

## Non-binding English version

# The Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels

Copenhagen, 26 March 2003

**MEDIA AND GRANTS  
SECRETARIAT**

On 26 March 2003, the Ministry of Culture issued the *Executive Order concerning the Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels*, pursuant to which the Radio and Television Board will be awarding licences for the fifth and sixth radio channels after an open, simultaneous auction.

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Interested parties are hereby invited to register for the auction of the fifth and sixth radio channels by **12:00 on Monday 2 June 2003**. The auction is scheduled to take place at **17:00 on Wednesday 18 June 2003**.

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## **2 Background**

Pursuant to *Executive Order no. 168 of 17 March 2003 concerning the Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels*, issued pursuant to *Act no. 1052 of 17 December 2002, the Danish Radio and Television Broadcasting Act*, the fifth and sixth FM radio channels, which theoretically cover 78% and 37% of the population respectively, are being tendered out to commercial radio undertakings.

## **3 Abstract**

The fifth and sixth FM radio channels will be tendered by means of an open, simultaneous auction. Interested undertakings must register for the auction by 12:00 on 2 June 2003.

In the period up to 12:00 on 19 May 2003, potential participants in the auction will be able to ask questions relating to the tender documents.

The registered parties must put up a banker's guarantee of DKK 5 million by 12:00 on 16 June 2003.

No participant may acquire the licences for both channels, and Danmarks Radio (DR) may not take part in the auction. Under the ownership rules, the registered parties must submit a signed ownership declaration by 12:00 on 16 June 2003.

The licence for the fifth radio channel will be subject to special requirements on public service news coverage, and the requirement that Scandinavian music must make up approx. 30% of the music output. Programming on the fifth radio channel may not be regionalised. There will be no special requirements for the programme content of the sixth radio channel. Other licensing conditions are set out in the model licences in the annexes.

The auction will be held at 17:00 on 18 June 2003 at the auction house of Bruun Rasmussen, Bredgade 33, 1260 Copenhagen K, and will be an open-cry auction. Participants in the auction will be making offers for the fixed annual concession fee for the respective channels. In addition to the fixed annual fee, the licensees will also have to pay a variable turnover-related concession fee.

The licences are expected to be issued at the end of June 2003 to take effect by 15 November 2003. The licences will be valid for a period of eight years. The National IT and Telecom Agency issues licences for the use of frequencies.

In addition to the concession fees, the licensees will have to pay a fee to the Radio and Television Board for administration, supervision, etc., and a fee to the National IT and Telecom Agency for the respective frequency licences.

The Radio and Television Board supervises compliance with the conditions of programme licences and with the rules of the *Danish Radio and Television Broadcasting Act*, while the National IT and Telecom Agency supervises compliance with the conditions of frequency licences and with the rules laid down in frequency legislation.

All information provided by the Radio and Television Board, including answers to questions from potential participants in the auction, will be published on the Media and Grants Secretariat's website [www.mediasekretariat.dk](http://www.mediasekretariat.dk) under 'Radio Auction'. On expiry of the registration deadline, any change in the date of the auction will also be directly notified to the registered parties' contact persons.

The entire tender process, including questions and answers, registration and other documents and communication, will be conducted in Danish. The tender documents will be translated into English for the benefit of interested foreign parties.

#### **4 Timetable and language**

The tender process for the two radio channels will proceed according to the following timetable.

##### **4.1 Timetable for the tender**

Deadline for asking questions on the tender	12:00, 19 May 2003
Deadline for changes to the tender conditions	16:00, 23 May 2003
Deadline for answering questions	16:00, 23 May 2003
Publication of supplementary information	Up to completion of tender
Deadline for submitting registration forms	12:00, 2 June 2003
Publication of registered parties	14:00, 4 June 2003
Deadline for submitting ownership declarations	12:00, 16 June 2003
Deadline for submitting banker's guarantees	12:00, 16 June 2003
Final approval of participants in auction	16:00, 17 June 2003
Holding of auction	17:00, 18 June 2003
Issuing of licences	End of June

Payment of fixed concession fee for the first year	12:00, 2 July 2003
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#### **4.2 Language**

Throughout the tender process, all communication and correspondence will be in Danish. This means, for example, that questions and answers, registration forms, ownership declarations, bank guarantees and other documents and communication must be in Danish. For the benefit of interested foreign parties, a non-binding English translation of the tender documents will be published as soon as it is available.

### **5 Registration**

#### **5.1 Acceptance of the auction conditions**

In registering, participants fully accept the auction conditions.

#### **5.2 Registration deadline**

The registration form plus annexes must be submitted in 15 copies to the Radio and Television Board, Media and Grants Secretariat, Nybrogade 10, 1203 Copenhagen K. Registration forms and annexes must be in Danish and must be received by the Media and Grants Secretariat by 12:00 on Monday 2 June 2003.

A receipt will be issued for registration forms that are handed in to the secretariat. In the case of registration forms received by post, a receipt will be sent to the contact person. Registration forms received after the stipulated deadline will be disregarded.

Any submitted material will not be returned.

#### **5.3 Processing of registration forms**

The Radio and Television Board will check the received registration forms as soon as possible to ensure that they meet the relevant requirements. The Board will then send a list of registered parties to all the parties concerned for their use in signing the ownership declaration. The deadline for registered parties to submit a signed ownership declaration will be 12:00 on Monday 16 June 2003.

The Radio and Television Board may request more detailed or additional information from the registered parties. Requests must be honoured within the deadline stipulated by the Board. The Radio and Television Board may exclude a registered party that fails to provide requested information.

#### **5.4 Public access**

Attention is hereby drawn to the fact that registration forms for licences for the fifth and sixth radio channels will be accessible to the public pursuant to *The Danish access to public administration files Act*. However, this will not apply if the registration forms or parts thereof are covered by one of the exemptions in the Act, e.g. information on operational and business matters or similar insofar as such information is of major financial importance for the company to which it relates. As a rule, all the information to be provided in the registration form is regarded as not being covered by the exemptions of Section 12 of the *The Danish access to public administration files Act*.

It must be indicated in the registration form if parts of the form may be regarded as being covered by the above exemptions. The relevant material must be clearly marked and kept separate from the rest of the form.

It is emphasised that in such case the Radio and Television Board will decide what information is covered by the exemptions of *The Danish access to public administration files Act*.

Immediately on expiry of the registration deadline, the Radio and Television Board will publish a list of applicants for the licences for the fifth and sixth radio channels.

#### **5.5 Content of the registration form**

The registration form as reproduced in annex 1 must be used for registration. The form can be downloaded in Word format from [www.mediasekretariat.dk](http://www.mediasekretariat.dk) under 'Radio Auction'. No changes may be made to the printed text. The registration form must include information on the following.

##### **5.5.1 Name, address and domicile of the registered party**

The name, address and domicile of the registered undertaking must be given.

##### **5.5.2 Contact person**

Details of the contact person for the registered party, including name, address, telephone/fax numbers and e-mail. The Radio and Television Board will send all correspondence for the registered party to this contact person.

##### **5.5.3 Legal form and ownership of the company**

The legal form of the company must be given.

Details on ownership must include the name and domicile of all owners of the undertaking and their relative ownership shares. In providing details of ownership, owners should be listed as far back in the ownership chain as is relevant in respect of controlling influence over the participant. Ownership shares in the various parts of the chain should be given in percentages.

Any shareholder agreements should be enclosed with the registration form.

The undertaking's Articles of Association and transcripts from the Danish Commerce and Companies Agency (or an equivalent foreign body) must be enclosed.

#### **5.5.4 Management**

The composition of the board of directors and of the accountable management (with names and addresses) must be given.

#### **5.5.5 Number of people attending the auction**

When registering for the auction, participants must state how many people will be attending on their behalf. Reservations may be made for a maximum of four people.

#### **5.5.6 Signature accepting the conditions of the tender**

The front page of the registration form must be signed by the authorised signatory of the registering party. In signing, the parties fully accept all the conditions of the tender documents.

## **6 Ownership**

Section 4(1) of the Danish Ministry of Culture's *Executive Order concerning the Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels* states that no participant in the auction may acquire the licences for both channels.

This prohibition on simultaneous ownership applies for the entire 8-year concession period, and disregard of this may entail withdrawal of the licence, cf. Section 7(3) of the Executive Order.

### **6.1 Prohibition on simultaneous ownership of the fifth and sixth radio channels**

The prohibition on simultaneous ownership means that a natural person or a legal entity that holds the licence for one channel may not acquire control of the licence for the second channel or acquire a controlling influence over that licence. If the second channel is owned by a limited liability company or similar, no-one may, either by means of agreement, share acquisitions, boardroom election or otherwise, have or acquire a controlling influence over the company holding the licence for the other channel. The corporate rules in Section 2 of the *Danish Companies Act* will be of guidance in this matter, but licensees may also, at any time, ask the Radio and Television Board for a ruling on any disputes over the ownership rules.

## **6.2 DR may not take part in the auction**

The licences may not be awarded to DR, cf. Section 1(3) of the Executive Order. Neither may DR be part of any consortium participating in the auction.

## **6.3 Signing of the ownership declaration**

On the basis of the above rules on ownership, participants in the auction must, before the auction, sign a declaration to the effect that they do not individually have control over other participants in the auction or controlling influence over them as described in para. 6.1 above. Shortly after expiry of the registration deadline, the participants will receive a list of the registered parties and, on the basis of this list, must sign the ownership declaration annexed to the tender documents (annex 2). The signed original declaration must be received by the Radio and Television Board by 12:00 on Monday 16 June. Any registered party failing to meet this deadline will not be eligible to take part in the auction.

## **7 Guarantee payable on demand**

It is a condition for taking part in the auction that, prior to the auction, participants put up an unconditional and irrevocable guarantee for DKK 5 million vis-à-vis the Danish State represented by the Radio and Television Board, Media and Grants Secretariat, Nybrogade 10, 1203 Copenhagen K, which sum must be payable on demand without scrutiny or other proof of legitimacy of the claim. The guarantee must be in Danish. A specimen guarantee payable on demand is enclosed as annex 3.

Requests for payment will be made by the Radio and Television Board represented by the Media and Grants Secretariat. Guarantees must be issued by a bank or insurance company resident in an EU member state or an EFTA country.

This sum serves as collateral for the registered party's (winner's) payment (in full or in part) of the fixed annual concession fee for the first year.

The guarantee payable on demand must be received by the Media and Grants Secretariat by 12:00 on Monday 16 June 2003, and the guarantee must be valid until 10 July 2003. The guarantee will be released earlier if the winner pays the fixed concession fee for the first period before this date.

The bank guarantees of participants that are not awarded a licence for the fifth or sixth radio channels will be released immediately after the auction.

## **8 Approval of participants**

The registered parties for the auction will be informed by 16:00 on Tuesday 17 June whether they have been granted final approval to participate in the auction. On the same day, the approval will be sent to the registered parties' contact persons. It will be valid as proof of access to take part in the auction, and must be presented on entry.

## **9 Issuing and entry into force of licences**

The licences will be issued as soon as possible after completion of the auction, with the date of entry into force requested by the holders and subject to a licensing period of eight years from that date. The earliest date of entry into force will be the issue date of the individual licence, and the latest date of entry into force will be 15 November 2003, when all frequencies will be available for both licensees.

Before the licences can be issued, the winners must inform the Radio and Television Board of their requested date of entry into force for the respective licence.

### **9.1 Information to be provided before the start of broadcasting**

#### **9.1.1 The channel's broadcasting name**

The name under which the registered party will be marketing the fifth and sixth radio channels respectively<sup>1</sup>. This information must be provided to the Radio and Television Board at the latest one month before broadcasting begins. The Board will then publish the channel's name.

#### **9.1.2 Start of broadcasting**

One month before the start of broadcasting at the latest, the registered party must inform the Board when broadcasting is expected to begin, including when it will be possible to receive programmes across the station's coverage area.

#### **9.1.3 Transmission time**

The registered party must inform the Board how many hours a day it plans to broadcast on the given channel.

### **9.2 Licensing conditions applicable only to the fifth radio channel**

#### **9.2.1 Programme content**

Broadcasting on the fifth radio channel must include public service news coverage.

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<sup>1</sup> The Radio and Television Board is aware that DR has registered the trade name P5 in the Danish trade mark register and has applied to register P6. The Board is not aware of any other registered names.

In addition to the requirements stipulated in Section 10 of the *Danish Radio and Television Broadcasting Act*, the public service news coverage must satisfy the following conditions:

1. At least 1,000 hours of news and current affairs, excluding advertising, must be broadcast each year. At least two-thirds of the news broadcasts, excluding current affairs, must be between 7:00 and 23:00. The broadcasts must include news from the whole of Denmark and abroad.
2. At least one hour of current affairs must be broadcast each day. The hour may be divided into programmes of minimum 15 minutes' duration, excluding advertising. The current affairs programs must be broadcast between 7:00 and 23:00.
3. The news broadcasts and current affairs programs should mainly be in Danish.

Scandinavian music must make up approx. 30% of the music output of the channel. Scandinavian music is defined in this context as "records produced in Scandinavia (understood as Denmark, Norway and Sweden)", i.e. records made and issued in Scandinavia. Records are music issued in mechanical form by a record company on e.g. cassette, vinyl or CD. This does not include concert recordings that are not issued as records.

The Scandinavian proportion of the music output is calculated as "Scandinavian records as a percentage of the total of records played on the channel measured in minutes".

The licensee may not regionalise the programming, i.e. a given programme or a given advertisement must be broadcast at the same time across the station's coverage area.

### **9.2.2 Start of broadcasting**

There are 24 frequencies in the fifth radio channel network. A frequency licence can be awarded for 12 of these frequencies on entry into force of the programme licence. The remaining 12 frequencies will be available by 15 November 2003, when the local radio stations that are using the frequencies at that time will switch to alternative frequencies.

The licensee must start broadcasting using all the allocated frequencies, cf. the frequency licence in annex 5, within six months of entry into force of the programme licence. If there are delays for external reasons, the Radio and Television Board may waive this date.

### **9.2.3 DAB frequencies**

The licensee will have at its disposal DAB capacity of 256 Kbit/s in the first nationwide DAB block.

Disposal of DAB capacity implies a duty to broadcast programmes in digital form. Digital broadcasting may comprise full or partial parallel transmission of the analogue programmes.

It is assumed that the licensee will enter into an agreement with DR on participation in setting up, financing and running DR's first nationwide DAB transmission network. If the licensee and DR cannot agree on these issues, the conditions will be laid down by the Radio and Television Board.

The Radio and Television Board will stipulate, with at least six months' notice, when digital broadcasting must begin.

#### **9.2.4 Calculation of the concession fee**

The licensee must pay a fixed annual concession fee. The size of this fee will correspond to the winning bid at the auction. In addition to the fixed annual concession fee, a variable turnover-related fee will be payable annually. The concession fee is VAT-exempt, and the fee calculation basis must be reckoned excluding VAT.

The variable fee constitutes 5% of the portion of the channel's fee calculation basis for the year in question that is above DKK 100 million and up to DKK 150 million, 10% from DKK 150 million up to DKK 200 million, and 15% from upwards of DKK 200 million.

The licensee is obliged to pay the concession fee for the whole of the licensing period.

The concession fee is not subject to VAT.

#### **9.2.5 Must-carry obligation**

The Ministry of Culture will soon be issuing an executive order stipulating a so-called 'must-carry obligation' so that owners of communal aerial installations in the municipalities stated in the executive order must ensure that programmes are distributed to communal aerial installations. The municipalities in question are listed in annex 6.

The licensee will not be able to collect separate payment for further distribution to communal aerial installations in the areas where the channel is intended for reception.

An annex to the licence will list the municipalities that, on the basis of theoretical calculation, are fully covered by the channel and thus subject to the must-carry obligation. The list will also give frequencies and transmitters.

The must-carry rules in legislation may be amended during the licensing period.

### **9.2.6 Supervision**

By 1 May each year, the licensee must provide an account of its compliance with the licensing conditions, including the public service requirements relating to news coverage. The licensee must also provide the Radio and Television Board with all the information that is necessary for the Board's supervision.

## **9.3 Licensing conditions applicable only to the sixth radio channel**

The following conditions will form part of the licence for the sixth radio channel.

### **9.3.1 Programme content**

There will be no specific requirements for programming.

### **9.3.2 Start of broadcasting**

There are two frequencies in the sixth radio channel network. The frequencies will be available by 15 November 2003, when the local radio stations that are using the frequencies at that time will switch to alternative frequencies.

The licensee must start broadcasting on all the allocated frequencies within six months of entry into force of the programme licence, cf. the frequency licence in annex 8. If there are delays for external reasons, the Radio and Television Board may waive this date.

### **9.3.3 DAB frequencies**

The licensee for the sixth FM radio channel will have at its disposal 256 Kbit/s in the first nationwide DAB blocks.

Disposal of DAB capacity implies a duty to broadcast programmes in digital form. Digital broadcasting may comprise full or partial parallel transmission of the analogue programmes.

It is assumed that the licensee will enter into an agreement with DR on participation in setting up, financing and running DR's first regional DAB transmission network. If the licensee and DR cannot agree on these issues, the conditions will be laid down by the Radio and Television Board.

The Radio and Television Board will stipulate, with at least six months' notice, when digital broadcasting must begin.

### **9.3.4 Calculation of the concession fee**

The licensee must pay a fixed annual concession fee. The size of this fee will correspond to the winning bid at the auction. In addition to the fixed annual concession fee, a variable turnover-related fee will be payable. The concession fee is VAT-exempt, and the fee calculation basis must be reckoned excluding VAT.

The variable fee constitutes 2.5% of the portion of the channel's fee calculation basis for the year in question that is above DKK 25 million and up to DKK 50 million, 5% from DKK 50 million up to DKK 100 million, and 10% from upwards of DKK 100 million.

The licensee is obliged to pay the concession fee for the whole of the licensing period.

The concession fee is not subject to VAT.

### **9.3.5 Supervision**

No special accounting for compliance with the licensing conditions is required. However, the licensee must provide the Radio and Television Board with all the information that is necessary for the Board's supervision.

## **9.4 Licensing conditions applicable to both the fifth and sixth radio channels**

### **9.4.1 Danish Radio and Television Broadcasting Act**

Broadcasting must be carried out in compliance with the *Danish Radio and Television Broadcasting Act* as valid at any given time, regardless of the licensee's domicile.

### **9.4.2 Transmission time**

Broadcasting must cover a minimum of 18 hours a day.

### **9.4.3 Licensing period**

The licences will be issued for a period of eight years. The licences will enter into force by 15 November 2003. Entry into force may be earlier at the request of the licensee.

No decision has been taken on how the frequencies will be used after expiry of the licensing period.

### **9.4.4 Frequency licence and use of frequencies**

The National IT and Telecom Agency issues a frequency licence for use of frequencies. The frequency licence is issued at the same time as the programme licence. The licensee is obliged to use all the allocated frequencies in accordance with the technical conditions stipulated in the frequency licences, cf. annexes 5 and 8. A frequency fee must be paid to the National IT and Telecom Agency for the frequency licence.

### **9.4.5 Emergency announcements**

Licensees are obliged to broadcast emergency announcements in accordance with the relevant rules of the *Danish Radio and Television Broadcasting Act* and rules laid down in pursuance thereof.

#### **9.4.6 Sale of licences**

Before any sale, a licensee must inform the Radio and Television Board of the sale of the licence, or of the company or similar that holds the licence, or of parts of the company. The Board will supervise that the conditions of the licence continue to be satisfied after the sale. The Board will give notification of this when the information has been evaluated.

#### **9.4.7 Calculation basis for the variable concession fee**

The basis for calculating the variable fee (fee calculation basis) for the fifth and sixth radio channels is the total direct and indirect income of the channel and the frequencies associated with the licence, not including the following:

- Grants for long-term unemployed.
- Grants for employees under the job creation scheme.
- Shareholder grants for loss coverage.
- Financial income.
- The value of legal self-promotion is not included in the fee calculation basis.

Independent accounts must be drawn up for the channel, and the fee calculation basis must be reckoned in these accounts so as to account separately for the total income, including advertising and sponsorship revenue and other direct and indirect subsidies for the individual channel, regardless of whether they are received by the licensee or by third parties, including advertising sales and production companies, and regardless of whether the transmission time is sold to another party. Indirect subsidies mean reimbursement of the channel's costs, or other parties meeting the costs of the channel. All sums must be calculated excluding VAT.

Additionally, the accounts and reckoning of the fee calculation basis must meet the following requirements:

- A procedure must be drawn up with built-in internal checks to ensure that all income is invoiced and included in the reckoning of the fee calculation basis. The procedure must i.a. ensure that the allocation of income for advertising campaigns is at market price and that the income is allocated correctly.

- A state-authorised or a registered public accountant must sign an auditor's report vouching that the cited principles for reckoning the fee calculation basis have been observed. The auditor must also declare that the above procedure and its built-in internal checks have functioned satisfactorily.

As supervisory authority, the Radio and Television Board is entitled to carry out checks on the reckoning of the fee calculation basis through its own auditor.

An annex to the licence gives examples of direct and indirect income and clarification for reckoning the fee calculation basis (annex 14 of the tender documents).

#### **9.4.8 Submission of annual accounts and reckoning of the fee calculation basis**

By 1 May each year, the licensee must submit its annual accounts and reckoning of the fee calculation basis to the Radio and Television Board, Media and Grants Secretariat, Nybrogade 10, 1203 Copenhagen K.

## **10 Regulatory issues**

### **10.1 Supervision and penalties**

#### **10.1.1 Danish Radio and Television Broadcasting Act**

The Radio and Television Board carries out supervision of licensees' compliance with the licensing conditions and with the *Danish Radio and Television Broadcasting Act* and rules laid down in pursuance thereof. The Board may withdraw a licence temporarily or permanently if the licensee violates the Act or rules laid down in pursuance thereof where such a violation is gross or where violations are often repeated. The Board may also withdraw a licence if the licensee disregards the licensing conditions or has provided incorrect information at the time that the licence was issued.

#### **10.1.2 Radio Frequencies Act**

The National IT and Telecom Agency supervises compliance with the conditions of frequency licences and the *Radio Frequencies Act* and rules laid down in pursuance thereof. If the National IT and Telecom Agency detects violations of the provisions of the *Radio Frequencies Act* or of the conditions of frequency licences, or if the use of frequencies leads to interference, the Agency may order remedial measures to be carried out at the licensee's expense, frequency usage to be brought into compliance with the rules, or apparatus to be shut down. The National IT and Telecom Agency has access to monitor the frequency band and to enter public and private properties without prior court ruling to the extent necessary to prevent interference and to examine and switch off apparatus. The National IT and Telecom Agency may withdraw a licence if the licensee grossly

and repeatedly violates the Act or the rules and conditions for licensing laid down in pursuance thereof.

The National IT and Telecom Agency may use frequency administration methods by negotiation with the Minister for Culture. Frequency administration methods entail requirements to switch to more frequency-efficient usage methods or technologies, restrictions in the use of frequencies, reallocation of already issued frequency licences, and withdrawal of already issued frequency licences.

### **10.2 Payment of concession fees**

A concession fee must be paid for the licences. The fixed annual concession fee is payable in advance for one year at a time. For the first year, applicable from the date of entry into force, the fixed concession fee must be paid by 12:00 on 2 July 2003. Thereafter, the fee must be paid in advance each year by the date of entry into force of the licence.

In addition to the fixed concession fee, licensees must pay a variable turnover-related concession fee.

The variable concession fee is payable in arrears each year within 1 month of the Board receiving the annual accounts and the reckoning of the fee calculation basis for the channel, but at the latest by 1 June and for the first time 1 June 2004.

Licensees must submit their annual accounts and reckoning of the fee calculation basis to the Radio and Television Board, Media and Grants Secretariat, Nybrogade 10, 1203 Copenhagen K by 1 May.

The concession fee is not subject to VAT.

### **10.3 Applicable legislation**

The main legislation applicable in this area is as follows:

- *Act no. 1052 of 17 December 2002, the Danish Radio and Television Broadcasting Act.*
- *Executive Order no. 168 of 17 March 2003 concerning the Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels.*
- *Executive Order concerning radio and television advertising and programme sponsorship (entered into force 1 April 2003).*
- *Act no. 421 of 6 June 2002 on radio frequencies.*

Copies of the above acts and executive orders are annexed to the tender documents.

#### **10.4 Ongoing clarification work, etc.**

There are currently two major clarification works in progress in the radio area:

- KPMG has drawn up a report for the Ministry of Culture on the Dutch replanning of the FM band according to the so-called zero-base model. On 24 March there was a half-day conference for the sector to present and discuss the report. No decision was taken on whether there should be replanning according to the zero-base model or other models in Denmark. Any decision on this matter before the auction will be published as supplementary information, cf. para. 12.2.
- A working group is addressing the future of local radio and television. The group will survey the current state of local radio and television and, based on this survey and the new rules for local radio and television services, put forward proposals on how a future local radio and television scheme can best safeguard both commercial local radio and television stations and non-commercial grass-roots stations in the coming years. The working group will complete its work by 1 November 2003.

#### **10.5 Future tendering of radio channels**

It is anticipated that transmission opportunities on the medium-wave radio broadcasting band will be auctioned in 2003.

At present there are no planned tenders of additional radio channels.

#### **10.6 Fees, etc.**

##### **10.6.1 Radio and Television Board's fee**

In addition to the concession fees, licensees must pay an annual fee to the Radio and Television Board for the licence for radio broadcasting on the fifth and sixth radio channels respectively. The annual fee for each of the licences is fixed by the Radio and Television Board so as to cover the respective channel's share of the costs of the general work of the Radio and Television Board.

The fee is payable annually on-account at the start of the year. The final sum is fixed at the end of the financial year.

The on-account fees for the licences for the fifth and sixth radio channels will be DKK 400,000 and DKK 300,000 respectively. In the first year, the on-account fee should be paid proportionately to the remainder of the year. An additional one-off sum of DKK 130,000 is payable for the fifth radio channel and DKK 100,000 for the sixth radio channel to cover costs relating to the tender.

##### **10.6.2 Frequency fee**

A frequency fee must be paid to the National IT and Telecom Agency. The frequency fees for the fifth and sixth radio channels are expected to be approx. DKK 20,000 and DKK 2,000 per annum respectively. The frequency fee is

payable from the date of issue of the frequency licence, and for the first year is to be paid proportionately to the remainder of the year. Thereafter, the frequency fee is to be paid in advance each year in January for the coming calendar year.

#### **10.6.3 Payments to rights holders**

Participants in the auction should be aware that rights holders must be paid for the use of music. Payments are agreed by negotiation with the relevant organisations, including KODA and Gramex. If no agreement is reached on payments to KODA and Gramex, the matter may be referred to the Copyright Licence Board.

## **11 The auction**

The licences will be tendered by means of an open, simultaneous auction, i.e. a traditional open-cry auction in an auction room. Both licences will be auctioned at the same time. All registered parties and approved participants in the auction must be present in the auction room.

The auction will be held at **17:00 on Wednesday 18 June 2003** at the premises of Bruun Rasmussen at **Bredgade 33, 1260 Copenhagen K**. As proof of access to take part in the auction, participants must present the Radio and Television Board's letter of acceptance of registration.

Participation in the auction may not be by proxy.

### **11.1 Auction procedure**

During the auction both licences will be auctioned in parallel. In practice, this will mean that the hammer will only fall when the final price has been reached for both channels.

Before the auction, each participant will be given a bidding placard with a buyer's number.

The front of the placard will have red marking and should be used when bidding for the fifth radio channel, while the back will have blue marking and should be used when bidding for the sixth radio channel. The marking for the channel that is being bid for must be turned towards the auctioneer. There will be a clear indication in the auction room of which channel is being bid for.

The fifth channel (red marking) will be offered first. When in the first instance the auctioneer receives no further bids for the fifth channel, the buyer that has made the last bid should continue to hold up their placard. The auctioneer will then announce that there are at present no further bids for the fifth channel, but that he/she will return to the channel later.

The auctioneer will then start the bidding for the sixth channel. The bidder with the highest bid for the fifth channel cannot then bid for the sixth channel. In bidding for the sixth channel, the reverse (blue) side of the bidding placard is used.

When the auctioneer confirms that there are no further bids for the sixth channel, the fifth channel will be offered again if someone wishes to bid higher than the final bid that is binding. The auction will continue in this way until the auctioneer confirms that there are no further bids for either of the channels.

The highest bidder for either channel at any given time is liable for its bid until a higher bid is made or the hammer falls.

A participant listed for the current highest bid for one channel cannot bid for the other channel until a higher bid is made for the channel for which that participant holds the binding bid.

When there are no further bids for either channel, the hammer will fall on both transmission licences at the same time, completing the auction simultaneously for both channels.

Bids may be made until the final hammer falls.

### **11.2 Bids for the fixed annual concession fee**

Participants in the auction will bid for the fixed annual concession fees. The winning bids will thus determine the fixed annual concession fees payable by the licensees. For the fifth radio channel, the minimum bid, and hence the minimum fixed annual concession fee, will be DKK 5 million. For the sixth radio channel, the minimum bid, and hence the minimum fixed annual concession fee, will be DKK 2 million.

### **11.3 Forming consortia during the auction**

Participants may not form consortia during the auction.

### **11.4 Public access to the auction**

The auction will be open to the public to the extent that space permits. It will only be possible to reserve seats for participants in the auction.

### **11.5 Fees and VAT**

The bidding sum will not be subject to fees or VAT.

### **11.6 Higher bids and disputes over bidding**

The size of higher bids will be determined by the auctioneer. If there are disputes during the auction as to who is the highest bidder, the auction manager will decide whether a new cry-out should be conducted.

### **11.7 Conditions**

The sale will be conducted on the basis of the Radio and Television Board's conditions for auctioning the fifth and sixth terrestrial FM radio channels. Payment must be made directly to the Radio and Television Board.

### **11.8 Liability**

The sale will be conducted without liability on the part of the auction manager and auctioneer, Jesper Bruun Rasmussen.

## **12 Questions on the tender and supplementary information**

### **12.1 Questions on the tender documents**

From the issuing of the tender documents up to 12:00 on Monday 19 May 2003, potential participants may ask detailed questions on the tender. Questions must be sent to the Radio and Television Board, either by email to [rtv@mediesekretariat.dk](mailto:rtv@mediesekretariat.dk) or by post to Nybrogade 10, 1203 Copenhagen K. It should be clearly stated that the communication relates to the tender of the licences for the fifth and sixth radio channels. Questions and answers will *only* be published on the Media and Grants Secretariat's website [www.mediesekretariat.dk](http://www.mediesekretariat.dk) under 'Radio Auction'. Wherever possible, questions will be answered within one week so that the final answers will be published by 16:00 on Friday 23 May 2003.

### **12.2 Supplementary information**

All communications from the Radio and Television Board relating to the tender, including any supplementary information, will generally only be published at [www.mediesekretariat.dk](http://www.mediesekretariat.dk) under 'Radio Auction'. The website will thus be the means for all interested parties to follow the tender process.

Any changes in the tender conditions will be published at [www.mediesekretariat.dk](http://www.mediesekretariat.dk) under 'Radio Auction' by 16:00 on Friday 23 May 2003.

## **13 Miscellaneous**

The Radio and Television Board may, at any time, postpone the auction. Information on this will be published as soon as possible at [www.mediesekretariat.dk](http://www.mediesekretariat.dk) together with details of the new auction time. The

information will also be sent to the registered parties' contact persons if the postponement should occur after expiry of the registration period.

## **14 Annexes**

Annex 1: Registration form.

Annex 2: Ownership declaration.

Annex 3: Specimen guarantee payable on demand.

Annex 4: Model programme licence for the fifth radio channel.

Annex 5: Model frequency licence for the fifth radio channel.

Annex 6: Municipalities that are fully covered by the fifth radio channel.

Annex 7: Model programme licence for the sixth radio channel.

Annex 8: Model frequency licence for the sixth radio channel.

Annex 9: Municipalities that are fully covered by the sixth radio channel.

Annex 10: *Danish Radio and Television Broadcasting Act.*

Annex 11: *Executive Order on the Radio and Television Board's auctioning of the fifth and sixth terrestrial FM radio channels.*

Annex 12: *Executive Order concerning radio and television advertising and programme sponsorship.*

Annex 13: *Act on radio frequencies.*

Annex 14: Annex on the definition of the fee calculation basis.