

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

Report on Consultation and Publication of Assignment Procedure

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1. Introduction

In August 2009, the Malta Communicationa Authority (MCA) published a consultation document on the 'Grant of Right of Use of Spectrum for Test and Trial Purposes' to seek input on the proposed introduction of a test and a trial licensing scheme and the related assignment process.

At the end of the consultation process there were two respondents, namely GO plc and the Faculty of ICT (Information and Communication Technology) of the University of Malta.

The purpose of this Report is twofold. It outlines the responses received and presents MCA's position on the various issues raised by the respondents and it is also intended to inform the public of the assignment process that will be adopted in respect of these two licence categories.

The MCA takes the opportunity to thank both respondents for their contributions.

2. Analysis of Responses and MCA's Position

2.1 Authorisation and Licensing

The consultation proposed:

"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."*

In view of this, the consultation also proposed that:

"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."

Response to Consultation

A respondent stated that exemption from the authorisation regime will be highly discriminating against those operators covered by a general authorisation.

Final Position

A general authorisation offers a more generic and flexible regime than an individual licence. In this case, given the need to ensure that tests and trials are conducted in a controlled environment, an individual licence is required. The service obligations, including but not limited to the relevant conditions of the General Authorisation, will be included in the individual test and/or trial licences.

It should also be clarified that no consumer services against payment will be provided via these licences and that all trial licences shall be issued on condition that the trial will be carried out on a non-commercial, non-profit basis.

Tests or trials will be governed by individual test and trial licences and shall therefore be exempted from the General Authorisation regime.

2.2 Spectrum Eligible for the Scheme

The consultation proposed that:

"Applications for test and trial licences in any part of the radio spectrum may be considered subject to the availability of spectrum."

Responses to Consultation

A respondent commented that there is no reference to maximum spectrum that can be granted.

The other respondent requested the MCA to clarify whether the Authority will consider:

- licensing in all bands, for any amount of bandwidth
- both local and nationwide coverage.

Final Position

Given the nature of the licences in question, spectrum requirements cannot be identified prior to application. There will be no limitations either on the spectrum bands or on the amount of spectrum that can be applied for. Each request will be considered on a case-by-case basis, subject to the relevant legal provisions.

Test licences are intended for localised use only. However, in the case of trial licences, spectrum applications for both local or nationwide coverage will be considered and due consideration will be given to the justification put forward for the spectrum request.

There will be no limitations either on the spectrum bands or the amount of spectrum that can be applied for.

Each request will be considered on a case-by-case basis.

Trial licences can be applied for both for local or nationwide coverage.

Test licence are intended for localised use only.

2.3 Technology/Service neutrality

The consultation proposed that:

"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."

Response to Consultation

A respondent remarked that the consultation is not clear as to whether the licences will be issued on a technology and/or service neutrality basis.

Final Position

No limitation will be imposed on the technology or service applicable to test and trial licences as long as these conform to the scope of these licences. The licences will however be issued for specific technologies and/or services in line with the applications received and no other technologies or services will be allowed without prior notification to, and written approval by, the Authority.

It is also relevant to point out that as outlined in the consultation document applications will be evaluated on a number of criteria, including but not limited to¹:

"Test and trial licences will only be granted on condition that neither the applicant, nor any third party, is already commercially offering a similar service on the same frequency band."

Applicants will be able to apply for test and/or trial licences for any technology and/or service.

Once an application is approved, applicants will be bound to adhere to the technology and service restrictions therein.

2.4 R&TTE Certification

The consultation proposed that:

"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."

Response to Consultation

A respondent asked for clarification on the use of non-RTTE certified development equipment during eventual tests or trials held under this scheme.

Final Position

The requirement for R&TTE compliance will be limited to trial licences. Requests to use equipment which has not yet been R&TTE certified will be allowed only for testing purposes, subject to the equipment being used in a controlled environment

¹ A comprehensive list of the applicable evaluation criteria is given in the Policy section of this document

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

not open to the public and that its potential radiation reach is limited to a localised and pre-established site. In this case prior approval by the MCA will be required.

Any equipment used for trial licences must comply with the Radio and Telecommunications Terminal Equipment (R&TTE) Directive.

The use of non-R&TTE compliant equipment for testing purposes will be subject to approval by the MCA and may require additional obligations such as limitations on access to testing site etc.

2.5 Licence fee

The consultation proposed that:

"The Authority intends to keep the 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 MCA to assign these licences.

The Authority proposed 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 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."

Response to Consultation

A respondent requested an indication whether the same fees would be applicable to local, nationwide, narrowband and wideband systems alike.

Final position

A fixed licence fee per annum as indicated above will apply irrespective of whether the licence is for local, nationwide, narrowband or wideband systems.

2.6 Reporting back

The consultation proposed that:

"The proposed licences will 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."

Response to Consultation

A respondent pointed out that in the case of R&D projects, some of the results would be highly confidential and of high commercial value. In view of this, the respondent requested the MCA to clarify the extent of information sharing that would be required, so as to reassure potential users that their intellectual property would be safeguarded to the fullest.

Final Position

Feedback will provide the Authority with a better overview of the test or trial progress where it might have a bearing on interference or other spectrum management considerations. Such information will be treated in line with the confidentiality guidelines of the Authority³.

³ <http://www.mca.org.mt/infocentre/openarticle.asp?id=544&pref=1>

All information exchanged in respect of test and trial licences including application details will be treated with strict confidentiality.

2.7 Other

2.71 The consultation proposed that:

"Test and trial licences will only be granted on condition that neither the applicant, nor any third party is already commercially offering a similar service on the same frequency band."

Response to Consultation

A respondent questioned if reapplying is needed if their currently owned spectrum is utilised to carry out tests and/or trials.

Final Position

Spectrum licences are currently awarded for the provision of commercial services or to operate radio equipment on known technology. This spectrum cannot therefore be utilised to carry out test and/or trials as defined without prior authorisation from the Authority.

Spectrum already assigned for the provision of commercial services cannot be used by spectrum holders for tests and/or trials without prior authorisation from the Authority.

2.72 The consultation proposed that:

"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) Act.

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.”

Reponse to Consultation

A respondent expressed concern that an interested party can obtain valuable spectrum “for say two years for a mere €1400 and eventually attack a significant customer base of an established operator”.

Final Position

Trial licences will be issued on a non-commercial, non-profit basis. The necessary safeguards will be in place to ensure that licensees comply with these conditions.

Moreover, as outlined in the extracts reproduced above, holders of test and/or trial licences will not be given any preference in the eventual assignment of commercial licences for the spectrum in question.

Trial licences will be issued on a non-commercial, non-profit basis.

The grant of right of use of spectrum for commercial purposes will be via open call in line with MCA’s established procedure for spectrum assignment.

2.73 The consultation proposed that:

“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 a service.

The licence may be extended following a formal request made by the stakeholder and if deemed appropriate by the Authority."

Response to Consultation

A respondent was of the opinion that MCA should guarantee fair and equal access to the spectrum. Further, this respondent also considered that the MCA should inform the market of the pending requests, when the spectrum is in demand, in case other interested parties would need to use the bandwidth.

Final Position

Applications will be treated on first-come, first served basis.

Pending requests will go in a queue and a public notification will be made through MCA's website. In addition, an individual notification will be made to the applicants.

3. Test and Trial Licence Assignment Process

3.1 The Applicability of the Test Licence

The test licence can only be requested for the purpose of carrying out tests on innovative⁴ radio equipment and uses of spectrum or technologies under test conditions.

It follows that test licences are intended for localised testing only, where communication signals need to be confined to a specific site. A test licensee cannot involve the public or provide a service to third parties.

3.2 The Applicability of the Trial Licence

The trial licence can only be requested for the purpose of carrying out trials of innovative⁵ radio services, involving members of the public or other third parties.

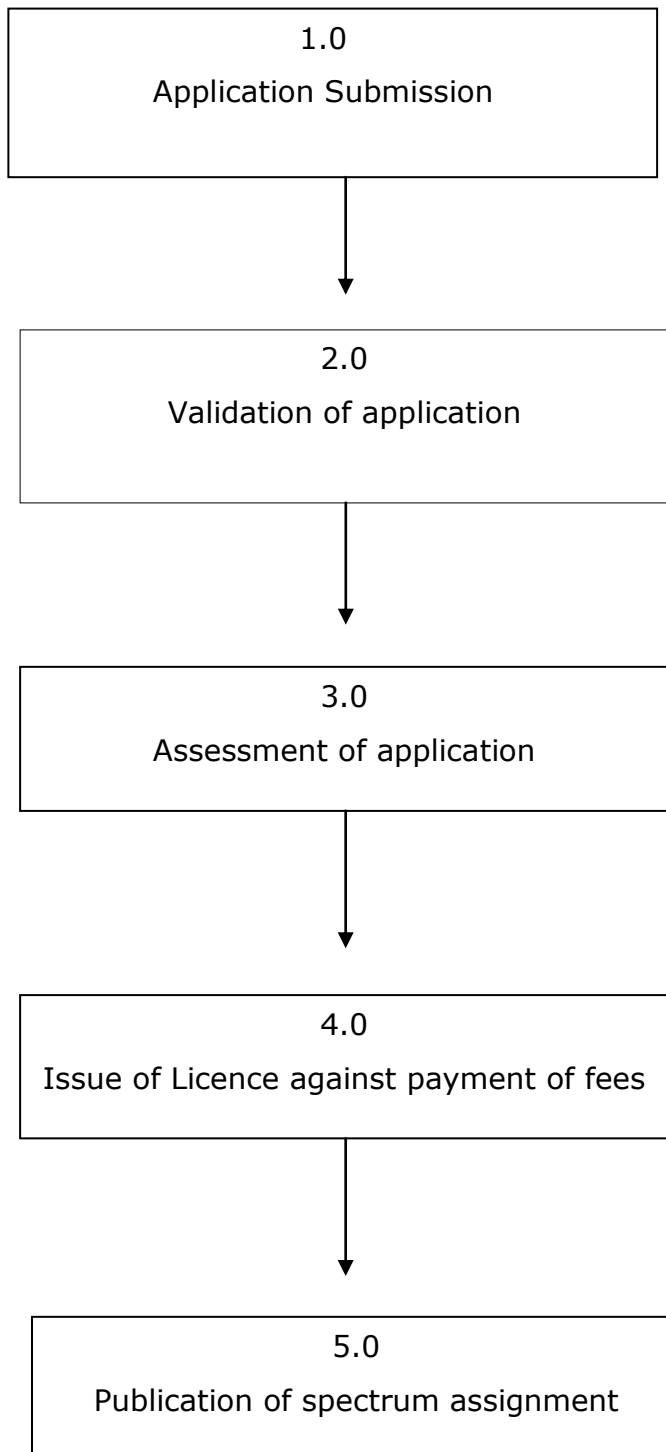
The trial licence is intended to give stakeholders the opportunity to become more acquainted with the technology, its benefits and associated pitfalls, and be in a better position to evaluate its feasibility before proceeding to provide the service on a commercial basis (in accordance with the procedures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

⁴ Service or technology has never been deployed in Malta on that band.

⁵ *ibid*.

3.3 Licensing Process

In order to obtain a test or trial licence, the following process applies:



During the processing of application, the Authority shall adopt an open, transparent and non-discriminatory approach.

1.0 The application will include applicant details, spectrum requested, technology to be deployed and any other requirements (as per application forms).

2.0 Application will be evaluated.

3.0 Spectrum will be assigned on a *first-come, first-served* basis. Pending requests will be queued and a public notification will be made through MCA's website.

4.0 Licence will be issued subject to the payment of licence fees.

5.0 Once fees are paid, information on the assigned spectrum will be published.

3.4 Application Evaluation

1. Test and trial licences will only be granted on condition that neither the applicant, nor any third party, is already commercially deploying the technology or offering a similar service on the same frequency band.
2. Test and trial licences will be granted on a non-exclusive basis. Therefore 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.
3. Applications for test and trial licences in any part of the radio spectrum may be considered subject to the availability of spectrum and to the relevant legislative provisions. There will be no bandwidth limitations to the amount of spectrum considered.

Trial licences will be considered for both local or nationwide coverage, whilst testing licences are intended for localised use only.

4. Foreign commercial entities registered as an oversea company with the relevant local authorities, may apply for such licences.

3.5 Licence Conditions

1. Any equipment used for TRIALS must be compliant with the Radio and Telecommunications Terminal Equipment (R&TTE) Directive.

The use of equipment that has not yet been certified to conform to the R&TTE Directive will only be allowed in the case of TEST licences subject to approval by the MCA and may require specific licence obligations to cover aspects concerning health and safety, electromagnetic compatibility and effective use of the radio spectrum.

Applicants must be able to forward the technical documentation and the R&TTE declaration of conformity (DoC) if and when requested by the MCA.

2. 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 Electronic Communications Networks and Services (General) Regulations.
3. 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. The Authority reserves the right to impose fees on the licensee to cover any costs that may be incurred by the same Authority to deal with interference problems.
4. The licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) or any other appropriate standards as may be specified by law or by the Authority.
5. 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.

6. Test and trial licences will be valid for a predetermined period of 12 months. Both licences may be extended for an additional 12 months following a formal request made by the stakeholder and if deemed appropriate by the Authority.
7. 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.
8. 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.
9. Test and trial licences will not convey any exclusive rights to the use of the spectrum which is authorised under that licence.
10. Past and present holders of test and trial licences should not assume any preference if the specific frequency band used by them is issued for public assignment.
11. 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) Act⁶.
12. 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.

⁶ <http://www.mca.org.mt/infocentre/openarticle.asp?id=951&pref=39>

13. 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.
14. 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.
15. Any right, interest or entitlement resulting from a test or trial licence is not transferable and may only be exercised by the person/company identified in the licence document.
16. The licensee shall comply with any request for information that the Authority may make from time to time, in accordance with law.

The Authority reserves the right to include additional rights or obligations on a case-by-case basis.

3.6 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. That the third party is under the obligation not to use the trial service for commercial purposes;
- v. 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.

3.7 The licence fee

A Test Licence fee of €100 per annum will be charged to cover the administrative costs incurred by the MCA to assign these licences. If the test licence holder needs to apply for a second term, the relevant fee will remain unaltered at €100 per annum.

A Trial Licence fee of €600 will be charged. Should the trial licence need to be extended for a second term, the fee for the following 12 month period will be incremented to €800.

Fees may be reduced pro rata for licences that will be used for a period of less than one year. A minimum of €100 per licence term shall, however, will always be applicable.

Requests for test and trial licence extensions will only be considered following a formal application from the test/trial licence holder at least two months prior to the expiry of the licence. Each request will be evaluated on the basis of its merits.

3.8 Reporting back

Both licences would require licencees to report back to the Authority on a quarterly basis and following the termination of the licence. This feedback is to be provided in a format established by the Authority and is intended to provide the Authority with a better overview of the test or trial progress, the particular technology, its successes or otherwise, and where it might have a bearing on interference or other spectrum management considerations. Such information will be treated in line with the confidentiality guidelines of the Authority⁷.

⁷ <http://www.mca.org.mt/infocentre/openarticle.asp?id=544&pref=1>