



## **Clarifications to the enquiries received from the interested stakeholders on the 800 MHz Call for Applications (MCA/O/16-2711)**

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## **Clarification to the enquiries made by the interested parties on the Call for Applications leading to the grant of the rights of use of radio frequencies in the 800MHz band in Malta (MCA/O/16-2711)**

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Reference is being made to the requests for clarifications as submitted to the Malta Communication Authority's ('MCA') by the interested parties concerning the 800 MHz Call for Applications MCA/O/16-2711.

The MCA, through this document is providing replies to the queries put forward by the interested parties with the aim to clarify and assist them in compiling their application for the assignment of rights of use for the 800 MHz spectrum.

The structure of the document is reproducing the submitted questions in relation to the Call for Application marked in black, followed by the MCA's reply for each individual question in blue italics text.

The MCA reserves the right to hold a meeting with all the interested parties if it considers that potential applicants have raised various valid queries and/or requests for clarifications on the Call for Applications, which the MCA considers justify such a meeting/meetings. The MCA would like to note that, following the submissions received for further clarification on the Call for Applications from the potential candidates, the MCA does not envisage scheduling any meetings at this stage.

## **Replies to the queries submitted by Operator 1**

### **Specific Questions in relation to the Call for Application Document**

#### **1. Introduction**

##### Q 1.1

Operator 1 's understanding of this Call for Application process is that at this stage no other interested parties other than those that have already expressed their interest in acquiring spectrum in the 800 MHz band can partake in this assignment process and be assigned spectrum in the 800MHz band. Is this understanding correct?

*As described in the Call for Expression of Interest (MCA/O/16-2662) as well as the Call for Applications (MCA/O/16-2711), only applicants who have submitted a Valid Expression of Interest can participate in the Call for Applications.*

#### **2. Implementation Timeframes**

##### Q 2.1

The envisaged implementation timeframes for the Assignment Process are laid out as being: 12th December (extended deadline) for the submission of queries related to the Call for Application Document; the 23rd January 2017 (16:00hrs) as for the submission of actual Application deadline; following this there is envisaged a '+3 month' period for Grant of Use should an auction not be required; and if required, there is the possibility of a further '+3 month' for such Auction Process and eventual Grant of Rights of Use.

The MCA however notes that these timeframes are indicative and not binding and the MCA shall not be held liable if these timeframes change. On the other hand interested parties that submit a duly filled in application in accordance with the Call for Application Document cannot withdraw their interest even if such timeframes do change.

What would occur if following the submission of the duly filled in applications, the timeframes do change, resulting in the assignment process being put on hold or delayed for an unknown period of time?

Operator 1 would like the MCA to put in place a clearly predefined time limit, within which the assignment and grant of use is concluded failing which operators are permitted to withdraw without forfeiture of the bank guarantee and any other fee or deposit shall be refunded.

*The MCA does not consider extending the assignment process as a normal circumstance. However, the MCA cannot a priori exclude that there will not be any circumstances that may necessitate extending the assignment process. If the assignment process is extended beyond the established timeframes, the MCA will inform the participating parties about such delays providing revised indicative timeframes for the assignment process. The MCA has the right to cancel the assignment process if it foresees any delays which are beyond its control. If the MCA cancels the assignment process, the bid bond and the deposit will be returned.*

## Q 2.2

Further to the above, on page 14 of the MCA's Decision (MCA/D/14-1933), the MCA state that

### ***“In case co-ordination not yet successfully concluded***

*If by the time the qualification process is completed successful co-ordination has not yet been achieved, the Authority will retain the right, at its discretion, to halt the assignment process for all the spectrum in question for a [maximum period of six months]. Should a successful co-ordination be achieved during this period, then the Authority will proceed as outlined above. Should no successful co-ordination be achieved by this time the Authority will retain the right to abort the assignment process. In case the process is aborted, all the material related to the individual submissions will be returned to the respective applicants.”*

(Emphasis added by Operator 1)

The above maximum 6 month period seems to be in contradiction to the wording contained in Section 2 of the Call for Application Document, which seems to leave the possibility for such delays open ended.

Can the MCA commit to a date when the 800MHz band will be made available for terrestrial mobile systems capable of providing electronic communication services?

What would happen if for some reason or another, following the Application deadline, when all applicants would have submitted their application together with their bank guarantee, deposit and application fee, the 800MHz band is not made available for terrestrial mobile systems capable of providing electronic communication services?

*The assignment of such spectrum is to be held within a 3 month period following the submission deadline. However, in the case where the assignment is held by auction, a provision of an additional 3 months applies. The MCA, whilst doing its utmost to conclude such an assignment process within the shortest time possible, does not exclude that there may be delays due to unforeseen circumstances. Where the MCA deems it appropriate to cancel the assignment process, the bid bond and the deposit will be returned.*

### 3. Spectrum Band being Assigned

#### Q 3.1

Operator 1 would like further clarity as to why the in-block EIRP for Channel 1 has been set at 56dBm/5MHz, being the most stringent limitation foreseen by the Commission Decision (2010/267/EU) outlining the general technical operating parameters within the 800MHz band, when:

- The same Commission Decision states that the setting of limits is firstly not obligatory; and
- when the Commission Decision (2010/267/EU) gives the Member States the possibility of setting any limits between a range from 56dBm/5MHz and 64dBm/5MHz.?

Therefore on what basis was 56dBm chosen rather than 58 dBm/5MHz or any other limit?. Where any tests carried out determining that at this limit interference would not be experienced locally or would be minimal? If not, why doesn't the Authority take the opportunity prior to assignment to carry out such tests so as to determine whether this limitation can be relaxed or removed altogether? Operator 1 as stated earlier would be more than willing to assist the MCA in the carrying out of such tests, which may give peace of mind to applicants that are somewhat concerned at being faced with the prospect of landing this 'dirty' spectrum.

From other market experience the issues/interference arising from adjacent channel leakage from CH:1 into DTV CH: 60 is very low and certainly not resolved/mitigated by a power back-off of 4dB. The most practical solution that we have seen in other markets is to apply a change in the antenna azimuth (direction) / tilt and potentially a power reduction. This is applied selectively and on a case by case basis and hence what we are objecting is this blanket power reduction which in reality would still be futile. Has the MCA considered this option and if not is the MCA willing to look into this as the possible interference mitigation solution?

*The 56dBm/5MHz power limit is being established as per MCA Decision MCA/D/14-1933 that is currently in force together with the possibility of relaxing the power limit in co-ordination with the DTTV provider. This power limit was established in accordance with Decision 2010/267/EU and CEPT Report 30 and is intended to protect DTT operating below 790 MHz. As indicated in the sample licence annexed to the Call for Applications, the power limits can be relaxed and or made more stringent depending on the interference scenario, if any.*

#### Q 3.2

Given the fact that by default the spectrum cap established for the 800Mhz band is set at 2 Lots per operator, and this cap can only be relaxed to 3 Lots if there is unassigned spectrum and no excess demand, when an applicant is registering their 'Maximum Interest' as part of

this submission, should this include at this stage the possibility of being interested on acquiring 3 Lots?

*The Cap for the 800 MHz band is currently set at 2 Lots per applicant following the demand expressed for such spectrum during the Call for Expression of Interest. Applicants that are interested in acquiring 3 Lots where the spectrum caps are relaxed must indicate accordingly in their response to the Call for Applications. Note that any fees related to the maximum interest shall make reference to the current spectrum caps of 2 Lots.*

#### **4. Participation Rules for the Qualification Phase**

##### Ownership Rules

###### Q 4.1

The last paragraph of Section 4.1 of the Call for Application Document provides that if *“none of the applicants affected refrains from participation in the Qualification Process by the indicated deadline, the Authority will disqualify all the parties affected.... In this case, the disqualified applicants will forfeit the bank guarantee’.*

Operator 1 would like to query what would happen to the deposit paid, would this be forfeited as well?

*In such an instance, the deposit will not be forfeited.*

##### Behaviour Rules

###### Q 4.2

During the Submission Period and during any other period prior to the Grant of Rights of Use, can the applicants hold discussions with each other , even with the MCA being present, to try and possibly arrive at an agreement for the assignment of Channels 1 and 2 within the 800MHz band other than having them assigned by lottery? This question is being asked in view that the brokered meetings will be held at the MCA’s discretion.

*During the period referred to in the query above, the Authority shall only meet with the operators to discuss the subject matter during the brokered meetings. Brokered meetings under the aegis of the MCA will be held only at the Authority’s discretion.*

#### Q 4.3

Paragraph 4 of Section 4.2 of the Call for Application Document provides that applicants ‘*may not enter into any agreement or establish any understanding with a provider of equipment or software, which.....regulates the provider’s ability to supply equipment or software to another applicant*’ or ‘*...regulates the prices or other terms and conditions that the provider can offer another applicant*’.

If an applicant, already has in place an exclusivity agreement with a supplier for the provision of such equipment would this be in breach of this rule?

*The MCA will not consider any exclusivity agreements as a breach to the conditions as specified in the Call for Applications provided that:*

*(1) such an exclusive agreement was entered into prior to the date when the expression of interest was published, and*

*(2) the supplier with whom the exclusive agreement has been signed is not a sole provider and that other alternate providers of the infrastructure required are available on the market.*

*Furthermore, the operator concerned needs to demonstrate to the MCA that the agreement signed meets with the conditions specified above. The MCA may request the applicant to revise the conditions of the exclusive agreement.*

#### Breach of Rules

#### Q 4.4

The Call for Application Document provides that a breach by an applicant of the rules may result in, amongst other things, the possibility of forfeiting of its bank guarantee. Would an applicant also forfeit the deposit paid?

*In such an instance, the deposit will not be forfeited.*

### **5. Call for Applications – Submissions Procedure**

#### Submission of Questions

#### Q 5.1

What are the grounds that the MCA will use to determine that a meeting should be called between interested parties? Can Operator 1 take this opportunity to ask the MCA to hold such a meeting?

*The MCA reserves the right to hold a meeting/meetings with all the interested parties if it considers that potential applicants have raised various valid queries and/or requests for clarifications on the Call for Applications, and for which the MCA considers justify such a meeting/meetings. The MCA does not envisage scheduling any meetings at this stage.*

#### Submission of Requested Information

##### Q5.2

The MCA may at its own discretion, and as necessary, extend the deadline for submissions of the application forms, what would trigger this, would the interested applicants be required to submit an initial request for an extension?

*The MCA will only consider extending the submission deadline if a written request accompanied with valid reason acceptable to the MCA, is submitted.*

#### Changes to the Application

##### Q 5.3

Should a Participating Party withdraw his application prior to the Application Deadline, would they be refunded the application fee, deposit and be realised from the bank guarantee and all other material be returned to them, or will they lose or forfeit anything?

*In case an applicant withdraws his application prior to the Application Deadline, the MCA will only release the deposit and the bank guarantee. The application fee however will not be refunded.*

##### Q 5.4

If an applicant withdraws the application after the Application Deadline they will forfeit the bank guarantee, however what will happen to the deposit?



*The deposit will be refunded.*

## Changes to the Status of the Candidate

### Q 5.5

What will occur to the applicants' applications if during the assignment process there is a merger between such applicants, whether there is prior notification to the MCA or not?

*Reference is being made to section 4.1 of the Call for Applications, in particular to the last three paragraphs of the aforesaid section. In the case were two or more applicants merge, one or more of these applicants will have to withdraw its/their application so that only one application for the new merger will be submitted to the MCA. In case the applicants fail to withdraw their application, the MCA will disqualify all the applicants involved in the merger. The operator withdrawing the submission will be handed back the bank guarantee together with the deposit paid.*

## Application Fee

### Q 5.6

Is there a basis that was used to determine the fifteen thousand Euros as being the quantum of the non-refundable application fee?

*The application fee has been established in order to recover the expenses incurred during the selection process and other related matters to that process.*

### Q 5.7

If an application is not accompanied by the Application Fee, the Call for Application Document provides that such application will be disqualified but that the bank guarantee will not be forfeited. What about the deposit, will this be refunded?

*The deposit will be refunded.*

## Bank Guarantee

### Q 5.8

If an applicant already has other bank guarantee's in place in relation to other spectrum holdings that it has, can these be used and extended to cover the 800MHz commitment to the Assignment Process and eventual performance obligations? Or would they be required to increase the amount of the bank guarantee to cover this additional €150K per Lot too?

*The bank guarantee is specific to the lots being requested.*

### Q 5.9

The MCA established that the bank guarantee needs to be of €150,000 for each Lot and computed on the Maximum Interest. Therefore if an interested party expresses their Maximum Interest in 2 Lots (so 2 Channels), Operator 1's understanding is that the bank guarantee would need to be of €300,000, is this correct?

*The MCA reiterates that the bank guarantee needs to be computed on the expressed maximum interest utilising the current spectrum caps of 2 lots. In the case were an operator expresses interest in acquiring the rights of use for two lots, the bank guarantee would amount to three hundred thousand Euros. In case the spectrum caps are relaxed, the MCA will request the applicants to revise their bank guarantee accordingly.*

### Q 5.10

Given the conditions established by the MCA in relation to the bank, institution or company that will be providing such a bank guarantee and in accordance with the Call for Application Document, Operator 1 would like the MCA to confirm in writing that a bank guarantee issued from <redacted> is considered by the MCA as being adequate for the purposes of this Call for Application.

*A bank guarantee issued by <redacted> is acceptable.*

## Deposit

### Q 5.11

In relation to the deposit that applicants are required to submit with the application, Operator 1 would like the MCA to kindly confirm its understanding that an appropriate deposit in case

that 2 Lots are identified when expressing 'Maximum Interest' would be of €448K (€224K per lot identified).

*The MCA reiterates that the initial deposit needs to be computed on the expressed maximum interest utilising the current spectrum caps of 2 lots. Were an operator expresses interest in acquiring the rights of use for two lots, the deposit that needs to be paid upfront would amount to four hundred and forty eight thousand Euros. In case the spectrum caps are relaxed, the MCA will request the applicants to revise their bank guarantee accordingly.*

#### Q 5.12

What happens to the deposit following the Grant of Rights of Use? When the successful applicants are assigned the license to use the spectrum, will this deposit be refunded to the applicant or will this deposit be kept as payment for the first year of spectrum fees for the spectrum assigned?

*Following the successful assignment for the grant of rights of use, the deposit shall be kept by the MCA as a payment for the first year of spectrum fees for the spectrum assigned.*

### Confidentiality, Data Protection and Freedom of Information

#### Q 5.13

When the MCA makes reference to the soft copy of the submission (Section 5.2 of the Call for Application Document) that needs to be submitted void of all information marked as sensitive in other copies, it provides that such omissions of sensitive information must be clearly evidenced, what does the MCA understand by clearly evidenced?

*Omitted data needs to be clearly identified as such either by obscuring the text or by replacing the information using the word "Confidential"*

#### Q 5.14

The MCA states that it reserves the right to determine which information forming part of a submission is to be disclosed if necessary. Can the MCA kindly elaborate on what grounds it can make this determination with respect to information deemed sensitive by the disclosing party?

*The MCA will only disclose the information that it deems necessary for the completion of the relevant stages for the assignment of the grants of right of use.*

## 6. Qualification Stage

### Managerial Competence

#### Q. 6.1

When the MCA makes reference to the requirement to submit detailed information on the top management tier of the applicant, would information it suffice to provide such information in relation to the most senior management committee level?

*The MCA requires detailed information about the management team responsible for the effective running and taking of decisions by the company.*

#### Q 6.2

To what extent is the requirement to produce a written legally binding commitment/guarantee committing other entities supplementing the applicant's competence to place necessary resources at the disposal of the applicant to fulfil its obligations of the rights of use required? Would this extend even to subcontractors supplying or maintaining applicants equipment?

*Such a requirement applies to all instances.*

### Business Plan

#### Q 6.3

Operator 1 would like further clarity as to the level of detail that is expected from the applicant in the submission of the detailed business plan. Also Operator 1 would like the MCA to clarify what is expected by way of 'plans' (see sub-section 6.1.3 Business Plan of the call for Application Document, fourth bullet point) to comply with the obligations arising from the rights of use and the relevant legislation.

*The business plan, in line with the details requested in section 6.1.3 of the Call for Applications, needs to provide adequate information for the MCA to be in a position to determine the operator's viability of the project as well as its project financing needs. Project financing needs*

*should be in line with the description of the financial resources secured as per section 6.1.4. The applicant should use its best judgement to determine the level of detail necessary and incorporated in the submitted business plan to provide an adequate description.*

## Project Financing

### Q 6.4

Would this requirement (to the detail contained in the Call for Application Document) subsist even with regard to applicants that already have spectrum holdings licenses in Malta and who are (and have been for a number of years) authorised with the MCA to provide and maintain electronic communication networks and services?

*The applicant has to provide details of the financial resources necessary to fulfil the obligations arising from this grant for the rights of use, this irrespective of whether the applicant in question has spectrum licences.*

## Results of Qualification Stage

### Q 6.5

What will happen to the deposit and the bank guarantee in the case that no submissions satisfy the qualification requirements set forth in the Call for Application Document resulting in the MCA cancelling the Assignment Process?

*In case where the MCA cancels the assignment process, the MCA will release the bank guarantee and the deposit paid. The application fee however will not be refunded.*

## **7. Brokered Meetings**

### Q 7.1

Can the MCA indicate on what grounds, other than the criteria already established in Call for Application Document where demand exceeds supply in any of the Lots categories, will its determination be made to carry out a set of brokered meetings with the qualified applicants?

*The MCA reserves the right to hold such brokered meetings if it considers that the operators are amenable to reach an agreement prior to proceeding with an auction process.*

Q 7.2

Why is the MCA reserving its discretionary right to decide whether or not to call such brokered meetings in case that demand does exceed the availability of spectrum in any of the Lot categories, when such brokered meetings may result in an agreement acceptable to all qualified applicants?

*Reference is made to the assignment process Section 3 of the MCA Decision MCA/D/14-1933.*

Q 7.3

Since the possible brokered meetings are envisaged to be held separately, will a proposal put forward by a Qualified Applicant be relayed to the other Qualified Applicants by the MCA? Is there the possibility of having a brokered meeting that will not discuss the commercial interests of the qualified applicants held with all parties present?

*The aim of the brokered meetings is to reach an assignment solution that is acceptable to the parties involved. Only the outcomes agreed upon during the brokered meetings will be disclosed amongst the participating applicants.*

## **8. Auction Stage**

Q 8.1

If a qualifying applicant does not withdraw their application prior to the brokered meetings or the commencement of the auction process after the Auction Rules are provided, but withdraws it after, such qualifying applicant shall forfeit their bank guarantee. What about the deposit paid, will this be refunded?

*In such an instance, the deposit will be refunded.*

Q 8.2

Can you please explain what is meant by 'Any available spectrum in the 800MHz band will be auctioned simultaneously? The Auction Stage will establish the number of Lots each one of the Qualified Applicants is to be awarded in the 800MHz band'?

Operator 1 is of the understanding that if demand exceeds supply (given the Lot cap of 2 lots per operator) in any particular Lot Category (High and/or Low Power), and no agreement be reached through the brokered meetings, then assignment will be done by auction. By this Operator 1 also understands that the Auction Stage will determine which operator ends up with which lots (channels). So by way of example, if demand for the high power lots (CH2 to 6) exceeded supply and no agreement is reached through the brokered meeting, then an auction would be held in accordance with the Auction Rules. Such an auction would allow qualified applicants to bid for the particular channels that they want (e.g. Channels 3 and 4) with the highest bidder being assigned these channels. Could the MCA kindly confirm this?

*As described in the assignment process in the MCA Decision MCA/D/ 14-1933 governing the assignment of the 800 MHz band, the auction stage will assign a Quantity of Lots within the respective lot category rather than specific channels. The MCA has the sole discretion to award the particular channels within the respective lot categories during the grant stage.*

## **9. Grant Stage**

### **Q 9.1**

Operator 1 understands that the Grant Stage will occur in all cases, therefore whether the Assignment Process results in an Auction or not. However the wording in the Call for Application Document does not seem to indicate how the Grant Stage would play out in case where an auction is required and undertaken. Can the MCA kindly clarify this?

*As described in the assignment process in the MCA Decision MCA/D/ 14-1933 governing the assignment of the 800 MHz band, the auction stage will assign a Quantity of Lots within the respective lot category rather than specific channels. In all instances, it is at the MCA's discretion to award the particular channels within the respective lot categories during the grant stage.*

### **Assignment of Specific Lots**

### **Q 9.2**

Again, in this section the MCA retains the right and unlimited discretion to award particular channels in the way it deems best in the interest on how spectrum is used effectively. Operator 1 understands that this discretion will not subsist if the assignment is done through an auction as this would defeat the purpose of the auction. Is this the correct understanding?

*As described in the assignment process in the MCA Decision MCA/D/ 14-1933 governing the assignment of the 800 MHz band, the auction stage will assign a Quantity of Lots within the respective lot category rather than specific channels. In all instances, it is at the MCA's discretion to award the particular channels during the grant stage. Furthermore Subsection 9.1 of the Call for Application relates to the grant stage which follows upon the conclusion of either the brokered meetings or the auction process.*

#### Q 9.3

Could the MCA expand on what is actually meant by it *retaining the discretionary power to award particular channels in the way it deems best in the interest on how spectrum is used effectively?*

*The MCA, being the body designated by Government in order to effectively manage the national spectrum, has the sole discretion to award the particular channels during the grant stage as it deems most appropriate whilst ensuring the most effective use of such spectrum.*

#### Q 9.4

Could the MCA kindly explain the meaning of the second paragraph under Section 9.1 of the Call for Application Document as the wording seems to be a bit contradictory?

*In assigning the right of use for the specific channels, the MCA will take utmost consideration of an applicant's preferences and justification.*

#### Q 9.5

Again, Operator 1 is reading this sub-section as guidance as to what would happen in the case that an auction is not required. Therefore could the MCA kindly confirm or otherwise whether the fourth paragraph under Sub-Section 9.1 of the Call for Application Document would only apply in case that an auction is not required. The 'lottery' referred to in this case would occur only if the demand does not exceed supply in any of the Lot Categories but the qualified applicants (following the brokered meetings) do not reach an agreement on who will take particular channels within a specific lot. Is this understanding correct?

*Should there be no way to reconcile the applicants' preferences, then the Authority reserves the right, at its discretion to carry out a lottery in order to determine the channel assignments. The*



*lottery mechanism shall identify a channel or contiguous channels which are drawn in rounds amongst the interested parties. After each draw, the following channel or contiguous channels are drawn amongst the remaining candidates until the last channel or contiguous channels are assigned automatically to the remaining eligible candidates.*

#### Q 9.6

Can an applicant appeal any assignment decision taken by the MCA on grounds afforded to it at law? And if so will it still forfeit the bank guarantee and deposit?

*Any assignment made by the Authority will be binding on the applicant. This is without prejudice to any right to appeal as established by law. If the assignment is contested in accordance with the applicable provisions at law then the forfeiture of the bank guarantee and/or deposit will be dependent on the final outcome of the litigation procedures.*

#### Payment of Fees

#### Q 9.7

What will happen to the deposit paid following the completion of the Assignment Stage? Will the deposit be refunded or will this be used to cover the Initial Payment due?

*The deposit is intended to cover the initial annual fee due for the assigned spectrum.*

#### Q 9.8

For Lots assigned through an auction, could the MCA clarify what exactly is the Initial Payment?

Operator 1's understanding is that this will be the difference between the spectrum fees established at law (therefore €224K per 5MHz paired channel) and the price established for that same 5MHz paired channel through the auction. Operator 1 would like better understand what form this will take unless this will be clarified further through the Auction Rules.

*The initial payment will be the difference in price between the spectrum fees as described under the 8<sup>th</sup> Schedule of the Electronic Communications Networks and Services (General) Regulations (S.L 399.28 of the Laws of Malta) and the final bid price immediately upon conclusion of the auction.*

## Amendment of Bank Guarantee

### Q 9.9

Operator 1 understands that the Bank Guarantee will need to firstly act as a bid bond and if the applicant is successful this will need to be converted to a performance guarantee that will need to be kept in place as a minimum for 24 months from issuing of license, correct? Therefore when the MCA is stating that prior to the Grant Stage it will inform the successful applicant whether it needs to extend its bank guarantee or not, is it simply referring to this?

*The understanding is correct. Upon the successful assignment of the spectrum, the MCA will inform the successful applicants to extend the bank guarantee for an additional 24 month period as a performance guarantee.*

### Q 9.10

The Call for Application document provides that if the successful applicant fails to effect the changes to the bank guarantee within the established timeframes, then that applicants' submission will be deemed as having been withdrawn and they shall forfeit the bank guarantee. However no mention is made as to what will happen to the deposit paid, will this be refunded or forfeited?

*In such an instance, the deposit will be refunded.*

## Establishment of an Interference Mitigation Fund

### Q 9.11

Sub-section 9.5 of the Call for Application Document provides that should the successful applicants fail to provide a fund management plan within 3 months from the Grant of Right of Use then they shall all forfeit their respective bank guarantee. Will the forfeited bank guarantee's then be used by the MCA to setup the fund management plan on their behalf and manage it?

*The bank guarantees will be forfeited if any or all of the successful applicant fail to setup the Interference Mitigation fund. The MCA reserves the right to setup the fund management plan on behalf of the successful applicants. However any costs borne by the MCA in the setting up or administration of the fund will be borne by the licensees in addition to the fund cap and the licence fees.*

Q 9.12

If the answer to the above question is no, can the MCA kindly explain why the bank guarantee is to be forfeited if all the costs incurred by the MCA for the setting up and management of the fund will still be borne by the Licensees?

*The MCA, is setting the condition of forfeiting the bank guarantee of the successful applicants in order to minimise the possibility of delaying the set up of such a fund and ensure commitment from all assignees.*

## **Appendix A - Part B. Applicant's Credentials**

### 1. Information on the Applicant

Q 10.1

In relation to the questions in the table of questions provided, can the MCA indicate what it understands by any 'related company' please?

*By 'related company', the MCA refers to any company in which the applicant has more than 25% shareholding.*

### 3. Information on the Shareholders of the Applicant

Q 10.2

If an applicant already has licensed spectrum holdings with the MCA and also has various General Authorisations in place with the MCA resulting in the same Authority already having the information being requested in this section of the Call for Application Document, would the applicant still be required to submit this information? In this case is it permitted for such an interested applicant to contact the MCA to understand what information may be missing and still be required by the MCA?

*If the applicant has already submitted information to the MCA, the applicant need not resubmit the same information to it. A clear indication in full of the document wherein the information was previously submitted and a clear indication of the relevant part of that document duly highlighted would suffice. However, if any of the information included in the said document is no longer applicable or valid, whether in full or in part, then the applicant must provide the full*

*information relating to that part of the document that is no longer applicable. Any certificates and documentation required must be up to date as at the date of submission.*

## **Appendix E – Interference Mitigation Fund**

### **Q.11.1**

If an operator is not assigned spectrum in the 800MHz band as a result of this Assignment Process they would not have to contribute to the interference mitigation fund. On the other hand, all Licensees would have to contribute proportionally in relation to the holdings that they have within the frequency band. Operator 1 would like clarity as to what would happen if the former operator acquires such spectrum holdings at a later stage when the interference problems would have been solved through the interference mitigation fund, funded by the pre-existing licensees. Operator 1's understanding of the process is that the new Licensee will have to contribute an equivalent amount to what has been contributed by the other operators (whether the fund is still in place or not) and that any unutilised funds will be then re-distributed equally amongst all Licensees. Is this understanding correct?

*Where all channels are not assigned simultaneously and a subsequent assignment of spectrum in the 800 MHz band takes place, the maximum contribution due by each licensee will be recalculated. In such a case the new licensee will be required to pay an upfront contribution proportionate to the number of channels acquired and the fund paid to date. Once the fund is terminated, any residual funds will be redistributed amongst the contributing licensees on a pro-rata on the basis of their contribution.*

### **Funding of application by the Interference Mitigation Fund**

#### **Q 11.2**

Operator 1 notes that the MCA includes a non-exhaustive list of categories for which the fund administrator shall consider and fund through the Interference Mitigation Fund. Operator 1 recall *(Missing text)*

For the purpose the 800 MHz licences will be required to establish a fund between them. The fund will cover the costs solely related to the mitigation measures required to solve interference issues to aerial television reception installations resulting from the deployment of outdoor base stations in the 800 MHz band.

*The MCA does not have any comments to make with regard to the final comment as made by Operator 1.*

## **Replies to the queries submitted by Operator 2**

1. OPERATOR 2 notes that the conditions set in Section 5.6 of the Call relating to the Application Fee and in Section 5.7 relating to the Bank Guarantee are explicit and leave no room for interpretation. We wish however to make sure that we understand the process that will be adopted in the case of the Deposit, which is covered in Section 5.8:

a. are we right to assume that the Deposit quantum per Lot applied for has to be equivalent to the first year base spectrum fees envisaged to be charged if one assumes that there will not be need for an auction?

*The deposit, which shall be paid upfront with the submission of the application form, is equivalent to the first year spectrum fees for the maximum number of lots applied. Note that any fees related to the maximum spectrum lots shall make reference to the current spectrum caps of 2 Lots. Operators should indicate separately from the maximum interest their interest for the lots should the MCA decide to relax the spectrum caps.*

b. our understanding is that if an applicant wishes to apply say for 3 Lots and submits the deposit for each, if it is assigned less Lots than those applied for, it will immediately be refunded the deposit for that portion that it applied for and was not assigned. Is this correct?

*Upon completion of the grant stage, following the notification to the candidates, the MCA will return back any bank guarantees and deposits for spectrum lots there were not assigned to the applicant in question.*

c. since current practice is that the MCA bills operators for spectrum on a quarterly basis in advance, and considering that the Deposit quantum requested in the Call is equal to the yearly charge per spectrum Lot, will the MCA on assignment of spectrum keep the amount equivalent to the charge for the first quarter of the licence duration and refund the rest to the successful applicants, to subsequently proceed to charge on a quarterly basis as per current practice?

*Following the successful assignment for the grant of rights of use, the deposit shall be kept by the MCA as a payment for the first year of spectrum fees for the spectrum assigned.*

2. There is a possibility for the spectrum cap of operators to be relaxed under certain circumstances, in part depending on the Maximum Interest expressed by all the respective bidders. Can the MCA elaborate on the timing it envisages to inform the bidders whether the spectrum cap or caps are to be relaxed?

*The MCA, following the qualification phase, will be in a position to assess whether the 800 MHz spectrum caps will be maintained or relaxed. The relevant timeframes as indicated in the Call for Application shall apply.*

3. Section 6.1 of the Call covering Qualification Criteria requires applicants to give detailed information on various aspects, many of which would be well known to the MCA in cases where applicants are established electronic communications operators in Malta. Can such applicants assume that they do not need to go into very exhaustive detail as to their Competence and Experience but that a general overview is sufficient?

*If the applicant has already submitted information to the MCA, the applicant need not resubmit the same information to it. A clear indication in full of the document wherein the information was previously submitted and a clear indication of the relevant part of that document duly highlighted would suffice. However, if any of the information included in the said document is no longer applicable or valid, whether in full or in part, then the applicant must provide the full information relating to that part of the document that is no longer applicable. Any certificates and documentation required must be up to date as at the date of submission.*

4. How extensive is the detail the MCA is envisaging it requires under Section 6.1.3 of the Call regarding the Business Plan, particularly where well-established operators in Malta are concerned? Are the broad outlines of a business plan sufficient or does the MCA require a detailed plan with detailed workings? Can you indicate broadly the required length of this Section?

*The business plan, in line with the details requested in section 6.1.3 of the Call for Applications, needs to provide adequate information for the MCA to be in a position to determine the operator's viability of the project as well as its project financing needs. Project financing needs should be in line with the description of the financial resources secured as per section 6.1.4. The applicant should use its best judgement to determine the level of detail necessary and incorporated in the submitted business plan to provide an adequate description.*