

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

Guidance Notes

Document No:	MCA/10/30/R.1
Date:	22 June 2011

Malta Communications Authority

Valletta Waterfront, Pinto Wharf, Floriana FRN 1913, Malta.

Tel: (+356) 2133 6840

Fax: (+356) 2133 6846

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

Table of Contents

1. INTRODUCTION	1
2. STATUTORY REQUIREMENTS.....	2
Regulations	2
R&TTE Equipment Compliance	2
3. APPLICABILITY OF TEST AND TRIAL LICENCES.....	3
4. LICENCE CONDITIONS	4
Common Conditions for Test and Trial Licences	4
Additional Conditions for the Trial Licence	7
5. APPLICATION PROCESS	8
6. APPLICATION EVALUATION	10
7. LICENCE FEES.....	11
8. OTHERS	12

Note: The information contained in these guidelines is subject to change without notice.

1. Introduction

Malta's limited size and geographical location, offer an optimal setting to study and test specific technology and service implementations on a national scale.

Two licences have been established:

- Test licences and
- Trial licences

This Report provides guidelines on the relevant licensing schemes, details on conditions attached to both licence types, and the application process through which these licences will be granted.

Note: The purpose of these Guides is to provide information and not to replace a legal advice.

2. Statutory Requirements

Regulations

Wireless systems are regulated by the Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta)¹. This Act establishes the framework for the grant of rights of use of radio frequencies and for the installation and use of radiocommunications apparatus, unless the apparatus in question is licence-exempt.

Each licence therefore authorises the use of specific apparatus, which is listed as part of the licence, for transmissions on specific frequencies, to and from specific points, as the case may be.

R&TTE Equipment Compliance

The placing on the market and putting into service of radio equipment is regulated by the Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity Regulations (S.L.427.41). These Regulations transposed the provisions of the R&TTE Directive (1999/5/EC) into national legislation.

These rules set out a regulatory framework for radio and telecommunications terminal equipment to be compliant with essential requirements concerning user health, safety, electromagnetic compatibility and radio spectrum usage. Therefore all radio equipment including radio links, can be placed on the market and put into operation only if it complies with the said essential requirements and with other relevant provisions of these regulations. The latter includes, amongst other things, the requirement to affix proper CE marking.

Detailed information on the R&TTE requirements is available in the portal of the European Commission².

¹ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8866&l=1>

² http://ec.europa.eu/enterprise/sectors/rtte/files/guide2009-04-20_en.pdf

3. Applicability of Test and Trial Licences

1. A **Test licence** can only be requested for the purpose of carrying out tests on innovative³ radio equipment and uses of spectrum or technologies under test conditions.
2. 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. A **Trial licence** can only be requested for the purpose of carrying out trials of innovative⁴ radio services involving members of the public or other third parties.
4. 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 Service or technology has never been deployed in Malta on that band.

⁴ *ibid*

4. Licence Conditions

Common Conditions for Test and Trial Licences

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 and 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 Plan⁵. 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 (S.L.399.28)⁶.
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 transmission using test and trial licences. If such interference does arise, operation of the system under test or trial will be required to cease immediately.

⁵ <http://www.mca.org.mt/article/national-frequency-plan-mca1026or2>

⁶ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>

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 on 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 relations 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 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 should the specific frequency band used by them be issued for public assignment.

11. Should the licence holders decide to commercially launch the tested or trialed service in Malta prior to 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.
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.
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 identified in the licence document.
16. The licensee shall comply with any request for information that the Authority may from time to time make, in accordance with law.
17. Both licences 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.

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.

⁷ <http://www.mca.org.mt/article/mca-internal-guidelines-confidentiality>

5. Application Process

1. Application forms for Test or Trial licences can be downloaded from the MCA's website:

Test Licence Application Form:

http://www.mca.org.mt/sites/default/files/pageattachments/Test%20licence%20application%20form%20January%202010_rm%20v1.pdf

Trial Licence Application Form:

http://www.mca.org.mt/sites/default/files/pageattachments/Trial%20licence%20application%20form%20January%202010_rm%20v1.pdf

2. Applications for Test or Trial licences should be submitted in writing to the:

Malta Communications Authority
Valletta Waterfront, Pinto Wharf
Floriana FRN1913

Telephone: +356 21336840
E-mail: info@mca.org.mt

3. The full licence fee must be submitted with the application.

A copy of the most recent Memorandum and Articles of Association and a copy of the Certificate of Registration need to accompany the application.

4. The application form also requires the submission of details concerning the applicant, the nature of the proposed test/trial and any third parties to the trial.
5. Tests on innovative radio equipment and uses of spectrum or technologies are intended for localised testing only under test conditions and communication signals need to be confined to a specific site. Trials must be carried out on a non-commercial, non-profit basis.
6. The radio equipment to be described in this application shall comply with the requirements of the Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity Regulations (S.L.427.41). Therefore, the MCA may request the applicant to submit further information and documentation to show compliance with these Regulations.
7. The use of equipment that has not yet been certified to conform to the R&TTE Directive will be allowed subject to approval by the Authority and may require specific licence obligations to cover aspects concerning health and safety, electromagnetic compatibility and effective use of the radio spectrum.
8. Application forms cannot be processed by the MCA unless all relevant sections of the application forms are completed.
9. The MCA shall act according to the Data Protection Act (Chapter 440 of the Laws of Malta) in making use of any personal information that may be provided.
10. Any false statement, misrepresentation or concealment of material fact on this form or on any other document presented in support of this application may be grounds for criminal prosecution.

6. Application Evaluation

1. 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.
2. 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.
3. Applications for test and trial licences in any part of the radio spectrum may be considered subject to the availability of spectrum. There will be no bandwidth limitations to the amount of spectrum considered.

Trial licences will be considered for both local or nationwide coverage.

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

7. Licence fees

The relevant licence fees were introduced in the Eleventh Schedule of the Electronic Communications Network and Services (General) Regulations through L.N. 271 of 2010.

Test Licence

1. A Test Licence fee of €100 per annum will be charged to cover the administrative costs incurred by the MCA to assign these licences.
- 2.
3. If the test licence holder needs to apply for a second term, the relevant fee will remain unaltered at €100 per annum.

Trial Licence

1. A Trial licence fee of €600 will be charged.
2. 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.

Pro-rata Payments

1. 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.

8. Others

Site Inspections

The MCA reserves the right to inspect an installation at any time to ensure that the system is configured and operating in accordance with the licence conditions.