

Consultation Paper:

The Grant of Right of Use of Spectrum for Test and Trial Purposes

Malta Communications Authority

Valletta Waterfront, Pinto Wharf, Valletta FRN1913, Malta, Europe

Telephone: +356 21 336 840

Facsimile: +356 21 336 846

Web: <http://www.mca.org.mt>

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1. Introduction

Radio frequency spectrum is a limited national resource. It facilitates a plethora of services and applications based on wireless communications. Consequently, spectrum access is becoming an ever increasing priority, enabling fast access to information and the deployment of mobile and wireless communication services.

Having the opportunity to access spectrum during the development and the testing phases of new wireless technologies is key to the delivery of such services. This view is captured in the Malta Communications Authority's (hereinafter the 'Authority') Strategic Framework for the Management of the Radio Spectrum 2007-2010. This Framework¹ has the encouragement and the authorisation of radiocommunications system trials and new technology experiments (in frequency bands appropriate to the intended applications and subject to the availability of suitable spectrum) as one of its objectives.

Considering Malta's limited size and geographical location, the island is in a unique position to offer an optimal setting to study and test specific technology and service implementations on a national scale. Indeed, the Radio Spectrum Strategic Framework focuses, amongst other things, on implementing and seeking opportunities to promote the take-up of 'trial licence schemes' in order to position Malta as a test-bed for wireless system testing and service trials.

2. The scope of a Test and Trial licence

The risks taken by a stakeholder when investing in, and implementing, a new technology are for the most part relatively high. Spectrum costs, coupled with the administrative procedures related to spectrum access, may deter a stakeholder who may otherwise be willing to invest time and resources to develop innovative ideas.

The Authority is therefore proposing a scheme that seeks to address these hurdles thereby enabling Malta to offer attractive opportunities in the area.

¹ www.mca.org.mt/infocentre/openarticle.asp?id=1119&pref=28

It is the Authority's belief that the availability of explicit licensing regimes to cater for trials and tests, together with Malta's strategic and small size, make the island a very suitable location for a nation-wide case study deployment of new technologies (irrespective of whether the commercial deployment would eventually take place in Malta or internationally). As a result, the Authority is proposing the introduction of two additional, and distinct, licence categories, namely:

- *A Test Licence* - intended to support the testing of a new technology
- *A Trial Licence* - intended to support the deployment of service trials involving third parties or the public.

The setting up of these two licensing schemes is intended to support Malta's continuous efforts to promote research and innovation. They could also attract foreign companies and organisations, the investment of which could continue to contribute to Malta's economic welfare and strategic importance.

The proposed test and the trial licences may also provide the Authority with the opportunity to gather information that amongst other things, would allow it to evaluate the relevant technology while it is being trialed and/or tested and also to decide on an adequate future licence scheme, if and when necessary.

The purpose of this consultation is to seek input on the proposed development of two additional licensing schemes within the current framework to cater for the testing and/or the trialing of wireless services and new technologies.

2.1 The Applicability of the Test Licence

The proposed *test licence* can only be requested for the purpose of carrying out tests on innovative radio equipment and uses of spectrum or technologies under test conditions.

By test conditions it is implied that test licences are intended for in-house testing only. A test licensee cannot involve the public or provide a service to third parties.

2.2 The Applicability of the Trial Licence

The proposed *trial licence* can only be requested for the purpose of carrying out trials of radio services involving members of the public or other third parties.

The trial licence is intended to give stakeholders the opportunity to become more acquainted with the technology, its benefits and associated pitfalls, and be in a better position to evaluate its feasibility before proceeding to provide the service on a commercial basis (in accordance with the procedures set out at law).

3. Authorisation and Licensing

All electronic communications networks and services being provided in Malta for the purposes of tests or trials are to be exempted from the General Authorisation regime in accordance with Article 19(4) of the Electronic Communications (Regulation) Act.

In order to obtain a test or trial licence, the correct application form must be duly filled in and filed with the Authority. A copy of the most recent Memorandum and Articles of Association and a copy of the Certificate of Registration need to accompany the application form. Following an internal vetting procedure, an individual licence will be issued where appropriate. The general conditions to which the individual licences are subjected are listed below. However, additional rights or obligations may be discussed and included on a case by case basis as the Authority may deem fit.

In issuing individual test and trial licences, the Authority will adopt open, transparent and non-discriminatory procedures, and no additional obligations will be imposed unless considered strictly necessary.

4. General conditions and licence adjudication criteria

All test and trial licences are subject to the following conditions:

1. Any equipment used for testing and trialing must comply with the Radio and Telecommunications Terminal Equipment (R&TTE) Directive². If utilising newly-invented equipment for the trials, stakeholders need to apply for R&TTE compliancy before utilising this equipment.
2. Test and trial licences will only be granted on condition that neither the applicant, nor any third party, are already commercially offering a similar service on the same frequency band.
3. Test and trial licences for the concurrent testing of services in identical frequency bands may also be granted on a case-by-case basis following an analysis carried out by the Authority.
4. As long as they are registered as an oversea company with the relevant local authorities, foreign commercial entities may apply for such licences.
5. Applications for test and trial licences in any part of the radio spectrum may be considered subject to the availability of spectrum.
6. Test or trial licences will be given without prejudice to any decision that may be taken by the Authority to reassign spectrum in accordance with the National Frequency Plan. The authority shall in such cases give an appropriate period of notice in accordance with Regulation 65 (3) of the ECNSR.
7. Test and trial licences will be issued in favour of the licensee on a non-protected, non-interference basis; the Authority cannot guarantee protection against interference by the existing licensed users of the radio spectrum. Conversely, the licensee must, at all times, take all the necessary precautions to ensure that no interference is experienced by existing spectrum users as a result of radio transmissions using test and trial licences. If such interference does arise, operation of the system under test or trial will be required to cease immediately. Any costs that may be incurred by the Authority to deal with interference problems shall be borne by the licensee.
8. The licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation

² <http://www.mca.org.mt/infocentre/openarticle.asp?id=807&pref=14>

Protection (ICNIRP) or any other appropriate standards as may be specified by law or by the Authority.

9. The holder of a trial license shall comply with any decisions issued by the Authority in relation to electromagnetic radiation and harmful interference and ensure that the network and all services at all times comply with the technical and performance standards generally accepted by the industry or as may be prescribed by the Authority or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.
10. Test and trial licences will not convey any exclusive rights to the use of the spectrum which is authorised under that licence.
11. Both licences will be valid for a predetermined period of 12 months making them temporary licences. This time-line is such so as to allow interested stakeholders to set-up and test and/or trial the technology and/or service. The licence may be extended following a formal request made by the stakeholder and if deemed appropriate by the Authority.
12. Test and trial licences may be terminated in advance by the licensee should the required testing or trialing be finalised before the assigned 12 months.
13. Test and trial licences can be terminated at any time by the Authority if the licence holder is in breach of any of the obligations as contained in the laws, subsidiary legislation, directives or in the licence.
14. Past and present holders of test and trial licences should not assume any preference should the specific frequency band used by them be issued for public assignment.
15. Should the licence holders decide to commercially launch the tested or trialed service in Malta before the expiry of the 12 month period, the test and/or trial licence would automatically become invalid and the stakeholder would have to apply for all the necessary licences and/or authorisations as defined in, and in accordance with, the Electronic Communications (Regulation) Act³.

³ <http://www.mca.org.mt/infocentre/openarticle.asp?id=951&pref=39>

16. Test and trial licence holders will be entitled to provide the electronic communications network and/or services as described in the test and/or trial licence application forms. No other technologies or services will be allowed without prior notification to, and written approval by, the Authority.
17. All national laws, directives and decisions of the Authority and applicable Community Law shall form an integral part of this licence grant, except in those cases where the undertaking is specifically exempted by the Authority.
18. Test and/or Trial licence holders are not exempted from the obligation of diligently obtaining, at their own expense, any permits, licences or other approval or authorisation that may be necessary to construct, operate and maintain the services (or any part thereof) or from the obligation of complying with any condition associated with such permits, licences, other approvals or authorisations.
19. Any right, interest or entitlement resulting from a test or trial licence is not transferable and may only be exercised by the person identified in the licence document.
20. The licensee shall comply with any request for information that the Authority may from time to time make, in accordance with law.

5. Additional Conditions for the Trial Licence

Trial licences are subject to the following additional conditions:

1. All trial licences shall be issued on condition that the trial will be carried out on a non-commercial, non-profit basis.
2. The services offered under a trial licence must be at no cost to participating parties and the subject of a contract with third parties willing to trial the technology must, as a minimum, contain the following clauses:
 - i. The period over which the trial shall be carried out and/or the duration of the contract with the third party;

- ii. Details of the service being trialed, together with the risks and limitations of the services (e.g. inability to secure the service against unauthorised access);
- iii. That the third party is trialing the service at no added financial cost to himself and under no obligation to purchase the service;
- iv. A liability clause stating any possible known risks and inconveniences involved with the trial being undertaken and the extent of responsibility of the licensee with respect to these and other unknown risks and inconveniences.

6. The licence fee

The Authority intends to keep the spectrum licence fees for testing or trialing a technology to a minimum. The fees will be such as to cover the administrative costs incurred by the Malta Communications Authority to assign these licences.

The Authority is proposing charging interested parties €100 per annum for a test licence.

Trial spectrum licences will be charged at €600. This fee may be reduced pro rata for trial licences that will be used for a period of less than one year. A minimum fee of €100 shall, however, always be applicable.

Given that most trials should, as a matter of fact, be completed within a 12 month period, should the trial licence need to be extended for a second term, the fee for the following 12 month period would be incremented by €200.

The test and the trial licence fees referenced in this document are inclusive of any fees due under the *Testing and Development* annual fees referenced in the Subsidiary Legislation 35.01⁴ (*Fees Leviable by Government Departments Regulations*).

⁴ <http://docs.justice.gov.mt/lom/legislation/english/subleg/35/01.pdf>

7. Reporting back

The proposed licences would impose the obligation on the stakeholders to report back to the Authority on a quarterly basis and following the termination of the licence. This feedback, which would be provided in a specific format, would provide the Authority with a better overview of the test or trial progress, the particular technology and its successes or otherwise.

8. Conclusion

The primary intention behind the Authority's proposal to introduce a test and trial licence scheme is to further promote research and technological innovation in Malta. Test and trial licences would give stakeholders the opportunity to test and/or trial a given technology or service on a short-term basis and with a proportionate licence fee that reflects and encourages this initiative. Rightly so, licensees would still be subject to the requirements and obligations outlined by other public authorities should such requirements apply.

The Authority would like stakeholders to express their views on the proposal being presented in this consultation paper, namely, that of introducing a test and a trial licence and the proposed conditions attached to such licences. The test and the trial application form templates that complement the licences being proposed in this document are also being issued for consultation.

Subsequent to the feedback received, the Authority will proceed to develop the appropriate application guidelines required to formalise the whole process.