

The Assignment of radio spectrum in the sub-700MHz band

Call for Expression of Interest

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1. Preamble

In August 2020, the Malta Communications Authority ('MCA' or 'the Authority'), published a Decision outlining the methodology for the assignment of spectrum in the sub-700MHz band to be used for the provision of digital terrestrial television (DTV) services in Malta. In addition, the Decision also outlined the conditions for the rights of use of spectrum in this band.

The aforementioned Decision prescribes that the Authority shall publish a Call for Expression of Interest following the receipt of a formal expression of interest by an interested stakeholder for any or all of the spectrum lots available in the respective band.

An authorised electronic communication service ('ECS') provider has lodged a formal request with the MCA for the assignment of spectrum in the sub-700 MHz band to be used for the provision of DTV network.

Therefore in line with the Decision, the Authority is hereby publishing a Call for Expression of Interest to determine the demand for the spectrum channels available in this band.

2. Definitions

Wherever the following terms appear in this document, they shall be attributed the corresponding definitions in accordance with what is stated below:

Definition	
Applicant	The legal or natural person submitting an Expression of Interest as per Section 6 of this document. In the cases of joint ventures, the term applies to the individual entities forming part of the joint venture.
Authority or the MCA	Malta Communications Authority.
Call	The Call for Expression of Interest.
Government	The Government of Malta.
Licensee	A successful applicant which is awarded a licence relating to the right of use for the relevant spectrum band at the Grant Stage of

	the Award process as described in the MCA Decision MCA/D/20 -3934.
Decision	The Decision published by the Authority titled "The Assignment Process of Radio Spectrum in the sub-700MHz band for Digital Terrestrial Television Services in Malta (MCA/D/20-3934)

3. Introduction

The MCA, as the competent authority responsible for the effective management of the radio frequency spectrum, invites undertakings who wish to obtain access to the rights of use for spectrum in the sub-700MHz band, to express their interest to this Call in line with the provisions outlined in this document.

Although every care has been taken in preparing this document, no representation, warranty or undertaking however so described, expressed or implied, in respect of any error or misstatement is or will be made or given, and no responsibility or liability will be accepted by the MCA or by any of its officers, employees, servants, agents or advisers, however so described, as to the accuracy or completeness of this document or any other written or oral information made available to any interested party or its advisers concerning this document, and any liability howsoever arising (including in respect of this assignment process) is expressly disclaimed. No information contained in this document shall form the basis for any warranty or representation however so described by the MCA. In case any part of the text represented in this document is in contradiction to the text in the Decision, the text in the aforesaid Decision shall prevail.

This Call is governed solely by Maltese law and is subject to the exclusive jurisdiction of the competent Maltese courts and, or tribunals however so described.

The expressions of interest are indicative only; they are non-binding and will not confer any rights to the Applicants that respond.

Any frequency assignment process pursuant to this Call will be limited to the Applicants that indicate an interest for any or both of the spectrum lots which are available in the sub-700MHz band.

All applications received shall be assessed administratively and any applications which are incomplete¹; improperly filled; or express demand for spectrum which is not based on the lot

¹ Areas of the application form which are deemed not applicable by the applicant shall be marked as such.

structure so established in the Decision, shall be automatically deemed inadmissible and hence refused.

The interest for each lot shall be treated on its own merits and depending on the interest expressed for each lot the process to assign a particular lot may follow a different route to that adopted for the other lot albeit following the same process.

Given that for each of the lots there is only one unit available, the Authority reserves the right not to issue a Call for Application for that Lot where the interest expressed is exactly one. In such circumstances the Applicant shall still be required to participate in a process leading to a Qualification Phase.

As part of this Qualification Phase the MCA will make a Request for Information and specify the requirements that the Applicant must satisfy in order to qualify for the award of a Licence for the rights of use of the radio frequency spectrum as listed in the lot/s in question. Failure by the Applicant to produce the required documentation shall also be considered as failure of this stage. The rights of use of spectrum shall only be awarded to the Applicant on passing the Qualification Phase. Failure by the Applicant to pass the stage of the Qualification Phase, will result in the discarding of the relevant expression of interest and the disqualification of the Applicant from being awarded a Licence for the lot in question.

Should the demand for a lot be more than one, then the Authority shall invite all of the Applicants who have expressed their interest for the Lot in question to participate in a binding Call for Applications followed by a Qualification Phase. The Call for Applications shall also include a request for the necessary documentation to be used during the subsequent Qualification Phase. Failure by the applicant to produce this documentation shall also be considered as a failure of the Qualification Phase. These Applicants shall be the only participants to this Call for Applications which will lead to the grant of the rights of use for the respective frequency lot accordingly.

The terms and conditions of the Licence will be communicated to the Applicants prior to the commencement of the Qualification Phase process (in the case where the demand for the lot/s does not exceed supply) or to the Call for Applications (in the case where the demand for the lot/s exceeds supply).

As stated above, this request for expressions of interest initiates the formal application process and the publication of this Call does not bind the Government and/or the Authority to assign or to proceed to a further stage in the process for the assignment of this radio frequency spectrum bands.

An Expression of Interest must be submitted to the MCA by completing the form contained in Annex 1. This has to be submitted in accordance with the instructions given in section 6 of this document.

4. General Conditions associated with the Spectrum and the Award Process

The Spectrum

The spectrum subject to this Expression of Interest is organised into two lots and two groups as prescribed in the Decision. Spectrum indicated as Lot 1 shall be granted for the period between 12th May 2021 and 30th June 2022, which licence may be extended under specific terms as listed in section 6 of the Decision. Spectrum indicated as Lot 2 shall be granted for the period between 1st July 2022 and 31st December 2030. In line with section 6 of the Decision, the term of Lot 2 shall not be extended.

Section 2 of the Decision provides the details about the spectrum Lots and Groups as applicable in this band.

Section 4 establishes the technical conditions for the rights of use of spectrum including the purpose of the network that the spectrum can be applied for, the applicable coverage obligations and necessary measures to avoid cross-border interference and obligations related to Electro-magnetic Field (EMF) emissions.

Section 6 of the Decision provides the details on the licence duration as applicable to both Lots.

Section 7 of the Decision provides the details concerning pricing for spectrum channels in this band.

Licence information

In addition to the licence terms and conditions applicable explicitly to this spectrum band, further conditions of a more generic status are also applicable as set forth in the Licence. These conditions arise from the Electronic Communications (Regulation) Act (Cap. 399 of the Laws of Malta)²; relevant national and EU legislation; and applicable decisions of the MCA,

² <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8866&l=1>.

which will apply to the undertaking/s who will be granted a Licence for the rights of use of radio frequency spectrum.

The Licence granted for the rights of use of radio frequency spectrum does not in itself authorise the undertaking/s to provide services. The undertaking/s which will be awarded the rights of use of the afore-mentioned radio frequency spectrum will be required to operate such networks and provide services under a General Authorisation in line with the Electronic Communications Networks and Services (General) Regulations (SL. 399.28 of the Laws of Malta)³.

The radiocommunications apparatus which form part of an electronic communications network is regulated by the General Authorisation (Radiocommunications Apparatus) Regulations (S.L.399.40 of the Laws of Malta)⁴. Licensees will be required to comply with the various provisions of these Regulations with regard to their radiocommunications apparatus.

³ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10563&l=1>.

⁴ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11475&l=1>.

5. Assignment Process

The Assignment Process, as outlined in Figure 1 below is established in section 3 of the Decision.

High-Level Process Overview

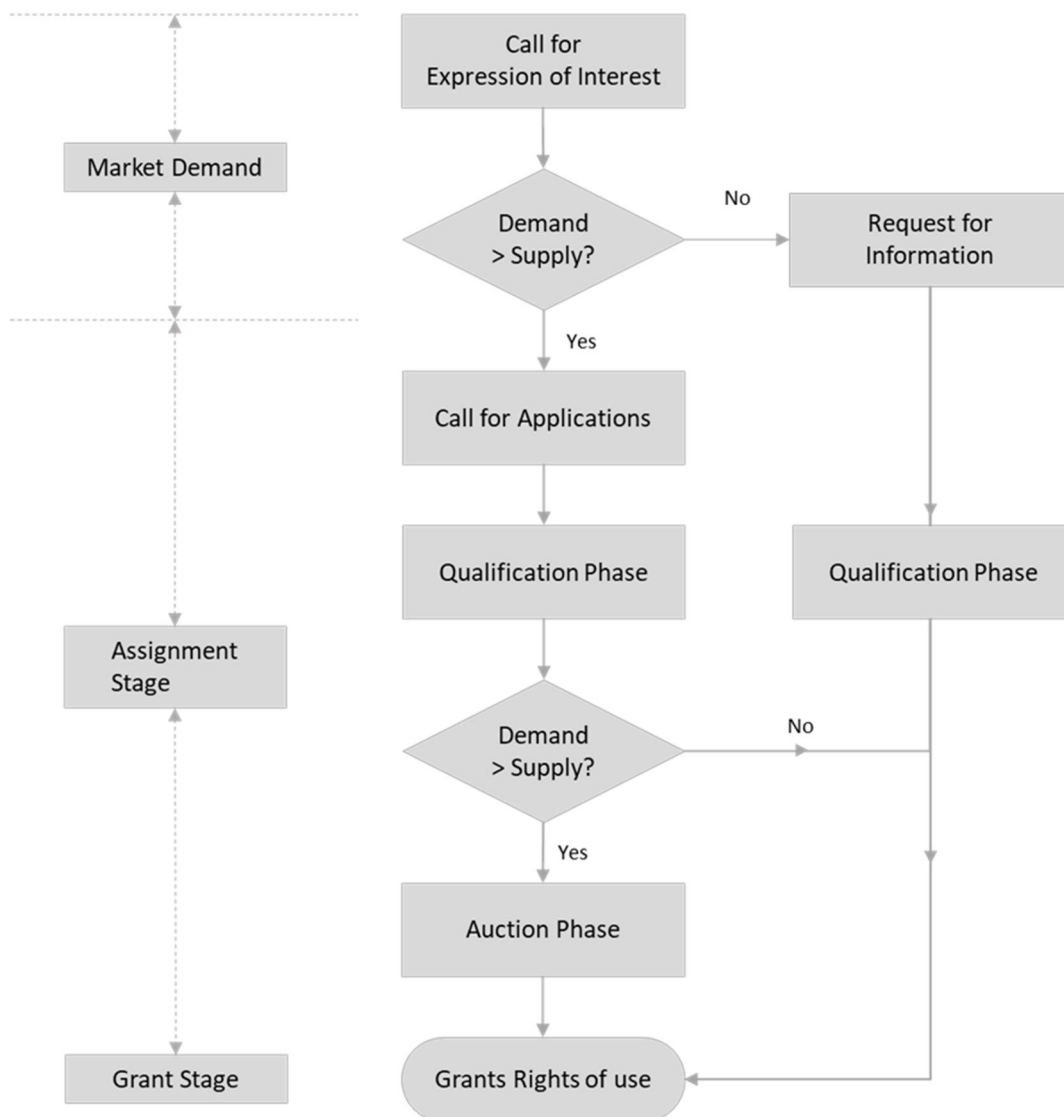


Figure 1 Spectrum assignment process

Through this **Call for Expression of Interest** parties may express interest in acquiring spectrum in the sub-700MHz band. Having established the demand for the spectrum, the Authority will proceed with either a **Request for Information** or with the publication for a **Call of Applications** which in both circumstances lead to a **Qualification Phase**.

As part of the Request for Information or the Call for Applications as the case may be the administrative fees, first year fees and bank guarantees shall be collected as follows:

- a) A non-refundable **administration fee** to cover the costs incurred in carrying out the spectrum assignment process.
- b) The **first year fees** of all spectrum lots requested by the applicant will also be collected. These fees shall be refunded to all unsuccessful applicants at the conclusion of the assignment process. These fees will cover the first year fees of the respective spectrum licences for all successful applicants.
- c) Applicants will be required to issue a **bank guarantee** for the whole duration of the assignment process in favour of the Authority and for an amount equivalent to the first year fees of the spectrum lots requested. At the end of the assignment process, the bank guarantee of all successful applicants will be converted into a performance guarantee valid for the duration of the license term (Lot 1) and for a two (2) year period starting from 1st July 2022 for Lot 2.

All the information received during the **Qualification Phase** shall assist the Authority in its assessment on whether the Applicants have the necessary standing to fulfil the Licence obligations should they be successful in acquiring the radio frequency spectrum rights. The outcome of this process is binary Pass or Fail and it shall not rank the Applicants.

Depending on the actual demand for spectrum, the process may continue through a direct assignment process or through an **Auction Phase** whereby the qualified Applicants will be able to bid for either one of the lots or for both.

The process is concluded at the **Grant of Rights of Use** stage whereby the successful Applicants are announced and the Authority shall proceed to issue the respective Licenses.

6. Submission of Expressions of Interest

Submitting an Expression of Interest

The Expression of Interest Application forms (to be found in Annex 1) shall be completed in full and must be received by the Authority by no later than 12:00 hrs of the 23rd October 2020.

The Applicant is to submit a copy of the said Application in both hard (paper) copy and soft copy⁵. The Authority notes that should there be any discrepancy between the soft copies and hard copies, then the version as listed in the hard copies shall be deemed as binding.

All Expressions of Interest received will remain sealed until the closing date⁶. In the case where the Applicant is not registered as an authorised ECS undertaking with the MCA and is a company, then a certified copy of the Memorandum and Articles of Association of the applicant company must be included with the application form. Submissions received after the closing date will not be considered and will be returned to the Applicant.

Any pages on which entries or corrections to an Expression of Interest have been made must be initialled by the person or persons signing the application form.

The Application Form may be completed electronically to facilitate processing and sent to spectrum.mca@mca.org.mt for the attention of the Chief Executive Officer of the MCA. However, as specified in this section, in all cases an original hard copy of the duly filled Application Form together with an original copy of the Memorandum and Articles of

⁵ Depending on the size of the submission, a soft copy of the application may be provided using a pen-drive or similar memory formats that can be readable using the USB interface. Encrypted documents may be used given that the any additional software required to open the document shall be made available to the Authority. Encryption keys are to be provided separately using email.

⁶ In view of precautionary measures taken by the Authority against the transmission of the Sars-Cov-2 virus, all documents received by the Authority shall be opened at least three calendar days after receipt but not earlier than the established 'Closing Date'.

Association of the applicant company (where applicable), must be submitted to the MCA in an appropriately sealed envelope/package clearly marked “**Expression of Interest – Spectrum for Digital Terrestrial Television in the sub-700MHz band**” which is to be addressed to:

**The Chief Executive Officer
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913
Malta**

The hard copy of the Expressions of Interest must be submitted at the Authority either by recorded delivery (postal/courier service) or hand delivered and the name and address of the Applicant should be clearly visible on the outside of the envelope/package.

All costs incurred in connection with the preparation, production and submission of the Expressions of Interest will be borne exclusively by the Applicant. Regardless of the outcome of the process, Applicants may under no circumstance, claim reimbursement from the Authority of any costs related, to their submission.

Opening of Expressions of Interest

Expressions of Interest will be opened on the premises of the Authority upon the expiration of the Closing Date⁷. The names of the Applicants will subsequently be published on the Authority’s website (www.mca.org.mt).

⁷ In line with measures taken by the Authority against the transmission of the COV-2-SARS virus, the opening of expressions of interest may be delayed by a maximum of 3 calendar days

Confidentiality

Any information in relation to this Call whether submitted in hard copy or in soft copy, will only be made public by the Authority subject to the Authority's Internal Guidelines on Confidentiality published on 16 December 2004.

Annex 1 – Expression of Interest Form

The Expression of Interest Form consists of two parts – Part I and Part II:

- Part I should be completed in clearly legible type or block letters by the Applicant.
- Part II is a declaration, which must be signed:
 - in the case of an individual, by the person in whose name the Application is made;
and
 - in the case of a legal person, by the person or persons duly and legally authorised to act for, and on behalf of, the said legal person. In this case the supporting documentation empowering such person(s) to represent the Applicant in this context must be presented with the declaration.

Part I: Information Required from the Applicant

1. Applicant Contact Details

1.1	Applicant's Name	
1.2	Business postal address of Applicant	
1.3	Company Registration Number	
1.4	Telephone Number	
1.5	Fax Number	
1.6	Website address	
1.7	Postal address of registered office ⁸	
1.8	VAT number	

⁸ In the case of registered companies whose business address differs from that of the address of their registered office.

2. Principal Contact Details

2.1	Name of primary contact person	
2.2	Designation	
2.3	Postal address	
2.4	Telephone Number	
2.5	Mobile Number	
2.6	E-mail Address	

3. Provide the Company's Profile

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4. Spectrum lots in the sub-700 MHz band being requested

Tick where appropriate.

Lot 1	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Lot 2	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

5. Description of Network and Service:

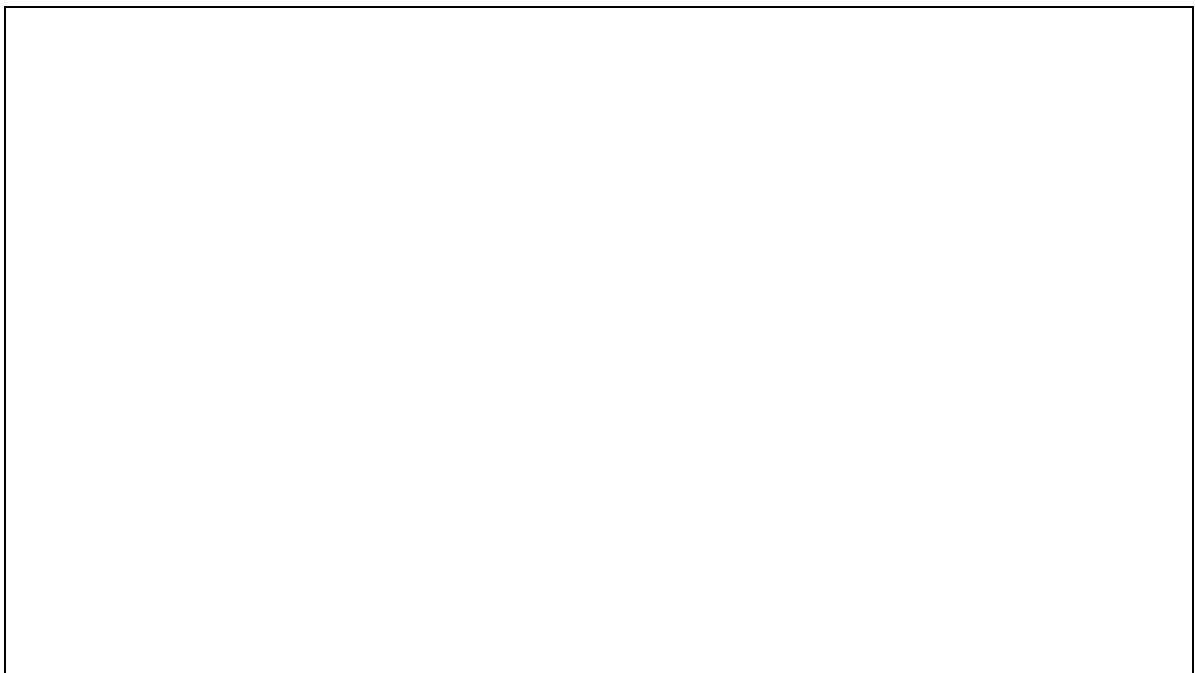
5.1 Description of networks to be operated⁹

Include, the proposed structure of the network, including number of transmitters, their location and other relevant technical parameters.

⁹ Any additional details should be provided in separate attachments.

5.2 Description of the DTTV service to be provided.


In your response describe the service in terms of the number of audio-visual broadcasting channels intended to be offered, the channel encoding technology, average bit rate amongst others.



6. Consumer Interest

In this section provide information about existing plans on how to reach out for existing consumers of DTTV networks in Malta and possibly migrate them onto the new network.

For Applicants expressing interest in spectrum in Lot 1 they are to provide their concerns; views; and plans on customers already existing in the current DTTV network in relation to the new network using rights of use of spectrum awarded in this process. Similarly, those Applicants expressing interest in Lot 2, are to provide their concerns; views; and plans about consumers of the network making use of the rights of use spectrum of Lot 1, in relation to the new network using rights of use of spectrum in Lot 2.



7. Geographical Scope

For Applicants requesting Lot 1, please indicate the geographical scope of the network proposed.

For Applicants requesting Lot 2, the geographical scope and the coverage obligation are both Nationwide. In this field insert the estimates on the percentage geographical coverage expected at the end of the first year following the award of the rights of use of spectrum license.



8. Estimated Date of Commencement of the Relevant Activity

Please indicate the estimated date of commencement of activities.

Month

Year

Part II: Declaration

I / We hereby declare that:

- The information provided is accurate and complete in all respects.
- Misrepresentation or failure to submit any information as requested by the Authority shall be deemed by me/us as a good and sufficient cause for the Authority to disregard the application.
- Any legal dispute between the Authority and an Applicant shall be governed solely by Maltese law and shall be subject to the exclusive jurisdiction of the competent Maltese courts and, or tribunals however so described.

Full name(s) of Signatory/Signatories:	Designation	Signature

Date: _____