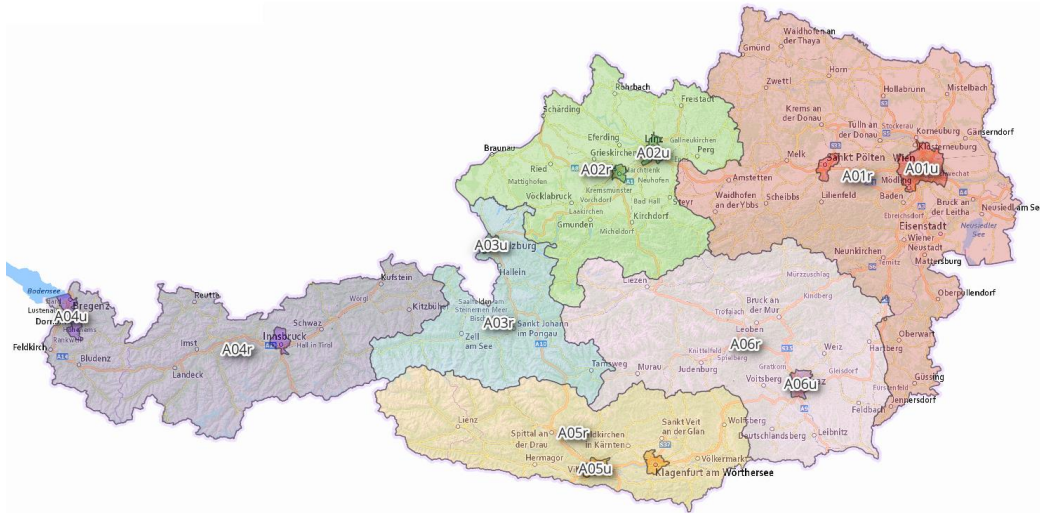


Figure 1: Map showing regions in the 3600 MHz band

The table below lists the auction lots in the 3600 MHz band.

Table 1: Frequency blocks/bandwidth

Frequency block	Region	Lot category	Frequency range/MHz	Bandwidth/MHz
LC1	A1u	C1	3410–3450	40
LC2	A1r	C2	3440–3450	10



Figure 3: Diagram showing frequency blocks in 26 GHz band

In stage 1 of the auction, the frequency blocks are allocated to lot categories (see Table 1 and Table 2, and the auction rules).

3.2 Synchronisation in 3600 MHz band

In the 3600 MHz range, owners of spectrum use rights acquired during this procedure (rights/licence holders) are duly bound to observe the conditions for the standard frame structure from TKK decision ref. no. F 7/16-401, as amended by TKK decision ref. no. F 1/19-43.

3.3 Synchronisation in 26 GHz band

In the event that reciprocal interference between rights holders occurs in the 26 GHz band as a result of unsynchronised or inadequately synchronised operations, and no bilateral or multilateral agreement on synchronisation can be achieved, the following specifications apply:

- a) Transmissions from a licence holder's base station shall use a certain frame duration and frame structure. The frame duration is 0.625 ms. This is complemented by use of the frame structure 'DDDSU', where 'D' stands for a downlink timeslot, 'U' for an uplink timeslot and 'S' for a special New Radio (NR) timeslot as defined by the 3GPP standards—this is configured as D:G:U=10:2:2.
- b) Licence holders are responsible for ensuring that frames are based on a uniform reference time (+/- 1.5 μ s), so that all of any licence holder's frames are aligned equally and transmissions are consequently synchronised.

The regulatory authority must be notified of synchronisation agreements between rights holders without delay.

3.4 Terms and conditions of use

3.4.1 Intended use

The frequency spectrum available is to be utilised in accordance with the applicable decision as adopted by the Commission for "terrestrial systems that provide electronic communications services" (ECS). All citations of and references to Commission decisions are to be understood as references to the latest published version of the same.

The following Commission decisions are to be applied:

- For 26 GHz: Commission Implementing Decision of 14 May 2019, No 2019/784/EU, last amended by Commission Implementing Decision of 24 April 2020, No 2020/590/EU (see annexes F.1 and F.2)
- For 3410–3470 MHz: Commission Decision of 21 May 2008, No 2008/411/EC, last amended by Commission Implementing Decision of 24 January 2019, No 2019/235/EU (see annexes F.3 and F.4)

3.4.2 Specific terms and conditions of use

3.4.2.1 Principle specifications

The version of the Radio Regulations adopted by the World Radiocommunication Conference (WRC-19) as well as in particular the provisions included in the annexes of the Commission decisions referred to above apply in general to frequency usage.

3.4.2.1.1 Specifications for 26 GHz

- (1) Pursuant to the Annex to Commission Implementing Decision of 14 May 2019 (No 2019/784/EU), both the frequency assignment to operators and the frequency usage by these operators shall ensure that the frequency range 24.25–27.5 GHz is available for use with Time Division Duplexing (TDD).
- (2) The spectrum that is made available is to be subdivided into seven unpaired basic frequency blocks within the frequency ranges of 25.5–25.9 GHz and 26.5–27.5 GHz. Each of these basic frequency blocks has a bandwidth of 200 MHz.
- (3) The radio interface specification for 26 GHz has yet to be included in the Radio Interface Specification Ordinance (FSBV) and is currently only available as a draft (see draft spec FSB-LM036 in annex F.9).

3.4.2.1.2 Specifications for 3410–3470 MHz

- (1) Pursuant to the Commission decision cited in point 1 above, the preferential duplex mode of operation in the 3400–3600 MHz sub-band is TDD.
- (2) Base station and subscriber terminal transmissions in the 3410–3470 spectrum band must comply with the block edge mask (BEM) specified in the Annex to Commission Decision 2014/276/EU.
- (3) The radio interface specification FSB-LM033 is to be considered generally applicable to the establishment and operation of the base stations.

3.4.2.2 Spectrum use near national and regional borders

- (1) The threshold limits specified under this item are potentially subject to change where possible, based on the outcome of any additional coordination procedures conducted by the telecommunications authorities in accordance with specifications that might be issued in future by European bodies and/or bilateral or multilateral agreements with the telecommunications administrative authorities of the other countries concerned.
- (2) When determining field strengths along borders, the calculation program specified in the most recently amended official version of the “Agreement on the co-ordination of frequencies between 29.7 MHz and 43.5 GHz for the fixed service and the land mobile service” (HCM Agreement) is definitive. The calculation program, which constitutes an integral part of these terms and conditions of use, is available from the website of the managing administration (<http://hcm.bundesnetzagentur.de>). The topographical data additionally required for applying the HCM program as well as the HCM Agreement 2022 are also available under that link.
- (3) While agreements relating to individual changes affecting areas near international borders are permitted between Austrian providers and similar

providers in neighbouring countries, in accordance with Art. 34 Par. 9 TKG 2021 they require the approval of the telecommunications administrative authorities, with the regulatory authority being notified immediately. The detailed provisions can be found in the agreements as currently amended (refer to the corresponding annex F).

- (4) Agreements relating to individual changes affecting areas near regional borders are also permitted between providers in Austria. Both the telecommunications authority and the regulatory authority are to be notified of such agreements immediately.

3.4.2.2.1 Specifications for 26 GHz

- (1) As a rule, base stations with unsynchronised TDD systems may be used without prior coordination with the neighbouring country. However, this is possible only if the mean field strength generated by the base station does not exceed the following values:
 - 62 dB μ V/m/(200 MHz) (this is equivalent to an SSB field strength of 52 dB μ V/m/(120 kHz) for NR) at a height of 3 metres above ground at the borderline
 - In the event of a frequency block size other than 200 MHz, a corrective value, calculated using the formula $10 \times \log_{10}$ (frequency block size in MHz/200 MHz) dB, must be added to the field strength values.
 - In the event of an SCS (subcarrier spacing) other than 120 kHz, corresponding corrective values must be applied as per [Final Draft] ECC/REC/(23)02.
- (2) No agreements have yet been made with neighbouring countries for the 26 GHz band and, considering the propagation characteristics, evaluations are ongoing as to whether these are even necessary in any range within the band.
- (3) To ensure optimum power of the digital mobile broadband access systems used in cross-border areas, providers should, in compliance with the [Final Draft] ECC/REC/(23)02 for the 26 GHz Band, implement the code resources given by technology as well as other radio parameters, in particular when signal centre frequencies coincide in border areas.

3.4.2.2.2 Specifications for 3410–3470 MHz

- (1) Without prior coordination with the neighbouring country or region, stations implementing TDD broadband technologies in the 3410–3470 MHz range may be used if the mean field strength produced by the base station does not exceed the values listed below:
 - a) In unsynchronised TDD networks:
 - 32 dB μ V/m/5 MHz at a height of 3 metres above ground at the borderline
 - b) In synchronised TDD networks:
 - 67 dB μ V/m/5 MHz at a height of 3 metres above ground at the borderline and
 - 49 dB μ V/m/5 MHz at a height of 3 metres above ground at a distance of 6 km within the neighbouring country or region

- (2) To ensure optimum power of the digital mobile broadband access systems used in cross-border areas, providers should, in compliance with the relevant annex to ECC/REC/(15)01, implement the code resources given by technology as well as other radio parameters, in particular when signal centre frequencies coincide in border areas.
- (3) In terms of individual changes affecting areas near national borders, full details of the provisions of agreements between Austrian operators and similar operators in neighbouring countries can be found by consulting the respective agreements (see the corresponding annexes).

3.4.2.3 Changes in use and additional use restrictions

- (1) The telecommunications authorities in Austria or in other countries can order changes in use or additional use restrictions for individual frequencies or border regions, to protect existing or planned radio services.
- (2) As of the date when the agreement with Germany, Liechtenstein and Switzerland was signed, due to frequency usage in those countries, details on any corresponding protection requirements were not yet available. On receiving further details relating to protection zones, the following apply in the entire 3400–3800 MHz range:
 - a) For the protection of non-MFCN systems, a power flux density of -122 dBW/MHz/m^2 must not be exceeded along the border (corresponding to a field strength of about $24 \text{ dB}\mu\text{V/m/MHz}$).
 - b) For the protection of satellite earth stations, a power flux density of $-154 \text{ dBW}/(\text{MHz}\cdot\text{m}^2)$ must not be exceeded along the border (corresponding to a field strength of about $16 \text{ dB}\mu\text{V/m/MHz}$).

3.4.2.4 Usage restrictions owing to existing frequency use cases

3.4.2.4.1 Limitations on use of the 26 GHz range

- (1) Existing microwave radio usage: Telecommunication authority permits still exist for microwave links in the frequency ranges 24.5–24.9 GHz and 25.5–25.9 GHz. Until these permits expire (see the table in annex 7 for exact dates), receivers for the radio stations listed in annex F.7 must be protected with a maximum power spectral density of -151 dBW/MHz (as per ITU-R Recommendation F-758). Operators have the option of working out a mutual agreement with the affected permit holders. Modifications to existing operating permits must be communicated to the telecommunications office (cf. Art. 41 TKG 2021 as amended). Annex 7 provides details of the microwave link sites, together with other key parameters required to guarantee the necessary level of protection through appropriate network planning.
- (2) Existing satellite radio usage: The protection zones in 3.4.2.4.2 Par. (1) apply similarly to the spectrum ranges 24.65–25.25 GHz (earth-to-space communications) and 25.25–27.5 GHz (space-to-earth communications).
- (3) Protection against interference must be provided for satellite reception in the 24.45–25.25 GHz frequency range (24.45–24.75 GHz Inter-Satellite Service communications and 24.65–25.25 GHz communications to satellite on-board receivers in the Fixed Satellite Service) (cf. Recital (10) of

Commission Implementing Decision of 14 May 2019, No 2019/784/EU). Accordingly, base stations are not permitted to be operated with antenna elevations having an angle greater than or equal to 0° above the horizon.

- (4) Passive radio services and radio astronomy usage within the 23.6–24 GHz frequency range must be protected against interference and disruption. This protection for base stations must also be ensured by cross-border agreements—cf. Recital (19) of Commission Implementing Decision of 14 May 2019, No 2019/784/EU.

3.4.2.4.2 Limitations on use for 3410–3470 MHz

- (1) To protect the Aflenz earth station, an absolute protection zone in the form of a polygon is defined. The coordinates of the absolute protection zone, along with a diagram of the zone, are shown in annex F.8 to the terms and conditions of use. An absolute protection zone means that this zone must not be directly or indirectly affected by any base station transmissions for broadband services within the 3400–3800 MHz frequency range.
- (2) To protect the other receiver locations referred to below, the power flux density of the entire 3400–3800 frequency range must not at any time exceed -183.52 dBW/m²/4kHz at a height of 15 metres above ground, within a cylinder defined by the centre point coordinates and radii specified below:
- 17°01'31.3" East / 48°06'53.3" North, radius of 80 metres from this centre point
 - 15°56'12.9" East / 48°10'34.3" North, radius of 230 metres from this centre point

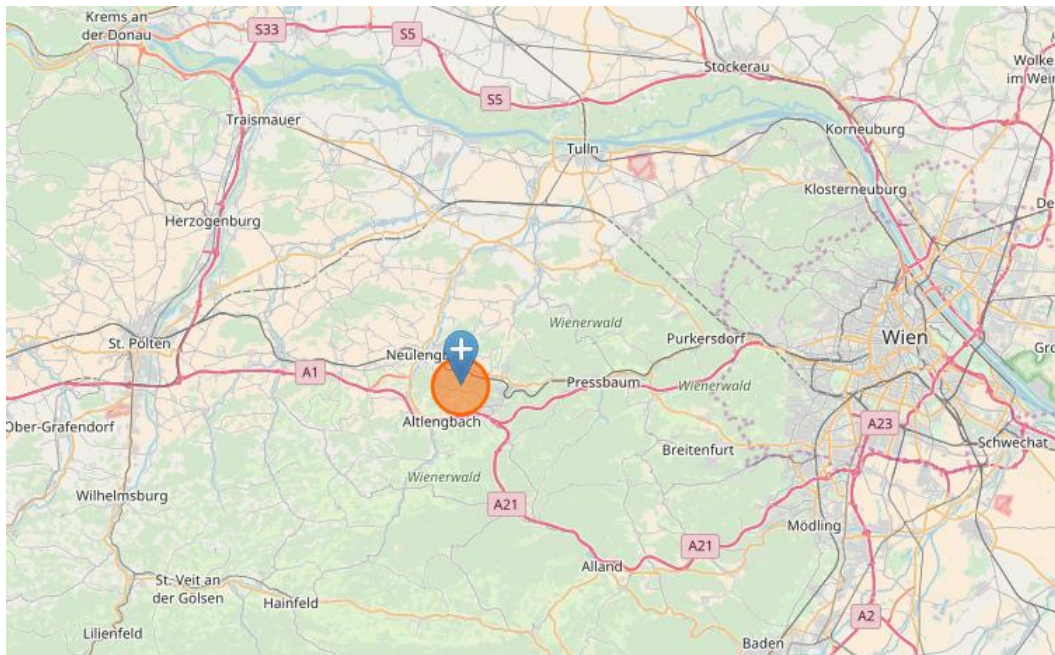


Figure 4: Protection of other receiver locations—Kohlreithberg (15°56'12.9" East / 48°10'34.3" North) (OSM CC-BY-SA 2.0)

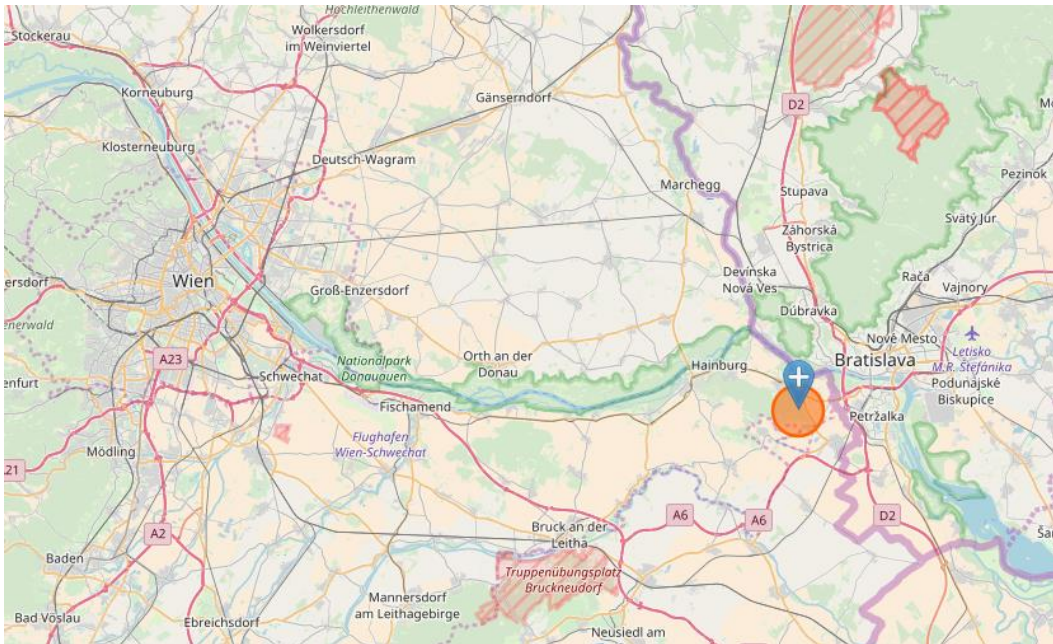


Figure 5: Protection of other receiver locations–Königswarte (17°01'31.3" East / 48°06'53.3" North) (OSM CC-BY-SA 2.0)

3.4.2.5 Secondary usages of the 26 GHz range

- (1) Art. 16 Par. 6 TKG 2021 envisages a secondary usage option for the frequency ranges 25.5–25.9 GHz and 26.5–27.5 GHz. The telecommunications office will decide on the assignment of any usage permit pursuant to Art. 34 Par. 3 TKG 2021.
- (2) As regards the extent of this secondary usage, geographical and time-based limitations may be assumed. As a result of these limitations, the consequential negative impacts/restrictions can be kept to a minimum. The current status of the base stations in operation will be taken into account for the assignment of geographical and time-based permits.
- (3) Permits will be assigned only to specific radio stations.
- (4) A period not exceeding one month will be specified for time-based permits.
- (5) The temporary deployment of wireless cameras serves as a reference use case for such secondary usage.

3.4.2.6 Quarterly report on base stations

The data on the base stations in operation for broadband services are to be reported on a quarterly basis to the telecommunications authorities and the regulatory authority. When an operating permit is issued, details of this procedure and the relevant data format will also be specified.

3.4.2.7 Frequency planning and usage: other international documents

- (1) The documents listed below, issued by the Conférence Européenne des Administrations des Postes et des Télécommunications (CEPT), must also be used as a basis for frequency planning and usage:
 - a) 26 GHz:
 - Draft ECC Recommendation ECC/REC/(23)02 (see annex F.9)

- ECC Decision ECC/DEC/(18)06 last amended on 20 November 2020
 - ECC Recommendation ECC/REC/(20)01 last amended on 6 March 2020
 - ECC Recommendation ECC/REC/(19)01 last amended on 8 March 2019
 - ECC Report 303
 - ECC Report 317
 - ECC Report 068
- b) 3410–3470 MHz:
- ECC Decision ECC/DEC/(11)06 last amended on 26 October 2018
 - ECC Decision ECC/DEC/(06)04 last amended on 18 November 2022
 - ECC Decision ECC/DEC/(22)01 approved on 4 March 2022
 - ECC Recommendation ECC/REC/(15)01 last amended on 10 June 2022
 - ECC Recommendation ECC/REC/(21)02 approved on 5 November 2021
 - ECC Recommendation ECC/REC/(20)03 last amended on 23 October 2020
 - CEPT Report 49
 - ECC Report 249
 - ECC Report 340
 - ECC Report 331
 - ECC Report 309
 - ECC Report 296
 - ECC Report 281
 - ECC Report 287
 - ECC Report 216
 - ECC Report 203

These documents have been published on the website of the European Communication Office at <https://www.cept.org/eco/deliverables> (under “ECO Document database”) and <https://docdb.cept.org/>.

- (2) In terms of applicable ETSI standards for radio equipment used, we assume that all equipment used meets the provisions of the Austrian Radio Equipment Market Monitoring Act (FMaG) as amended.

3.4.2.8 Direction finder locations requiring protection

- (1) For the protection of stationary directional receiver systems operated by telecommunications authorities, at such locations the peak field strength of signals transmitted by the base stations must not exceed 105 dB μ V/m, as measured for the bandwidth of the specific system.

- (2) The current list of the direction finder locations requiring protection can be viewed (in German) in the FB-Infoletter 13_2022_01⁴ on the website of the telecommunications office under <https://www.fb.gv.at/Funk/landmobiler-dienst.html>.

3.5 Start and duration of use

Art. 13 Par. 15 TKG 2021 states that spectrum is to be awarded only for a specified period that is appropriate to the technical and business aims.

- Usage rights to the frequency blocks in the 25.5–25.9 GHz range will be assigned based on existing usage rights in this range from 1 January 2025 to 31 December 2046.
- Usage rights to the frequency blocks in the 26.5 –27.5 GHz range will be assigned for the period from the notification of the assignment decision to 31 December 2046.
- Usage rights to the frequency blocks in the 3600 MHz range will be assigned for the period from the notification of the assignment decision to 31 December 2039.

In the 26 GHz range, a rights holder is assured of the arrangement of the frequency blocks awarded as specified during the assignment stage for at least ten years, specifically, until any potential rearrangement as a result of the awarding or assignment of other usage rights in this frequency range enters into force. This approach maximises the defragmentation of assignment and the efficient use of spectrum in the 26 GHz range, even over the long term.

⁴ Refer to <https://www.fb.gv.at/dam/jcr:acec986d-3d49-495c-ac02-bf554fc7dad4/13%20Schutz%20station%3Frer%20Peilanlagen.pdf> (in German)

4 Coverage obligations

Every spectrum holder is obliged to use the spectrum awarded in this procedure at a specified number of locations from a certain date onwards. The coverage obligations help to ensure the efficient use of spectrum.

4.1 26 GHz range

4.1.1 Coverage obligation

Each holder of spectrum use rights in the 26 GHz range must operate a minimum number of locations that depends on the amount of spectrum awarded. The table below lists the minimum number of locations a licensee holding spectrum is required to operate as of the date specified:

Table 3: Coverage obligation for 26 GHz

Spectrum awarded	Minimum number of locations by no later than 1 December 2027	Minimum number of locations by no later than 1 December 2030	Minimum number of locations by no later than 1 December 2034
200 MHz	15	45	150
≥400 MHz	30	90	300

4.1.2 Location as defined in terms of the coverage obligation

A location meeting the requirements listed below qualifies as a location as defined in terms of the coverage obligation:

- A location that is eligible for meeting the coverage obligation must have a base station capable of transmitting at a minimum level of 2 watts of electrical power per sector. The actual transmission power level can be less.
- A location qualifies as a location within the meaning of the coverage obligation only if the frequencies transmitted there are used to connect end users.
- Only base stations operated outdoors are considered as locations within the meaning of this obligation.
- The spectrum holder must have actual, legal and technical control of any such base station.
- Locations operated as active sharing locations are not considered to be locations for the sharing party within the meaning of this obligation. Accordingly, a location is therefore counted as a location within the meaning of this coverage obligation for at most one rights holder.
- Separate sectors count as one location—even in cases where these sectors are not situated at a single, shared antenna mast.

- Two locations are counted as two separate locations for the purpose of the coverage obligation only if spaced at least 25 metres apart as measured with a straight line.

At a location relevant for the fulfilment of the coverage obligation, measures to reduce energy consumption during the period 00:00 to 05:00 can be implemented, if this does not result in a drop, for any individual user, in the downlink and uplink data transmission rates in this location's coverage area below the 95th percentile of data transmission rates during the period 08:00 to 22:00.

4.2 3600 MHz range

4.2.1 Coverage obligation

In those regions in which no more than 10 MHz within the 3600 MHz range is to be awarded, (additional) coverage obligations are waived. However, any existing obligations in such a region incumbent on a rights holder from the 2019 award (TKK decision ref. no. F 7/16-401) remain in force as before.

In all other regions—A01u, A04u, A04r, A05u and A05r—the conditions of the current award procedure require a rights holder to operate five additional locations in each region in which spectrum is awarded within five years of the assignment date.

4.2.2 Location as defined in terms of the coverage obligation

As regards the definition of a 'location' in the context of this coverage obligation, rules apply as set out in the 2019 spectrum award (section 5.1, p. 10 f. of the annex to TKK decision ref. no. F 7/16-401⁵).

4.2.3 Obligation to disclose coverage data (3600 MHz)

Every spectrum holder is required to publish on their company website a map view showing the coverage area for the frequencies awarded in this procedure and any other previously assigned spectrum in the 3600 MHz range. Specifically, the map should show, by means of a realistic simulation, the data rates available to end users outdoors, broken down by downlink and uplink rates. The maximum data rate available should also be indicated. In the map view, each area supplied with service must be displayed in sectors of at least 100 m by 100 m, corresponding to the 100 m grid size used by Statistics Austria in projections of regional statistics (ETRS-LAEA grid), and show the bandwidth normally available⁶ as well as the estimated maximum download and upload speeds. Compliance must be given with the specified speed at every point within the particular grid.

⁵ Available (in German) at https://www.rtr.at/TKP/aktuelles/entscheidungen/entscheidungen/F7_16_Zuteilungsbescheid_080419.de.html

⁶ The bandwidth available to end users 95% of the day or per 24 hours; i.e. the bandwidth must not fall below this level for more than 72 minutes on any day.

The related raw data—at a minimum the grid, speeds and time stamp—are to be additionally made available to the public in the Open Data format (based on the CC BY 4.0 licence).

Data are to be published for the first time by 30 September 2024 at the latest. The data are to be consistently kept up to date, and revised within no more than three months. The regulatory authority is to be immediately notified of any update.

4.3 Obligation to disclose coverage data

An operator who is a rights holder according to the provisions of the current spectrum award must, independently of the spectrum use rights acquired, publish a map on their website that depicts the coverage area for all frequency ranges which are specified as ECS spectrum for mobile and broadband services in the Frequency Utilisation Ordinance, FLG II No. 63/2014. Specifically, the map should show, by means of a realistic simulation, the data rates available to end users outdoors, broken down by downlink and uplink rates. The maximum data rate available should also be indicated. In the map view, each area supplied with service must be displayed in sectors of at least 100 m by 100 m, corresponding to the 100 m grid size used by Statistics Austria in projections of regional statistics (ETRS-LAEA grid), and show the bandwidth normally available⁷ as well as the estimated maximum download and upload speeds. Compliance must be given with the specified speed at every point within the particular grid.

The related raw data—at a minimum the grid, speeds and time stamp—are to be additionally made available to the public in the Open Data format (based on the CC BY 4.0 licence).

The initial publication or integration, into the existing map view, of data relating to the frequency ranges from the current award procedure must be completed by 30 September 2024 at the latest. The data are to be consistently kept up to date, and revised within no more than three months. The regulatory authority is to be immediately notified of any update.

⁷ The bandwidth available to end users 95% of the day or per 24 hours; i.e. the bandwidth must not fall below this level for more than 72 minutes on any day.

5 Rules for infrastructure sharing

5.1 3600 MHz

In the event of spectrum being assigned from the 3600 MHz range, rules apply as set out in the 2019 spectrum award for the same frequency range (section 7 of the annex to TKK decision ref. no. F 7/16-401⁸).

5.2 26 GHz

5.2.1 Core network

No cooperation relating to essential core network functions is permitted between two spectrum holders in the 26 GHz band, where more than one of the participating companies hold more than a total of 10% of the nationwide usage rights in the 700 MHz, 800 MHz, 900 MHz, 1500 MHz, 1800 MHz, 2100 MHz, 2600 MHz or 3600 MHz frequency ranges or are affiliated under ownership law, as defined in section 7.2.2 of the Tender Document, with parties holding more than 10% of such usage rights.

5.2.2 Shared use obligations for infrastructure

As envisaged by Art. 26 TKG 2021, the regulatory authority may impose obligations in relation to the sharing of passive infrastructure or obligations to conclude localised roaming access agreements on undertakings that operate or are authorised to operate electronic communications networks. In both cases, this may be done if directly necessary for the local provision of services that rely on the use of radio spectrum, and assuming that no viable and similar alternative means of access to end users is made available to any undertaking on fair and reasonable terms and conditions.

As envisaged by Art. 26 Par. 2 TKG 2021, the regulatory authority may impose such obligations only if this possibility was explicitly envisaged when assigning spectrum—which is indeed envisaged in relation to the current award procedure—and where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the operation of networks or provision of services that rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles, and access to networks or services by end users is therefore highly unreliable or absent.

In those circumstances where access to and sharing of passive infrastructure alone does not suffice to address the situation, national regulatory authorities may impose obligations for the sharing of active infrastructure (Art. 26 Par. 3 TKG 2021).

⁸ Available (in German) at https://www.rtr.at/TKP/aktuelles/entscheidungen/entscheidungen/F7_16_Zuteilungsbescheid_080419.de.html

6 Auction procedure

6.1 Fundamentals

A total of 1.4 GHz from the 26 GHz band will be awarded, plus the remaining spectrum in the 3600 MHz band from the 2019 award. Spectrum in the 26 GHz band will be awarded at national level and comprises the following:

- 400 MHz in the 25.5–25.9 GHz range
- 1000 MHz in the 26.5–27.5 GHz range

The relevant spectrum in the 3600 MHz band will be awarded at regional level and comprises between 10 and 60 MHz, depending on the region.

The 400 MHz in the 25.5–25.9 GHz range and the relevant spectrum in the 3600 MHz band will be auctioned as specific frequency blocks. The spectrum in the 26.5–27.5 GHz range will first be auctioned as abstract frequency blocks. During a second stage, specific frequencies will then be assigned to the winners of blocks in this part of the band.

In the first stage, the frequency blocks will be auctioned in a simultaneous multi-round auction utilising the Enhanced SMRA (ESMRA) auction format. In this format, bidders use the first round of bidding to state the number of blocks they wish to acquire at the minimum price in each lot category. If this round results in excess demand, then additional rounds are held. For each round, the auctioneer specifies an initial price and a round price (per block) for each lot category. Bidders may restate their demand from the last round at the respective round price or submit bids to change their demand. In the latter case, they can state a price between the respective initial price and the respective round price.

At the end of each round, the bids submitted are processed. Bids to reduce demand will be accepted in bid processing only insofar as these bids do not lead to excess supply in the respective lot category or do not have the effect of increasing an existing excess demand. Bids to increase demand will be accepted only insofar as this is possible while accounting for confirmed bids to reduce demand, in accordance with the rules of activity and any spectrum caps that may be applicable. This means that, during the course of the auction, the confirmed demand in any lot category cannot drop below the demand as expressed by bidders during the first round.

Completion of this bid processing results in a confirmed demand and a price per block for each lot category. If an excess demand is present, then this is also the round price. If there is no excess demand present and at least one bid to reduce demand has been accepted at least partially in the processing of demand, then the price is equal to the highest price that was specified in the confirmed bids to reduce demand. Otherwise, the price is the same as the initial price.



If excess demand is present in at least one lot category, then another round is held, with the price determined by bid processing as the initial price and a round price as set by the auctioneer.

Otherwise, this stage ends and the bidders are awarded the demand as confirmed in each case by bid processing at the price as determined for each block.

In the second stage, bidders who have been awarded blocks in the 26.5–27.5 GHz frequency range can then bid on the specific frequency assignments that are relevant for their purposes. This stage will be conducted as a single sealed bidding round in which winners of spectrum submit bids for various combinations of specific frequency blocks, thereby enabling the mutually compatible assignment of contiguous spectrum to the winners of spectrum in this frequency range (assignment options). Winning bids are identified by determining the combination of mutually compatible bids with the highest total value. The winners receive the actual frequency blocks contained in their respective winning bids at what are termed ‘additional prices’, which are calculated on the basis of a modified second price rule.

The total price to be paid by a successful bidder is calculated as the sum of successful bids during the first stage, plus any applicable additional price.

The auction rules can be found in annex E.

6.2 Minimum bid

Art. 16 Par. 4 TKG 2021 allows for the tender documentation to include details of the amount of the minimum spectrum licence fee that may be bid, as referred to in Art. 24 Par. 2 TKG 2021.

In accordance with Art. 24 Par. 2 TKG 2021, the minimum bid must be specified as an amount that ensures an effective assignment and use of radio spectrum, and which meets the criteria given in Art. 36 Par. 6 TKG 2021. It must also be based on the spectrum assignment fees that are expected to be charged for the assigned spectrum.

Where reasons exist, in accordance with Art. 24 Par. 3 TKG 2021, the authority can depart from the rule of defining the minimum bid based on the spectrum assignment fees, specifically where this appears justified considering the actual market value of the frequencies. In this case, the minimum bid may not exceed 50% of the lower limit of the market value as determined in accordance with the previous sentence.

If the regulatory authority does not set the minimum bid based on the assignment fee, the authority will always set the bid based on national and international reference values. Based on the principles for defining the minimum bid that can be derived from the provisions mentioned above, the minimum bids listed below results for the principal stage, per block and lot category:

Table 4: Minimum bid amount per block and lot category

Band	Lot category	Number of blocks	Minimum bid per block in EUR
26 GHz	A	5	1,900,000
26 GHz	B	1	3,800,000
3600 MHz	C1	1	1,357,500
3600 MHz	C2	1	98,000
3600 MHz	C3	1	247,000
3600 MHz	C4	1	290,500
3600 MHz	C5	1	161,000
3600 MHz	C6	1	126,500
3600 MHz	C7	1	50,000

6.3 Participation requirements/bank guarantees

To be allowed to participate in the auction, an applicant is required to provide security in the amount of the lowest minimum bid for one block in the auction (see section 6.2 **Fehler! Verweisquelle konnte nicht gefunden werden.**), in compliance with the rules on bank guarantees below and with the Auction Rules.

Applicants must provide security for bids (bid limit) in stage 1 of the auction, in accordance with the Auction Rules (annex E). Such security must be provided by means of an abstract bank guarantee which is callable on first demand and has been issued by a bank with a good credit rating that is established in a signatory country of the European Economic Area (EEA; see annex B for a sample bank guarantee as security for the spectrum licence fee).

The minimum amount of the bank guarantee is determined based on the minimum bid set for the least costly frequency block (EUR 50.000, see also section 6.2). The original of that bank guarantee must be supplied with the application.

Bank guarantees can also be presented between the submission of the application and the start of the auction. Such additional bank guarantees must be submitted by a point in time to be specified in the rules of procedure.

Beyond this, it is possible to present additional bank guarantees during the auction. In the event that bank guarantees are presented later during the auction, to allow the necessary checks, such guarantees must be presented by no later than 3:00 pm (local time) of the business day (Monday to Friday) prior to submitting the bid and must have been issued by the same bank that issued the guarantee supplied with the application.

The following rules apply to security for bids submitted in stage 1 of the auction:

Table 5: Amount of security for bids in the principal stage

Amount of the bank guarantee	Bid limit
Less than EUR 15 million	Bank guarantee x 2
EUR 15 million and more	Unlimited

As the sole condition for becoming effective, any bank guarantee must specify the award of the spectrum designated in this tender procedure by official decision to the applicant. The guarantee must designate the Republic of Austria (the federal government) as the beneficiary and be valid for at least the period of 2023-XX-XX to 2024-XX-XX. Any additional bank guarantee provided later must be valid from the date of presentation until at least 2024-XX-XX.

A bidder may exchange any previously submitted bank guarantees after the end of the auction if their value exceeds the spectrum licence fee to be paid. Instead, a bank guarantee of a value matching the spectrum licence fee to be paid is to be presented to the regulatory authority.

No bank guarantee is required as security for the assignment stage.

The TKK reserves the right to demand additional bank guarantees or other security.

On completion of the procedure (notification of the decision), those applicants to whom no spectrum has been awarded will have the bank guarantees that they provided to secure their bids returned to them.

The bank guarantees provided by those applicants who are awarded spectrum will be returned to them after full payment of the spectrum licence fee.

6.4 Spectrum caps

To safeguard competition in downstream markets, the total number of frequency blocks that a bidder may acquire by auction in the 26 GHz range will be limited to 1000 MHz. No restrictions are imposed on the spectrum in the 3600 MHz range that is the subject of the current award.

7 Spectrum award procedure

7.1 Steps of the procedure and timetable

As mentioned above in section 2.2, the spectrum award procedure is divided into two steps. Pursuant to Article 16 Par. 1 in conjunction with Par. 2 No. 2 TKG 2021, the first step involves verification to determine whether applicants meet the criteria set out in Art. 16 Par. 2 No. 2 TKG 2021. Any applicants not meeting the requirements in Art. 16 Par. 2 No. 2 TKG 2021 are excluded from the spectrum award procedure, as specified in Art. 16 Par. 9 TKG 2021.

The main events in the timetable for the award procedure are presented below.

Table 6: Award procedure timetable

Activity	Anticipated time period
Publication of the invitation to tender	Anticipated in September 2023
Receipt of questions	Anticipated in October 2023
TKK's responses to questions	Anticipated in November 2023
End of the tender submission period	Anticipated in November 2023
Admission to the auction	Within two weeks of the end of the tender submission period
Start of auction	Anticipated in December 2023
Spectrum assignment decision	Within one month of completion of the auction

7.2 Requirements for the award procedure

7.2.1 Legal personality of the applicant

The applicant must have legal personality and full legal capacity as defined in Art. 9 of the General Administrative Procedure Act.

7.2.2 Affiliated companies

1. Applications are not permitted if submitted by a plurality of companies that are affiliated within a company group as defined in Art. 189a No. 6 to 8 in conjunction with Art. 244 of the Austrian Commercial Code (UGB) or Art. 15 of the Stock Corporation Act (AktG) and Art. 115 of the Limited Liability Companies Act (GmbHG), or in the manner described in Art. 7 of the 2005 Cartel Act (KartG; directly or indirectly).

The same applies where applicants exercise or intend to exercise a significant amount of direct or indirect influence on another applicant so as to affect competition (for example through trust or cooperation agreements, takeover agreements or similar), even where such an agreement has not yet been approved. Whether significant influence affecting competition exists is subject to verification in the specific case. Such influence is always considered to exist, however, in the case of major holdings within the meaning of Articles 130 et

seq. of the 2018 Stock Exchange Act (BörseG).

2. Where several companies currently active in the Austrian mobile telecommunications market hold shares in one and the same company (for example a joint venture), such a company is only permitted to apply on the condition that, as required by cartel law in the individual case, any documents certifying non-objection under competition law as well as any approvals are presented, whereas the rules set out above (under 1) also apply here.

When evaluating the individual case, consideration is also to be given as to whether the applicants may currently be in the midst of a merger or demerger process. Any previous decisions by competition authorities (either at national or EU level) are especially to be considered in such cases (for example, the conditions for any merger that are specified in the approvals).

In the event that two or more applicants affiliated with one another in the manner described above apply for spectrum, only the first applicant to submit an application will be allowed to participate in the auction. Where the applications are submitted on the same day, the applicant admitted to the spectrum auction will be decided by draw.

7.2.3 Changes in the ownership structure

Regulatory authority approval is required for any change in the legal person of the applicant or any significant change in the participating interest held in the applicant (even indirectly or not immediately) that might occur during the procedure. Approval must only be given if, after completion of the change, the company is fully independent of other applicants for purposes of competition. A significant change is always to be recognised in cases where the percentage thresholds specified in Articles 130 et seq. of the 2018 BörseG are exceeded or where major holdings, with the exception of mere financial holdings, are initially acquired, in application mutatis mutandis of Articles 130 et seq. of the 2018 Stock Exchange Act. Where any change in the legal person of the applicant or any change in participating interest occurs without the TKK's approval, the company or companies concerned will be excluded from the award procedure.

In the application, the applicant must inform the TKK of any and all pending or anticipated procedures by cartel authorities that concern the ownership structure, submitting with the application any and all related decisions in their entirety. Any and all changes in the ownership structure that are carried out in fulfilment of such obligations, even after application is made, are to be reported to the TKK.

Regarding a change in the ownership structure of companies that have been awarded frequency usage rights in a procedure as referred to in Art. 16 TKG 2021, we refer to Art. 20 Par. 4 TKG 2021.

7.2.4 Rights to application documents

When applying for a spectrum award, the applicant irrevocably consents to unlimited use by the TTK of all information disclosed and all documents submitted as part of the application, for the purpose of the procedure and for verification of compliance with the decision as well as for all other procedures relating to frequency awards.

7.2.5 Questions concerning the Tender Document

To prepare their applications, interested parties who have paid EUR 300.00 to cover the expense of being provided with the Tender Document (excluding annexes) are entitled to clarify any issues during a question and answer session with the TTK. The TTK reserves the right to decide whether to respond to any individual question.

Questions may be submitted to the TTK exclusively via the email address tkfreq@rtr.at by XX.XX.2023 at 12:00 noon local time (date and time of receipt), giving as the subject “F 1/22 – questions concerning the tender procedure”. Written responses will be provided by XX.XX.2023.

The questions submitted to the TTK will be collected and forwarded, without details of the parties submitting the questions and together with the responses, to all such interested parties referred to above.

In the event that the TTK finds it necessary or helpful to clarify questions with any applicants, by submitting an application, applicants irrevocably declare their willingness to respond to any such questions within the appropriate period set by the TTK in the individual case and to subsequently submit any information requested.

7.2.6 Information collection–advisors

For the purpose of collecting information and making enquiries for this tender procedure, the TTK can request support from advisors (Art. 16 Par. 12 TKG 2021). This may concern the collection of information related to Tender Document questions as referred to above in section 7.2.5 or related to the verification of eligibility criteria as referred to in Art. 16 Par. 2 No. 2 TKG 2021, as well as support in the auction procedure, while this list is by no means exhaustive.

7.2.7 Examination of files

All applicants are principally to be granted access to files on request. Those parts of files are excluded from the right to examination where disclosure would harm the justified interests of a party to the procedure or a third party or would jeopardise the activities of the authority or interfere with the purpose of the procedure. To refuse the examination of files to a party against which a procedure is pending, a procedural order is issued in accordance with Art. 17 Par. 4 of the General Administrative Procedure Act.

A large volume of the information made available in this procedure could, if released for examination, harm the justified interests of a party in the procedure or a third party. Similarly, the procedure may involve information with the potential of

jeopardising the activities of the authority or interfering with the purpose of the procedure, were such information to be examined by parties to the procedure. The TKK consequently reserves the right to exclude such parts of files from the right to examination.

Considering the possibility of collusive behaviour, disclosure of the applicants prior to completion of the auction could interfere with the purpose of the procedure. The TKK will therefore refrain from disclosing the applicants; not even via the right to examine files will this information be available prior to completion of the auction. After completion of the auction, the applicants will be provided with access to all information, while taking into account any business and trade secrets.

To ensure confidentiality of any sensitive information made available, applicants should indicate in their applications those items of data that they consider to be business and trade secrets. An additional redacted version of the application, with any business and trade secrets removed and clearly marked as a redacted version, is to be submitted. The TKK additionally reserves the right to exclude any other parts of files from the right to examination, in accordance with Art. 17 Par. 3 of the General Administrative Procedure Act. The TKK also reserves the right to make available for examination any parts of files labelled by applicants as business and trade secrets, if such disclosure is not expected to harm the justified interests of a party to the procedure or of third parties or to jeopardise the activities of the authorities.

Reference is made in this context to Art. 208 TKG 2021 and to ruling No. 2002/03/0273 of 25 February 2004 by the Administrative Court concerning business and trade secrets.

Applicants are obliged to use any information concerning other applicants that is obtained through this procedure only for the purpose of the procedure and to refrain from disclosing such information.

7.2.8 Publication

The TKK will publish the results of the auction on the regulatory authority's website.

7.3 Information in the application

Art. 16 Par. 1 TKG 2021 requires the regulatory authority to assign the frequencies entrusted to the authority to that applicant who meets the general requirements set out in Par. 2 No. 2 loc. cit. and who makes most efficient use of the spectrum.

To evaluate whether the requirements set out in Art. 16 Par. 2 No. 2 TKG 2021 have been met, insight into the applicant's organisation is necessary, in addition to other requirements. The information provided by the applicant must include details of the legal and financial situation and of the ownership structure.

7.3.1 Information on the applicant

The application documents must include the information on the applicant listed below (where applicable):

- a) Name (company name), place of establishment (address), date and place of founding, including current excerpt from the Austrian Commercial Register or from the comparable register of the country of establishment
- b) Type and quantity of capital shares, nominal value of the capital shares, and the voting and dividend rights tied to any and all types of shares
- c) Subscribed capital for each type of capital share as well as precise information on the shareholders as of the date when the application is submitted, as well as any and all anticipated changes in this regard
- d) Quantity, value and rights (including exchange rights) in relation to any and all options, certificates of entitlement, preferred shares and debt capital, as well as any other securities issued by the applicant
- e) Currently amended version of the articles of association
- f) Description of the business activities
- g) Name of the person meeting the requirements under Art. 9 of the Service of Documents Act (*Zustellgesetz*) who is authorised by the applicant to accept service of documents, as well as the person's phone and fax numbers and postal and email addresses (see also section 7.3.7)
- h) All other issues that, if disclosed or kept secret, could significantly influence the TKK's decision when carrying out verification as referred to in Art. 16 Par. 2 No. 2 TKG 2021 prior to the assignment of spectrum

Any details listed above that are not provided in full will be subsequently requested by the TKK, if the authority deems the information necessary for determining the facts relevant for the decision.

7.3.2 Information on the applicant's owners, shareholders and similar items

The applicant is required to provide the details listed under section 7.3.1 lit. a) to d) and f) and h) (where applicable) for every owner or shareholder as well as every owner of options, certificates of entitlement, preferred shares, debt capital or other types of securities issued by the applicant. The following is also to be provided for every such person with an entitlement:

- a) Relationship with the applicant (e.g. quantity and type of the capital shares or securities held), any trust or consortium agreements
- b) Where applicable, group parent company or companies, higher-level company or companies within the group

In the event that individuals hold any capital shares or other securities issued by the applicant in a trustee or similar capacity on behalf of a third party, this circumstance must be indicated and the details listed above provided for the actual beneficial owner.

7.3.3 Higher-level companies with major holdings: additional description of the ownership structure

In the event that, without directly holding shares in the applicant, several higher-level companies have holdings in the applicant (i.e. owners, shareholders, owners of options, certificates of entitlement, preferred shares, debt capital or other types of



securities issued by the applicant) and these companies together hold (based on the ultimate owner) an effective total participating interest of 25% or more in the applicant, a description of such holdings must be provided in the application.

Specifically, the items of information listed in section 7.3.2 of this Tender Document are to be provided for every company that has effective participating interest of at least 25% in the applicant—regardless of the higher level at which these shares are held.

The information specified under section 7.3.2 of this Tender Document must therefore also be provided for any companies that, while not holding participating interest of at least 25% in the applicant through concrete holdings in a company at a level above the applicant, achieve this level as a result of adding together the participating interest held in several companies at any level above the applicant.

In the event that individuals hold any capital shares or other securities issued by the applicant that equal a participating interest of at least 25% in a trustee or similar capacity on behalf of a third party—even if held indirectly by means of participating interests at a higher level—this circumstance must be indicated and the details listed above provided for the actual beneficial owner.

The details required under this section can be illustrated using tables or charts showing the participating interests held directly and indirectly as well as the type of control over the applicant, in particular the type of holding. When providing a description of the linked participating interests, care should be taken to ensure that the TKK is able to identify any business interrelationships that would allow one applicant to directly or indirectly exercise on another applicant a significant amount of influence affecting competition.

Any details listed above that are not provided in full will be subsequently requested by the TKK, if the authority deems the information necessary for determining the facts relevant for the decision.

7.3.4 Information on consortia

The additional items of information listed below are required in the case of a consortium or joint venture:

The type of relationship between the members, in addition to precise details of any of the following:

- Trust agreements, consortium agreements
- Joint venture agreements
- Declarations of intent
- Ownership agreements

In addition, the same details as listed under section 7.3.2 are required for the members of the consortium and are to be included with the application.

Any details listed above that are not provided in full will be subsequently requested by the TKK, if the authority deems the information necessary for determining the facts relevant for the decision.

7.3.5 Information on technical capabilities, service quality and coverage

As stated in Art. 16 Par. 2 No. 2 TKG 2021, there must not be any grounds for assuming that the proposed service will not be provided, in particular with regard to level of quality and fulfilment of the coverage obligation. The applicant must furthermore have the necessary technical capabilities. The information requested in the sections below is intended to allow verification of meeting these requirements.

The applicant is obliged to provide evidence of meeting the necessary requirements.

Evidence must include at least the following details:

- Description of planned spectrum use (e.g. services, technologies, data transmission rates, quality and availability)
- Planned coverage (supply of services) over the entire licence term
- Number of locations over the entire licence term
- Capabilities and expertise in the planning and operation of wireless networks

7.3.6 Information on financial strength

The applicant is required to provide evidence of having the financial resources necessary for setting up and operating a wireless network.

The application documents are to specifically include the information listed below.

7.3.6.1 Business plan/balance sheet

Every applicant is required to prepare a business plan for the field of business (or fields of business) in which the applicant plans to use the requested spectrum, with the plan based on the applicant's strategy, market assessment and forecast of business operations for the three years following initial use of the spectrum in each case.

The applicant is free to structure the business plan. The breakdown should, however, show the following information:

- Which services are to be offered in this frequency range?
- Which technologies will be implemented to provide those services?
- As of which date will the services be offered?

7.3.6.2 Financing

Every applicant is also required to describe how the spectrum licence fee is to be funded. This must be in accordance with the operator's financial capabilities. The following details are correspondingly required:

- Equity financing—schedule for and raising of equity capital, including any plans for issuing share capital
- Debt financing—credit lines, security made available, and the repayment terms and borrowers for any and all loans in the first four years from spectrum award

7.3.7 Authorised recipient

When applying for assignment, natural persons not having their main residence in Austria or legal persons not established in Austria are required to designate an authorised recipient within the meaning of Art. 9 of the Service of Documents Act (Zustellgesetz), FLG No. 200/1982 as currently amended (see section 7.3.1). The application must include a declaration bearing the authorised company signature which designates a recipient with unlimited authorisation to accept service of documents. A new unlimited authorisation is to be submitted immediately upon any change of recipient.

7.3.8 Application form

The application form (see annex A) must also be completed, signed and submitted.

7.3.9 Declaration of completeness

Any duly completed application in writing is required to include the information requested under section 7.3. A declaration of completeness (annex D) is also required to be enclosed with the application, confirming that all information required by this Tender Document as well as all information relevant for evaluation of the case by the TKK is complete and correct as included in the application.

7.4 Submission of the spectrum award application

Spectrum award applications are to be addressed to:

Telekom-Control-Kommission
Mariahilfer Straße 77–79
1060 Vienna
Austria

The TKK must receive the complete spectrum award application, in a sealed package (e.g. envelope or parcel) labelled “F 1/22 – Spectrum Award Application”, by XX.XX.2023 12:00 noon (local time). Any applications received after that time will not be considered. The spectrum award application can be delivered by postal or courier service or submitted in person. If submitted in person, it is necessary to request an appointment. Appointments can be requested by sending an email to tkfreq@rtr.at no later than 12:00 noon of the day preceding the requested appointment. Appointment requests as well as submissions can be made only on business days (Monday to Friday).

The original spectrum award application must be submitted in printed form in German and be accompanied by an electronic copy (e.g. on a USB flash drive). Any required supplements such as business reports and maps may also be in English.

Changes to applications or withdrawal of applications are not permitted after expiry of the tender submission period (Art. 16 Par. 7 TKG 2021).

7.5 Application document check list

The spectrum award application is to be structured as listed below:

- Application form (see annex A)
- Information on organisational structure
- Information on technical capabilities, service quality and coverage obligation (see section 7.3.5)
- Information on financial strength (see section 7.3.6)
- Bank guarantee (see sample in annex B)
- Authorisation to accept service (see section 7.3.7, sample in annex C)
- Declaration of completeness (see section 7.3.9, sample in annex D)

8 Costs and fees

8.1 Spectrum licence fee

The successful applicants are required to deposit the spectrum licence fee, as determined in the auction procedure, within four weeks of being served the spectrum assignment decision.

The spectrum licence fee does not include value-added tax.

The spectrum award becomes void if the spectrum licence fee is not paid (in full and on schedule). Notwithstanding the above, the Republic of Austria (federal government) is entitled in such a case to call on the bank guarantee or to collect the unpaid portion of the spectrum licence fee by administrative execution.

8.2 Spectrum use fee

Art. 36 TKG 2021 specifies fees, including spectrum use fees, for the use of spectrum. The fees are prescribed by the telecommunications office as part of issuing operating permits.

8.3 Consulting expenses

The regulatory authority is entitled to consult experts and advisors at any stage of the procedure. The fees for such consultants as well as their additional cash expenses are required to be paid by the applicant awarded the spectrum in the particular case. In the case of more than one applicant, the expenses are divided up on a pro-rated basis among the applicants awarded spectrum.



A. Sample application form

Application form for Procedure F 1/22 involving spectrum award in the frequency ranges of 3600 MHz and 26 GHz

Applicant:

Address:

Security

Security in the amount of EUR _____ (in words
_____) in the form of an original bank
guarantee is enclosed with the application.

.....
Date

.....
(authorised company signature)

B. Sample bank guarantee as security for the spectrum licence fee

Name of bank:

Address:

Republic of Austria
c/o Telekom-Control-Kommission
Mariahilfer Straße 77–79
1060 Vienna

Guarantee number _____

(Bank) XX hereby provides to the Republic of Austria the irrevocable guarantee declaration described in the following:

It is known to the bank that (company) _____ is applying for spectrum award in the 3600 MHz and 26 GHz frequency ranges within the framework of the tender procedure currently being conducted. As stipulated in section **Fehler! Verweisquelle konnte nicht gefunden werden.** of the TKK Tender Document of 2023-XX-XX, (company) _____ is required, as security for the requested bidding eligibility, to submit with its application an abstract bank guarantee issued by a bank with a good credit rating that is established in a signatory country of the European Economic Area (EEA).

(Bank) hereby guarantees payment to the Republic of Austria of a total amount up to the maximum specified below, without verification of the underlying legal relationship and under waiver of any and all objections:

EUR XX
(in words: XX euros)

Payment will be made to your designated bank account on first demand in writing, on condition that spectrum has been awarded to (company) XX based on this tender procedure. Confirmation of the fact in your written demand will be considered as proof that the condition has been met.

This guarantee cannot be used prior to 2023-XX-XX.



This guarantee expires automatically when this deed is returned to us and by no later than XX.XX.2024 even if not returned, unless you make use of the deed by means of a letter (sent by registered mail or by courier) which we receive by no later than that date.

Any claims under this guarantee can be assigned, pledged or restricted in transferability for the benefit of third parties only with our express consent.

.....
Date

.....
(authorised company signature)

C. D. Sample declaration of completeness

To:
Telekom-Control-Kommission
Mariahilfer Straße 77–79
1060 Vienna
Austria

Name and address of the applicant

Application in F 1/22 – declaration of completeness

The applicant hereby declares the following:

The enclosed application contains in complete and true form the information and documents which are requested in the Tender Document for Procedure F 1/22 and are otherwise necessary for evaluating the application in the spectrum award procedure based on the criteria set out in provisions of European Union law as well as Austrian law and in particular the Telecommunications Act 2021 (TKG 2021), even where such information or documents are not expressly requested in the Tender Document.

In particular, except for those disclosed in the application, no agreements, collateral agreements or other relevant circumstances relating to

- ownership of the applicant,
- planned financing or
- the business plan

exist that could influence evaluation of the application.

.....
Date

.....
(authorised company signature)



D. C. Sample authorisation to accept service

(Company) XX hereby authorises XXXX to accept any and all correspondence in Procedure F 1/22 for spectrum award in the 3600 MHz and 26 GHz frequency ranges.

Contact details of Ms./Mr. NAME XX XXX:

Street
Postal code, city or town
Phone +43...
Fax +43....
Email@.....

.....
Date

.....
(authorised company signature)



E. Auction Rules

The draft Auction Rules (annex E) are available from the regulatory authority's website at: https://www.rtr.at/konsultation_ausschreibungsunterlagen_f1_22.

F. Annexes to the terms and conditions of use

The annex consists of the following items:

- Annex F.1: Commission Implementing Decision of 14 May 2019, No 2019/784/EU
- Annex F.2: Commission Implementing Decision of 24 April 2020, No 2020/590/EU
- Annex F.3: Commission Decision of 21 May 2008 No 2008/411/EC
- Annex F.4: Commission Implementing Decision of 24 January 2019, No 2019/235/EU
- Annex F.5: Agreement on 3400–3800 MHz (Austria, Germany, Liechtenstein and Switzerland)
- Annex F.6: Agreement on 3400–3800 MHz (Austria, Croatia, Hungary, Serbia, Slovakia, Slovenia; in English)
- Annex F.7: Data on microwave link applications to be protected
- Annex F.8: Coordinates and diagram of the absolute protection zone for Aflenz
- Annex F.9: Draft FSB-LM036
- Annex F.10: Draft ECC Recommendation ECC/REC/(23)02

The annexes to the terms and conditions of use are available from the regulatory authority's website at https://www.rtr.at/konsultation_ausschreibungsunterlagen_f1_22.



G. Digital annex

The following annex is made available as a separate, digital download on the regulatory authority's website, at https://www.rtr.at/TKP/aktuelles/veroeffentlichungen/veroeffentlichungen/konsultationen/consultation_tender_conditions_F1_22.en.html:

G.1 Regional borders in the 3600 MHz band

The regional borders in the 3600 MHz band are provided in a digital format as an OGC GeoPackage (g1_regionen_3600.gpkg). The regional borders correspond to the specifications of TKK decision ref. no. F 7/16-401.