

Call for Applications:

Leading to access to rights of use of radio frequencies in the 900 MHz and 1800 MHz bands in Malta

Document No:	MCA/10/52/O
Date:	27 October 2010

Malta Communications Authority

Valletta Waterfront, Pinto Wharf, Floriana FRN1913, Malta.

Telephone: +356 21 336 840

Facsimile: +356 21 336 846

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

Table of Contents

1. Preamble.....	4
2. Definitions	5
3. Introduction.....	10
4. Spectrum Bands Being Assigned.....	12
5. Overview of Award Process	14
5.1. The Process Flowchart	14
5.2. Implementation timeframes	15
6. Participation Rules	17
6.1. Ownership Rules	17
6.1.1. Resolution of Applicant Connections.....	17
6.2. Behaviour Rules.....	18
6.3. Breach of Rules	19
7. The Application Procedure.....	20
7.1. Submission of Questions.....	20
7.2. Submission of Applications.....	21
7.3. Changes to the Application.....	22
7.4. Changes to the Status of Applicants	23
7.5. Opening of Applications	23
7.6. Application Fee	23
7.7. Bank Guarantee.....	23
7.8. Minimum Requirements	26
7.9. Right of Refusal to Consider an Application.....	27
7.10. Confidentiality, Data Protection and Freedom of Information	27
8. Qualification Stage.....	29
8.1. Qualification Criteria.....	30
8.1.1. Company Standing	30
8.1.2. Competence and Experience.....	32
8.1.3. Technical and Commercial Plans.....	33
8.2. Results of Qualification Stage	39
8.3. Assessment of Demand	39
8.4. Notification to Applicants	39
9. Brokered Meetings.....	40
10. Auction Stage	41
11. Grant Stage	42
11.1. Assignment of Specific Lots.....	42
11.2. Payment of Fees.....	42
11.3. Amendment of Bank Guarantee.....	43
11.4. Grant of Right of Use of Frequency	44
11.5. Return of Deposits and Bank Guarantees	44
11.6. Announcement of Results	44
Appendix A - Application Form	46

Appendix B - Further Spectrum Band Information	65
Appendix C - Sample Licence	67
Appendix D - Bank Guarantee.....	77
Appendix E - Auction Rules.....	80

1. Preamble

The 900 MHz (880 – 915 MHz / 925 – 960 MHz) and the 1800 MHz (1710 – 1785 MHz / 1805 – 1880 MHz) bands provide 110 MHz of paired spectrum. Since 1990, three licences have been assigned in these Bands to authorised undertakings. These rights of use are due to expire in 2011.

Since the early 1990s these Bands were earmarked at an international level for the provision of mobile communication systems, with the GSM standard being undisputedly the most popular technology deployed in these Bands. Over the years, numerous technological developments have given mobile operators the possibility to offer over the said Bands, not only voice and data services, but also innovative multimedia services such as video streaming.

In February 2009, the Malta Communications Authority (MCA), cognisant of the significant impact that these technological developments and the upcoming licence expiry would have on the local industry, published a consultation paper outlining a proposed methodology for the reassignment of spectrum in these Bands¹ together with the proposed applicable licence conditions.

Following consideration of the various responses received, a document entitled 'The Future of the 900 MHz and 1800 MHz Bands - MCA Decision on the Assignment Methodology and Licence Conditions' (the "MCA Decision") was published by the Authority in July 2010².

This Call for Applications is based on the MCA Decision and the Electronic Communications Networks and Services (General) (Amendment) (No. 2) Regulations, 2010 (Legal Notice 449 of 2010) which establishes the annual spectrum fees relating to the spectrum in the two Bands under consideration.

¹ 'Consultation Paper: The Future of the 900 MHz and 1800 MHz Spectrum Bands'

² MCA/10/44/D

2. Definitions

Term	Definition
900MHz band	Spectrum frequencies between 880 MHz and 915 MHz inclusive paired with frequencies between 925 MHz and 960 MHz inclusive.
1800MHz band	Spectrum frequencies between 1710 MHz and 1785 MHz inclusive paired with frequencies between 1805 MHz and 1880 MHz inclusive.
Alternative Option	Options, other than the Preferred Option, that would suit an Applicant's needs in the case that the Preferred Option cannot be entertained in view of the fact that demand for the spectrum (determined on the basis of the Applicants' Preferred Options) exceeds supply.
Applicant	<p>The legal entity or natural person submitting an Application in relation to the Award process.</p> <p>In the cases of joint ventures, the term applies jointly and severally to the individual entities forming part of the joint venture.</p> <p>(Throughout this Call for Applications "it", "he" and "she" are used interchangeably with reference to the Applicant.)</p>
Application	The documents filed in accordance with the application procedure set out in the Call for Applications, which include a completed Application Form, submission of Bank Guarantee and application fee as well as the requested information relevant for the qualification process.
Application Deadline	The deadline for submitting the Applications for spectrum in the 900 MHz band and/or the 1800 MHz band i.e. 10:00 hrs CET on Friday 14 th January 2011, or such other date that may be announced by the Authority.
Application Form	The form contained in Appendix A of the Call for Applications.
Application Stage	That stage of the Award process during which Applications for the grant of spectrum in the 900 MHz band and/or the 1800 MHz band, are received and ending on the Application Deadline.
Application Terms	Terms of the Award process for spectrum in the 900 MHz and/or the 1800 MHz bands in Malta.
Auctioneer	The Authority, or that person designated by the Authority to conduct the auction.

Authority	Malta Communications Authority.
Award	The overall process of assigning spectrum frequencies in the 900 MHz and/or 1800 MHz bands, from the Call for Applications to the Grant Stage.
Bands	The 900 MHz (880 – 915 MHz / 925 – 960 MHz) and the 1800 MHz (1710 – 1785 MHz / 1805 – 1880 MHz) bands.
Bank Guarantee	A Bank Guarantee, as defined in Section 7.7, that an Applicant must submit with its Application.
Bid	A binding offer by a Bidder to meet an Initial Payment requirement up to the specified Bid Amount for the specified Bid Package.
Bid Amount	An amount that the Bidder would be willing to pay as the Initial Payment for a Licence that includes all the Lots specified in the Bid Package. The value of the Bid Amount must not be less than the sum of the applicable first year Spectrum Fees for the Lots in the Bid Package. The Bid Amount would include the applicable first year Spectrum Fees.
Bid Form	The form provided by the Auctioneer to Bidders for making Bids in the auction. The Bid Form will consist of a list of all the packages the Bidder may bid for, and will allow the Bidder to specify the Bid Amount for the packages the Bidder wishes to bid for.
Bid Package	A number of Lots in the 900 MHz band and / or in the 1800 MHz band to which the Bid refers.
Bidding Round	The period during which Bidders can submit their Bids in the auction.
Bidder	A Qualified Applicant that is eligible to bid for any Lots in the auction (if an auction is required for this Award).
Call for Applications	Document describing all aspects of the award of rights of use of spectrum in the 900 MHz and/or the 1800 MHz bands, and the process for applying for Licences covered by this Award.
Commencement Date	The date of entry into force of the Licence.

Connected Person	A legal or natural person that is connected to another legal or natural person (the "Relevant Person") in any of the following ways: <ul style="list-style-type: none"> i. He/she/it directly or indirectly controls or is controlled by the Relevant Person; ii. He/she/it is a director in, or has directors that sit on the Board of Directors of the Relevant Person; or iii. He/she/it directly or indirectly controls or is controlled by a Legal Entity that is connected with the Relevant Person in terms of paras. (i) or (ii) above.
Control	The holding by a person of 25% of the shares, or the right of a person to appoint the majority of directors, in a legal entity.
Deposit	A sum of money that Bidders need to submit for the Auctioneer to keep as a guarantee of payment before bids can be approved and processed.
Grant Stage	The stage in the Award process in which Qualified Applicants will be granted the Licences.
GSM	Global System for Mobile communication.
Guarantor	A bank or an insurance company that does not control the Applicant, nor is controlled by the Applicant or a person who controls the Applicant, that is registered in the European Economic Area, and which acts as a Guarantor for the Applicant in relation to the Bank Guarantee, as defined in Section 7.7 of the Call for Applications.
Initial Payment	The Initial Payment for the Licence, consisting of the following: <ul style="list-style-type: none"> • For Lots assigned outside the auction process: the spectrum fee for the first licence year of €224,000 per 5 MHz paired channel in line with Legal Notice 449 of 2010; and • For Lots assigned through an auction: the Price determined during the auction process. <p>No further spectrum fee payments would be due for the first year of the Licence.</p>
Law	The Maltese Law
Licence	A licence substantially in the form set out in Appendix C of the Call for Applications.
Licensee	A Successful Applicant that, following the payment of the Initial Payment, is awarded a Licence relating to spectrum in the 900 MHz band and/or the 1800 MHz band at the Grant Stage of the Award process as described in full in the Call for Applications.
Lot	A paired 5 MHz channel.

Lot Category	A grouping of Lots in the same band. There are two Lot categories relating to this Award: a category containing Lots in the 900 MHz band only, and a category containing Lots in the 1800 MHz band only.
Maximum Interest	The maximum number of Lots in each band that an Applicant may apply for throughout the course of the Award.
Membership	Shareholding in a legal entity or in the partnership consisting a Joint Venture.
Preferred Option	The preferred combination of Lots in any of the Bands.
Price	The Price to be paid by a Winning Bidder, that is, the Initial Payment for any Lots awarded to this Bidder in the auction. The auction Price will be calculated in such a manner that each Winning Bidder, and each group of Winning Bidders jointly, pay the minimum amount that they could have bid without changing the outcome of the Winner Determination process.
Qualification Stage	The stage in the Award process during which Applications are scrutinised by the Authority, ending with the determination of Qualified Applicants and notification to Applicants of whether they have qualified or not.
Qualified Applicant	An Applicant that has been advised by the Authority that it has met the criteria set out in Section 8 of the Call for Applications.
Spectrum Cap	A cap on the amount of spectrum that an Applicant may apply for at any stage in the Award. An overall cap of eight (8) Lots will be applied over both Bands with a limit of four (4) Lots in the 900 MHz band.
Spectrum Fees	€224,000 per annum per paired 5 MHz channel in the 900 MHz and 1800 MHz bands as defined in LN 449 of 2010.
Status	The directorship, Membership and voting rights of an Applicant.
Successful Applicant	A Qualified Applicant that secures rights of use of spectrum in this Award Process.
UMTS	Universal Mobile Telecommunications System
Unsuccessful Applicant	Where an auction is necessary, a Qualified Applicant that has submitted Bids but is not allocated any Lots in the auction process.
Winner	A Winning Bidder.
Winner Determination	The selection of the Winning Bids as specified in the auction rules.

Winning Bid	A Bid included in the set of bids selected by the Winner Determination process. The Bidder that submitted this Bid will be awarded the Bid Package specified therein.
Winning Bid Amount	The Bid Amount of a Winning Bid.
Winning Bidder	A Bidder that has submitted a Winning Bid.

3. Introduction

The Malta Communications Authority (MCA), as the competent Authority responsible for the regulation of electronic communications networks and services and the assignment of radio frequencies for the provision of such services, invites Applications from undertakings who wish to obtain access to rights of use of radio frequencies in the 900 MHz and 1800 MHz bands in the Maltese territory.

This Call for Applications follows the publication of the Authority's Decision and the Legal Notice 449 of 2010. Interested parties are urged to review these documents prior to submitting an Application.

The meanings of terms and expressions used in this Call for Applications are as defined in Section 2.

Although every care has been taken in preparing this document and any other document relating to this Call for Applications, no representation, warranty or undertaking, 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 Authority or by any of its officers, employees, 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 to its advisers concerning this document and any liability, howsoever arising, is expressly disclaimed. The Authority retains the right to amend any part of this Call for Applications by publishing a Notice on its website to this effect.

The Authority makes no representations and warranties in respect of the viability of the market so that the Applicant, or potential Applicant, is responsible for its own verification and due diligence.

In particular, the Applicant is responsible for assessing the potential of the radio frequencies being assigned through this Award. It should be noted that the Authority retains its right to amend the assignments made, and any of the terms and conditions of the Licence, including the technologies allowed, to reflect legal developments, EU harmonisation requirements and to cater for other requirements consequential to changes in the local market that may occur during the duration of the Licence, in line with its powers and obligations at Law.

In submitting an Application, the Applicant accepts in full and in its entirety, the content, terms and conditions, of this document and all its appendices, including subsequent clarifications issued by the Authority, whatever its own corresponding conditions may be. The Applicant is expected to examine carefully and comply with all instructions, forms, provisions and specifications contained in this document, or those that may be requested by the Authority on the basis of this document.

By accepting any rights of use that it may be offered, the Applicant agrees that, as the holder of the rights of use, it is responsible for all costs, liabilities and losses derived from the operation or non-operation of the rights of use or authorised service for whatever cause.

The Authority reserves the right to alter any of the deadlines or conditions outlined in this document during the Award process. Under no circumstances will the Authority, or its advisers, be liable for damages, whatever their nature (in particular, but not limited to, damages for loss of profits) in relation to any such alterations, even if the Authority would have been advised of the possibility of damages.

This Call for Applications and any consequent assignment of rights of use of radio frequencies is governed solely by Maltese Law and is subject to the exclusive jurisdiction of the competent Maltese Courts and, or Tribunals however so described.

4. Spectrum Bands Being Assigned

The 900 MHz (880 – 915 MHz / 925 – 960 MHz) and the 1800 MHz (1710 – 1785 MHz / 1805 – 1880 MHz) bands (the “Bands”) provide 110 MHz of paired spectrum. These result in a total of twenty-two (22) paired 5 MHz channels, seven (7) channels of which are in the 900 MHz band and fifteen (15) channels in the 1800 MHz band. The channelling plan is per Figure 1 below.

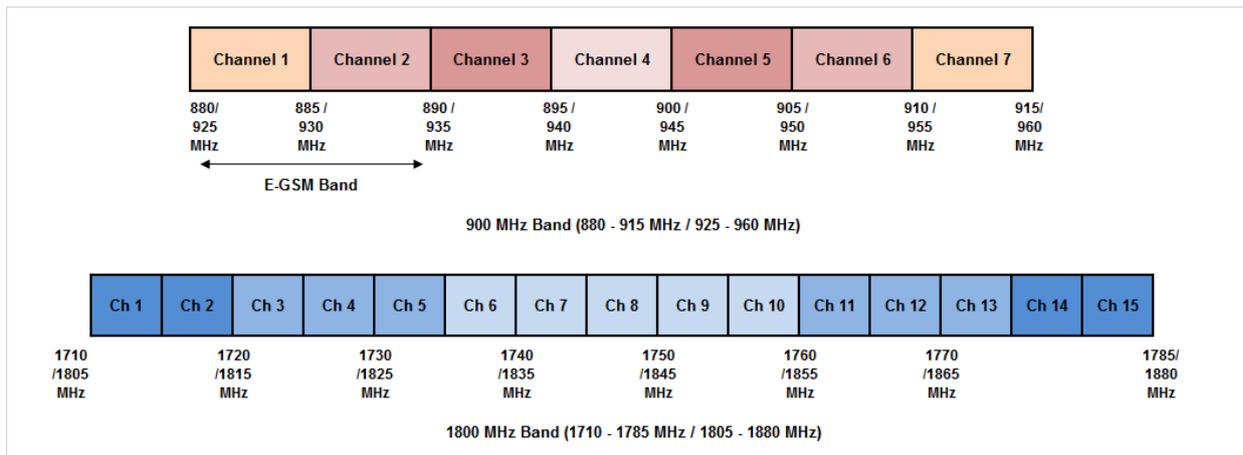


Figure 1: Channelling Plan for the 900 MHz and 1800 MHz Bands

A paired 5 MHz channel is considered to be a single lot ('Lot'). A total of twenty-two (22) Lots will be assigned by the Authority during this Award. Lots in both Bands are being assigned simultaneously in a single process.

Interested parties are not to apply for specific frequencies in any of the two Bands but are to submit a single Application for any number of Lots in one or both of the spectrum Bands subject to the applicable Spectrum Caps.

The Applicant will need to state:

- the maximum number of Lots in each Band that it may apply for throughout the course of the Award ('Maximum Interest'). The Applicant needs to ensure that the Maximum Interest registered in each Band and overall (i.e. in both Bands together) will cover the interest it might register in all stages of the Award process including a possible auction.
- its preferred assignment of Lots being either a number of Lots in a specific Band or a combination of Lots in both Bands ('Preferred Option').

- alternative (less preferred) assignment options that would still meet its needs. These options will form the basis for discussion in the eventuality that brokered meetings take place.

An Applicant must not apply for spectrum in excess of the established Spectrum Cap³ and, or its declared Maximum Interest.

The overall demand for Lots in each of the Bands will be determined by the Authority on the basis of the Preferred Option submitted by all the Qualified Applicants.

As part of its Application, the Applicant should also identify its specific paired 5 MHz channels of first choice, giving reasons for such a preference. This shall not detract in any way from the Authority's sole discretion to assign to the Successful Applicants the paired frequency channels in the way it deems fit as outlined in Section 11.1.

Successful Applicants will be bound by the conditions in the Licence that will be awarded to it, a sample of which is attached to this Call for Applications (Appendix C).⁴

This Call for Applications will not in any way preclude or influence future assignment processes for the grant of rights of use of frequencies in any spectrum band, including the 900 MHz and 1800 MHz bands.

³ Spectrum Cap is established as an overall cap of eight (8) Lots over both Bands with a limit of four (4) Lots in the 900 MHz band.

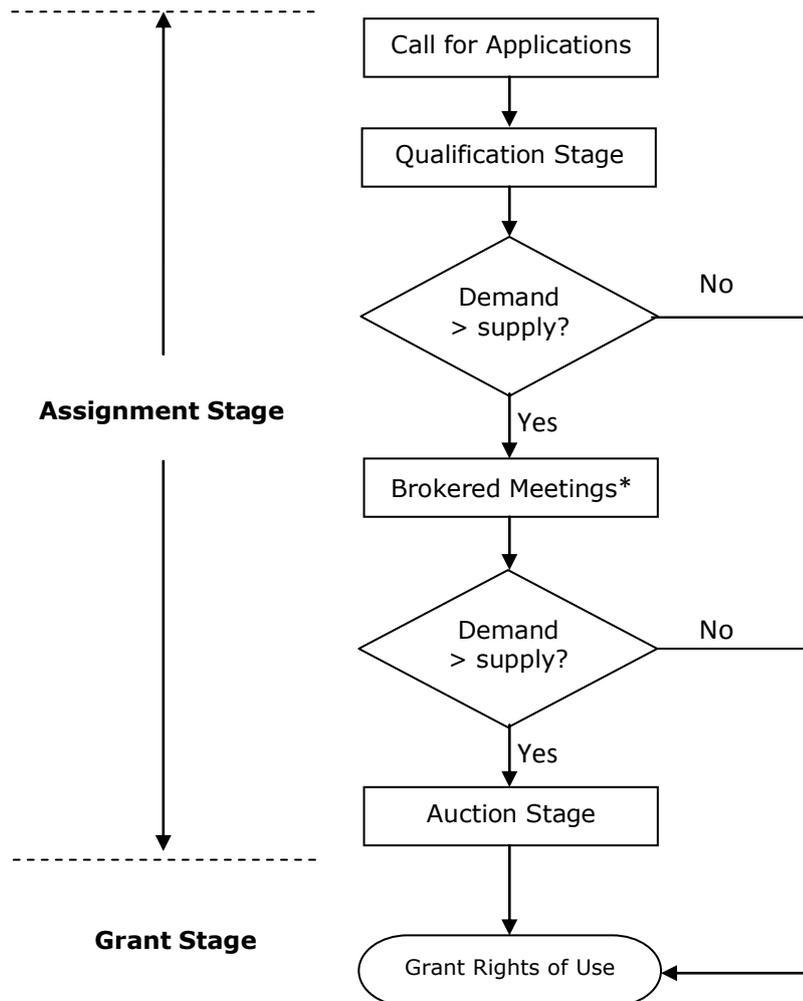
⁴ The Authority reserves the right to amend the sample Licence at any point prior to the issue of the Licence, if the Authority considers this necessary to:

- i) further clarify the said contents;
- ii) comply with any requirements at national / European law; and to
- iii) reflect any further obligations that the Licensee assumes as a result of the process for the grant of rights of use of the radio frequency spectrum

5. Overview of Award Process

This section provides an overview of the process that will be used to identify the Successful Applicants that will be granted the rights of use.

5.1. The Process Flowchart



* The Brokered Meetings will be held at the Authority's discretion.

- The **Call for Applications**, in which Applicants submit Applications to participate in the process;
- The **Qualification Stage**, in which the Authority determines, on the basis of the criteria detailed in Section 8, which Applicants are qualified to participate in the Award process (the "Qualified Applicants").

Participation in subsequent stages will be restricted to the Qualified Applicants.

- The **Brokered Meetings**, in which the Authority will, if it deems it appropriate, attempt to reach a solution agreeable to all Qualified Applicants in relation to the assignment, in full or in part, of the spectrum. The Authority reserves the discretion to decide whether to hold these meetings or not.
- The **Auction Stage**, in which each Qualified Applicant will be able to bid for Lots that are auctioned as part of Bid Packages (each comprising one or more Lots from either or both Bands), thereby determining the Price to be paid by each Successful Applicant.
- The **Grant Stage**, in which the Authority determines the specific radio frequencies to be awarded to each Successful Applicant, the Successful Applicants pay the relevant fees and the Authority issues the Licences to these Applicants.

A detailed description of these stages will be provided in the following sections of this document.

5.2. Implementation timeframes

The envisaged implementation timeframes for the Award process are as follows:



* If demand does not exceed supply

** If required

Note:

The above timeframes **are indicative and are not binding on the Authority**. The Authority shall, in no way, be held liable for any changes in the above-mentioned timeframes. The Applicant will not be able to withdraw from the process if the timeframes change. Such a withdrawal will result in the forfeiture of the Bank Guarantee.

The Authority does not exclude the possibility that further interim extensions to the existing rights of use may need to be granted in order to cover any possible period between the expiry of the current rights of use in March 2011 and the conclusion of this Award process.

It should also be noted that, following the award of rights of use, a migration plan might need to be developed between the interested parties in order to:

- address the interim issues that could arise in the period between the expiry of the current rights of use in March 2011 and the commencement of the new rights of use; and
- allow all Successful Applicants in this Award process to address any network developments necessary as a result of the award of the rights of use, during this transitional period.

The Authority does not, at this stage, exclude the possibility that further interim extensions to the existing rights of use may need to be granted as part of these transitional arrangements.

The Authority shall, at its sole discretion, establish the timing of the transition from the current spectrum assignments to the new assignments arising from the outcome of this Award process, as necessary. The Authority shall use its powers at Law to ensure that the Successful Applicants are able to use the frequencies assigned to them following this Award, within a reasonable timeframe.

Any Successful Applicant that fails to properly vacate current spectrum that it is not re-awarded in this Award process, shall be considered to be in material breach and the Authority shall at its discretion have the right to withdraw any Licence or Award made to such party. In such event, the Applicant shall forfeit its Application Fee and Deposit.

6. Participation Rules

6.1. Ownership Rules

An Application is to be submitted by a natural person or a properly constituted legal entity.

Only one Application per Applicant is allowed. The Authority will not issue more than one Licence to any Applicant as part of this Award.

Applicants that are connected or associated with any other Applicants, in any of the ways mentioned hereunder, will be disqualified.

No Applicant or Connected Person in relation to such Applicant may be a Connected Person in relation to another Applicant or to a Connected Person of such latter Applicant.

A "Connected Person" is a legal or natural person that is connected to another legal or natural person (the "Relevant Person") in any of the following ways:

- i. He/she/it directly or indirectly controls or is controlled by the Relevant Person;
- ii. He/she/it is a director in, or has directors that sit on the Board of Directors of the Relevant Person; or
- iii. He/she/it directly or indirectly controls or is controlled by a Legal Entity that is connected with the Relevant Person in terms of paras. (i) or (ii) above.

For the purpose of the establishment of Connected Persons, "Control" shall mean the holding by a person of 25% of the shares or the right to appoint the majority of directors in a legal entity.

Any changes to the Status of an Applicant must be notified to the Authority in line with Section 7.4. Any changes to the Status of an Applicant that will result in a breach of these Ownership Rules will be treated by the Authority in accordance with this Section.

6.1.1. Resolution of Applicant Connections

It is possible at the Application Deadline that an Applicant is unaware that another party with whom it has an Association is applying.

If the Authority finds that one of the relations referred to in Section 6.1 exists between Applicants, the Authority shall notify this to the Applicants affected, indicating a deadline by when either one of the Applicants may withdraw from participation in the Award

process, so that it is not necessary for the Authority to exclude both Applicants. In this case, the withdrawing Applicant will not forfeit its Bank Guarantee.

If none of the Applicants affected refrains from participation in the Award process by the indicated deadline, the Authority will disqualify all the Applicants affected and exclude them from further participation in the Award process. In this case, the disqualified Applicants will forfeit the Bank Guarantee.

6.2. Behaviour Rules

The Applicant shall ensure that all persons who are in possession of confidential information relating in any way to its Application shall treat such information with utmost confidentiality and shall not disclose such information except to persons who are employed with or engaged by the same Applicant and under strict confidentiality obligations.

An Applicant and, or its Connected Persons should refrain from obtaining or attempting to obtain confidential information in relation to any other Applicant.

Any collusive practices and other forms of agreement between Applicants and, or their Connected Persons, as well as between an Applicant and, or its Connected Persons and any other person, in relation to the Award process is strictly prohibited and will lead to the annulment by the Authority of the outcome of the Award process with respect to the Applicants involved in addition to the penalties that are prescribed within this Call for Applications and, or by Law. For avoidance of doubt, and without prejudice to any laws that regulate this matter, mergers or takeovers between Applicants which have the purpose or effect of affecting this Award process and, or the eventual grant of the rights of use or the exercise of such rights of use, shall be prohibited for the purposes of this Award process.

In addition to the above the Applicant must comply with the following rules:

- Without prejudice to any laws, an Applicant, and, or its Connected Persons may not enter into any agreement or establish any understanding with a provider of equipment or software, which:
 - 1) regulates the provider's ability to supply equipment or software to another Applicant or the latter's Connected Persons regarding the planning, establishment or operation of a network in Malta involving the frequencies dealt with by this Award process; or
 - 2) regulates the prices or other terms and conditions that the provider can offer another Applicant or its Connected Persons regarding the planning,

establishment or operation of a network in Malta involving the frequencies dealt with by this Award process.

- An Applicant, and, or its Connected Persons, may not enter into any agreement or establish any understanding with a third party to the effect that this third party does not participate in the Award process, or which restricts the ability of this third party to participate in the Award process.
- Both prior to and after submission of an Application and until the Licences have been issued, an Applicant, its Connected Persons and the officers and, or employees of the Applicant or any of the Connected Persons shall refrain from any action that could have an adverse effect on the Award process.
- Prior to submitting an Application for the Award process, an Applicant shall take all reasonable measures with a view to identifying its Connected Persons.
- After submitting the Application, an Applicant and its Connected Persons must refrain from actions or omissions that would establish a relationship with another Applicant resulting in Applicants falling within the exclusionary rules under Section 6.1.

6.3. Breach of Rules

If at any stage of the process, the Authority discovers that an Applicant is in breach, or has breached, any of the rules, as established in this Call for Applications, including but not limited to:

- Submission of false or misleading information to the Authority;
- Breach of the Ownership Rules outlined in Section 6.1 above; and
- Breach of the Behaviour Rules outlined in Section 6.2 above;

the Authority may exclude the Applicant from the Award process and may also subject the Applicant to penalties as prescribed in this Call for Applications and, or Law, including but not limited to, the forfeiting of its Bank Guarantee and, or any possible Deposits.

If an Applicant has been granted a Licence and is later found to have breached any of these rules, the Licence may, at the discretion of the Authority, be revoked. The Applicant may also be subject to penalties as prescribed in this Call for Applications and, or by Law, including but not limited to the forfeiting of its Bank Guarantee and any payments effected till that date.

7. The Application Procedure

7.1. Submission of Questions

Interested parties may submit requests for clarification concerning this Call for Applications. Such questions must be in writing and should be addressed to:

Malta Communications Authority
Valletta Waterfront, Pinto Wharf
Floriana, FRN 1913, Malta.
E-mail: gsm@mca.org.mt

Enquiries are to be labelled "**Enquiry: Call for Applications – 900 MHz and 1800 MHz Bands**" in the subject field and must be received by the Authority by no later than **4th January 2011**.

All questions received and answers provided will be made publicly available on the Authority's website.

A meeting for interested parties will be held at 1 p.m. Malta time (13:00 hrs CET), on Monday 22nd November 2010 at the Malta Communications Authority, Valletta Waterfront, Pinto Wharf, Floriana, Malta, for the purpose of answering questions or providing clarification to any aspect of this Call for Applications. Attendance should be registered by sending an email to the above address by not later than close of business on Wednesday 17th November 2010.

Minutes will be taken during the meeting, and these shall be posted online on the Authority's website.

Meetings with individual prospective Applicants during the submission period other than this meeting for all prospective Applicants will not be held.

Questions and answers that have been made available on the Authority's website are considered to be known to the Applicants. These will constitute an integral part of the Call for Applications documentation, and it is the responsibility of the prospective Applicants to visit this website and be aware of the latest information published online prior to submitting their Application.

7.2. Submission of Applications

Completed Application Forms (to be found in Appendix A) along with accompanying documentation, as may be necessary, must be received by the Authority by no later than **10:00 hrs CET on Friday 14th January 2011 ("Application Deadline")**.

The Authority may, at its own discretion, and as necessary, extend the deadline for submission of Applications to give Applicants sufficient time to take any clarifications provided by the Authority into account when preparing their submissions. Any such extension will be notified via the Authority's website and a revised Application Deadline will be set. In such cases, all rights and obligations of the Authority and the Applicant regarding the original Application Deadline specified in this document will be subject to the new date. Requests by Applicants for an extension of the deadline will not be considered.

All Applications will remain sealed until the Application Deadline. Any Application received after the Application Deadline will not be considered and will be returned to the Applicant.

Applications should be clearly labelled "**Application – 900 MHz and 1800 MHz Bands**", and the name and address of the Applicant should be clearly visible on the outside of an appropriately sealed envelope/package.

The Applicant is to submit two (2) copies of the Application. One copy of the Application is to be provided in hard (paper) copy. A soft copy (electronic) Application must also be provided in compact disc form and with files using the portable document format (.pdf) or as otherwise specified in this Call for Applications. In addition, a soft copy of the Application is to be provided void of all sensitive information, in line Section 7.10.

Any pages on which entries or corrections to an Application have been made must be initialled by the person or persons signing the Application. All pages must be numbered consecutively.

In the case of any conflict between the hard copy and the copy submitted on a compact disc, the hard copy will prevail.

The Application and all correspondence and documents related to the Application exchanged by the Applicant and the Authority must be written in English.

Supporting documents and printed literature furnished by the Applicant may be in another language, provided they are accompanied by an official translation in English. For the purposes of interpretation of the Application, the English language will prevail. All supporting documentation should be typewritten.

Applications should be submitted at the Authority either by recorded delivery (official postal/courier service) or hand delivered to:

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

Written confirmation of receipt of the Application will be given. All Applications will be stamped with the date and time and signed by an Authority official.

An Application submitted to the Authority will be binding on the Applicant until such time as the rights of use are awarded.

All costs incurred in connection with the preparation, production and submission of the Application will be borne by the Applicant. Regardless of the outcome of the Award process, Applicants may, under no circumstance, claim reimbursement from the Authority of any cost related, directly or indirectly, to the Application.

7.3. Changes to the Application

The Applicant may amend, replace or withdraw its Application until the Application Deadline. Amendments and replacements to the Application must be in the same method as specified in Section 7.2 above and clearly marked as such. The Applicant is to ensure that amendments clearly identify the section/s of its Application that is/are being amended. Withdrawals must be in the form of a written statement confirming the desire to remove an Application from further consideration.

Written confirmation of receipt of these submissions will be given. All submissions will be stamped with the date and time and signed by an Authority official.

In the case of amendments or replacements, the documents received last by the Authority at the Application Deadline will be considered to be the final and only binding Application.

The Applicant cannot amend or withdraw the Application after the Application Deadline. Amendments to an Application made after the Application Deadline will constitute a withdrawal of the Application for the purposes of this Call for Applications. An Applicant who withdraws its Application after the Application Deadline (refer to Section 7.2) will forfeit the Bank Guarantee (see Section 7.7).

7.4. Changes to the Status of Applicants

In the event that, while an Application is being considered, an Applicant merges its enterprise with another party, or enters into any form of cooperation that will have a bearing on the Application and the exercise of the eventual rights of use of the spectrum being assigned through the current Award process, the Applicant must inform the Authority of this immediately. Any changes to other circumstances that are relevant to the Application are also to be reported immediately.

7.5. Opening of Applications

The Applications will be opened on the premises of the Authority in the presence of a Notary Public immediately upon the expiration of the Application Deadline, at which time, the names of the Applicants will be published on the Authority's website (www.mca.org.mt).

7.6. Application Fee

An Application is subject to a non-refundable fee of five thousand Euro (€ 5,000).

The Application Fee is to be in the form of a bank draft made out to the Malta Communications Authority and is to be enclosed together with the Application.

An Application that is not accompanied by the Application Fee submitted in the prescribed form will be disqualified. In this case the Bank Guarantee will not be forfeited.

An Applicant will not be entitled to claim reimbursement of the Application Fee for any reason whatsoever.

7.7. Bank Guarantee

The Applicant is required to submit a bid bond/performance guarantee in the form of a Bank Guarantee. This Bank Guarantee has to be payable on demand in favour of the Authority, and in a form acceptable by it. The Bank Guarantee must be conformant with the conditions as laid out in Appendix D of this document.

The amount is being set at €95,000 for each Lot and must be computed on the basis of the total Maximum Interest registered by the Applicant in its Application (Part I.A.3).

The Bank Guarantee is intended to ensure the Applicant's commitment to the Award Process, lasting up to the grant of the rights of use. In the case of Unsuccessful Applicants, the Bank Guarantee will be released either once the Successful Applicants have been announced or earlier in the case of unqualified Applicants. In the case of Successful Applicants, the Bank Guarantee will be retained as a performance guarantee.

This Bank Guarantee will act as evidence of good faith, to ensure that:

- The Applicant will abide by the rules laid out in this Call for Applications, including the Auction Rules;
- The Applicant will submit correct and full documentation and information required by and, or pursuant to, this Call for Applications;
- The Applicant will not withdraw or amend its Application after the Application Deadline (see Section 7.3);
- The Applicant will not decline an assignment of rights of use that is in line with the Preferred Option as stipulated in its Application;
- The Applicant will participate in the brokered meetings should the Authority decide to hold these meetings;
- The Applicant will participate in any auction process that may be held;
- The Applicant will accept the rights of use assigned to it by the Authority in line with the agreement reached at the Brokered Meetings Stage and, or the outcome of the Auction Stage;
- The Applicant will, in the event that it is granted the rights of use, unreservedly accept the Licence and all conditions therein;
- The Applicant will honour the Initial Payment⁵;
- In the event that the Applicant is awarded a Licence, the Applicant will honour its Licence obligations, in particular, but without limitation, its rollout obligations, and abide by any decision and directive issued by the Authority in relation to the rights of use; and
- The Bank Guarantee will be kept operative for the period required hereunder.

Save where stated otherwise, disqualification from the process will result in the forfeiture of the Bank Guarantee.

⁵ As defined in Section 2.

The Bank Guarantee will have to remain valid and effective until **31st December 2015**. If the process leading to the commencement of the Licence extends beyond the envisaged timeframes, the Authority may request that the term of the Bank Guarantee be extended to cover a period of three years from the Commencement Date of the Licence. If the Applicant fails to comply with such a request it will be deemed to have breached one of its Application conditions and the Authority will be entitled to disqualify the Applicant from further participation and call upon the Bank Guarantee.

The Bank Guarantee must be issued by a bank, investment bank, financial institution, insurance company or similar, which neither controls, nor is controlled by, the Applicant, nor is controlled by a person who controls the Applicant, and which is registered in the European Economic Area and has a minimum long-term debt A rating from Standard & Poors or A2 from Moody's Investors Service Limited or is otherwise acknowledged in writing by the Authority as being adequate.

A Bank Guarantee issued by a bank, other financial institution or insurance company as mentioned above and which is issued for periods of one year or more, will be accepted by the Authority. This is without prejudice to the obligation of the Applicant to retain the Bank Guarantee in place for the period specified above and in accordance with the conditions specified in this document. Failure by the Applicant to issue a new Bank Guarantee at least one week prior to the date of lapse of the Bank Guarantee will in itself give rise to the right of the Authority to call upon the Bank Guarantee which at that point in time is in its possession.

The Successful Applicant will, at all times, ensure that the Bank Guarantee remains in place subject to the conditions described above and that the Authority is informed within three working days if the Guarantor loses the credit rating specified.

If the Bank Guarantee is for any reason discontinued, the Authority must be informed immediately in writing, provided that the Authority may, at its sole discretion, concede the opportunity to substitute the previous Bank Guarantee with another Bank Guarantee acceptable to the Authority and this within such reasonable period as the Authority may determine. If, notwithstanding such a concession, such new Bank Guarantee is not provided within the period so established by the Authority, this will constitute a material breach of the Application or Licence and the Authority may then take those measures that it deems appropriate in accordance with its powers resulting from this Call for Applications, or the Licence, and, or from Law.

The surety issuing the Bank Guarantee will be bound to effect the required payment on a simple demand by the Authority.

In the case of Successful Applicants, upon the passage of 24 months from the Commencement Date of the Licence, or earlier if notified by a Successful Applicant of its compliance, the Authority will assess the compliance of the Successful Applicant with the obligations stipulated in the Licence, in particular, but not limited to, the rollout

obligations. If these are satisfactorily met, such compliance will be confirmed in writing by the Authority to the Successful Applicant and the Bank Guarantee will be released by the Authority. In case of any non-compliance, the Bank Guarantee may be forfeited.

7.8. Minimum Requirements

All Applications must meet the minimum requirements set out below in order to be considered.

1. The Application Form in Appendix A is to be correctly completed in accordance with the instructions provided;
2. All declaration forms included in the Application Form are to be signed by the Applicant or the Applicant's authorised representative or as otherwise directed in the Application Form;
3. The Application is to be received by the Application Deadline;
4. The Application is to be accompanied by a non-refundable application fee, as specified in section 7.6;
5. The Application is to be accompanied by a Bank Guarantee that satisfies all the criteria set in section 7.7; and
6. The spectrum requirements listed in the Application Form are to be in line with the criteria established therein.

If an Application fails to meet any one of the above requirements the Application may be disqualified. The Authority, however, reserves the right to, at its sole discretion, contact an Applicant to request rectifications in respect of incomplete/non-submitted information pertinent to the documentation outlined in points 1 to 6 above. In such a case, the Authority will publish a notice stating that a request for information has been made.

Such rectification/s must be submitted within two (2) working days from notification, and will be subject to a non-refundable administrative fee of €50. Failure to comply shall result in the Application not being considered any further, in which case the Authority will publish a notice to this effect.

If an Application does not meet the minimum requirements set forth in this Call for Applications, the Application will not be considered further. In this case the Bank Guarantee will not be forfeited and will be returned.

If no Applications that satisfy the minimum requirements set forth in this Call for Applications are received, the Authority reserves the right to cancel this Award process

and consequently not to grant the right of use of frequency within this specific process launched by this Call for Applications.

All Applications that satisfy the minimum requirements will be evaluated in terms of the criteria detailed in Section 8.

7.9. Right of Refusal to Consider an Application

The Authority will have the right to refuse to consider any Application submitted if the Applicant supplies incorrect information or is in breach of any rules set out in the Call for Applications or fails to comply with any request made by the Authority to produce any information that the Authority deems pertinent.

No account will be taken of any reservation made in the Application and any reservation will result in the rejection of the Application without further evaluation. Any disagreement, contradiction, alteration or deviation in the Application shall lead to the Application not being considered any further.

Any attempt by an Applicant to obtain confidential information or influence the Authority, or any persons acting for or on behalf of the Authority, during any stage of this Award process will lead to the rejection of the Application and the disqualification of the Applicant from this Award process, together with the forfeiture of the Bank Guarantee in the Authority's favour.

7.10. Confidentiality, Data Protection and Freedom of Information

All information submitted as part of the response to the Call for Applications will be treated in line with the Authority's Internal Guidelines on Confidentiality⁶.

In order to ensure the confidentiality of sensitive information provided by the Applicant, the latter is required to label all data regarded as sensitive company or business information accordingly in its Application. In addition, as stated in Section 7.2, a soft copy of the Application (in compact disc form and with files using the portable document format (.pdf)) is to be provided void of all that information marked as sensitive in the other copies. All the omissions of the sensitive information in the said copy of the Application must be clearly evidenced.

⁶ 'MCA's Internal Guidelines on Confidentiality'

This notwithstanding, the Authority reserves the right to determine which information forming part of the Application is to be published.

For the sake of clarity, it is noted that all information related to all Applications may be made available by the Authority to any advisers or consultants that may be contracted by the Authority to provide expert advice during the analysis of the Applications received. These shall, however, be bound by an appropriate non-disclosure agreement stipulated by the Authority.

Any personal data submitted in the framework of the Award process and, or subsequently included in the rights of use shall be processed pursuant to the Data Protection Act (2001). It shall be processed solely for the purposes of the performance, management and follow-up of the Award process and, or subsequent rights of use by the Authority without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and, or Community law.

It should also be noted that the rules of the Freedom of Information Act (Cap. 496 of the Laws of Malta) on access to documents will be applicable to information and documents submitted in connection with this Award Process.

8. Qualification Stage

Only Applications that fulfil the minimum requirements established in Section 7.8 will be eligible for consideration in the Qualification Stage.

Only information submitted as part of the Application will be used in the qualification assessment. An Applicant will not be allowed to introduce additional information after the Application Deadline.

Without prejudice to the above, in assessing the Application in order to determine whether a particular Applicant qualifies for further participation in the Award process, the Authority will, at its sole discretion and with full regard to reasons of fairness, be entitled to request, in writing, additional documents or information to enable a more thorough evaluation and analysis of the Application.

Any communication between the Authority and the Applicant will be made strictly in writing. The submission of additional documents following the Application Deadline **will be made solely upon request** of the Authority and solely for the purposes of clarification. Such further submissions shall not, in any way, modify the original Application made by the Applicant. Additional information submitted in accordance with the procedure mentioned herein shall be treated as an integral part of the original Application.

If an Applicant fails to provide any additional information upon the request of, and within the deadline established by, the Authority, the latter will be entitled to disqualify the Applicant from further participation in this process without further warning.

The Authority will attach great emphasis to the credibility of the submitted information and may disregard information or plans that are not deemed to be sufficiently substantiated, consistent or documented.

It is not the scope of this qualification assessment to rank Applicants but rather to determine which Applicants have the necessary standing to fulfil the obligations arising from the rights of use should they be successful in acquiring the spectrum rights. Therefore the outcome of the Authority's evaluation will be simply a pass/fail result.

The Applicant is required to pass **all** the qualification criteria in order to be eligible to participate further in the Award Process.

8.1. Qualification Criteria

In order to pass the Qualification Stage, an Applicant must provide evidence that it meets or exceeds minimum qualification criteria in the following areas:

- Company Standing
- Competence and Experience
- Technical and Commercial Plans

These criteria are detailed further in the subsequent sub-sections.

8.1.1 Company Standing

The information provided should give a clear indication of the Applicant's good standing.

The Applicant is required to answer the questions in parts I.B.1, I.B.2 and I.B.3 of the Application Form and provide the relevant information requested therein as well as the following documentation:

- In case of a company, a copy of the most recent Memorandum and Articles of Association of the Applicant, of its parent company (where applicable) and of the latter's parent company, and so forth up to the point of establishment of the beneficial owner(s);
- In case of a company, a copy of the Certificate of Registration of the aforementioned companies;
- A Good-Standing Certificate of recent date coupled with a bank reference of the aforementioned companies, and a bank reference and good conduct certificate of the shareholders and the ultimate beneficiaries;
- An Advanced Revenue Ruling from Inland Revenue regarding ITC status (for International Trading Companies registered before 1st January 2007);
- The names, occupations and signatures, of all the persons who are empowered to sign for and, or bind the Applicant in any respect in relation to the Award process together with supporting documentation, including a Board Resolution empowering such person(s) to represent the Applicant in this context;
- An organigram of the Group of Companies of which the Applicant forms part (where applicable); and

- In the case of consortia or joint ventures, the type of relationship among the members, as well as detailed information on the following will be necessary:
 - Syndicate agreements, consortia agreements
 - Joint venture agreements;
 - Declarations of intent;
 - Stakeholder agreements.

In the case of a Joint Venture, one partner must be appointed lead partner and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The Application must include a preliminary agreement or letter of intent stating that all partners assume joint and several liability for the execution of the Licence and fulfilment of the Licence obligations, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.

Details are required of the involvement by the Applicant, its board of directors and any other company connected to the Applicant in terms of Section 6.1 above ("Connected Person") in other interests / activities. Details should include a brief description of the involvements and activities of any Connected Person.

The Applicant should submit evidence of its financial standing and, where applicable, that of its parent company and of the latter's parent company, and so forth up to the ultimate beneficiary. Audited financial statements for the previous three years must be included. In the case of a quoted company, market capitalisation performance over the same period should also be included. The same applies to parent companies, or other companies on which the Applicant has based any financial qualifications. These financial statements should be verified by an independent certified auditor. Where an Applicant relies upon the financial performance of any parent company or Connected Persons in order to evidence its financial standing, then such parent company or Connected Persons will be required to submit a company guarantee guaranteeing the obligations of the Applicant.

The Authority will establish if the Applicant is a fit and proper person to hold a Licence for the use of spectrum on the basis of the information provided in its Application:

In particular, but without limitation, the Applicant will not qualify to participate in this Award process if the Applicant and / or its board members or the company connected to the Applicant as described above:

- i) was convicted of a criminal offence relating to its business or profession, or against public trust;

- ii) has been adjudged bankrupt or administrative procedures were instituted against it, or is being wound up, or is passing through bankruptcy or administrative procedures or is incapable of trading;
- iii) was the subject of disciplinary proceedings in relation to its business and, or profession and was found to have breached its code of ethics;
- iv) has failed to satisfy a judgment debt under a Court order, or an executive title, however so described, in relation to a debt, within a year from the Court order or obtainment of the executive title;
- v) has been found to have breached its fiscal obligations and not to have paid its contributions in a timely manner.

Without prejudice to the above, the Authority may also prohibit an Applicant from participating further in this Award process on grounds of public security.

The information provided in this section will also be used to ensure that the Applicant does not violate the ownership rules outlined in Section 6.1.

8.1.2 Competence and Experience

The information provided should give a clear indication of the competence and experience of the Applicant in the setting up, operation and commercialisation of an electronic communications network comparable to the network which would be established in Malta if the Applicant is awarded these rights of use.

8.1.2.1 Managerial Competence

The Applicant is required to submit:

- Details of its organisational structure (organigram), clearly identifying executive or senior staff positions, relevant disciplines and levels of expertise.
- Detailed information on the top management tier. This information should at least include:
 - Name;
 - Date and place of Birth;

- ID Card Number (or Passport Number in case of non-holders of a Maltese ID Card);
- Nationality;
- Principal Residential Address;
- Bank Reference;
- Recent Police Conduct;
- Curriculum Vitae, highlighting relevant experience.

Where an Applicant is supplementing its competence through association with another entity, it must, in that case, prove to the Authority that it will have, at its disposal, the resources necessary for the execution of the obligations of the rights of use, for example, by producing a written legally binding commitment / guarantee by those entities to place the necessary resources at the disposal of the Applicant.

8.1.2.2 Experience

The Applicant should clearly demonstrate its knowledge and experience with regard to the establishment, operation and commercialisation of a public electronic communication network for, at least, a 10 year-period prior to the submission of its Application.

In particular, for any networks referred to in the Application, details of the identity of the location, the licensing authority, date of licence award and launch date of service provision should be provided.

In cases of Joint Ventures or newly formed subsidiary companies, the information mentioned in this section must be provided in relation to the individual parties of the Joint Ventures and the parent companies respectively.

8.1.3 Technical and Commercial Plans

The information given by the Applicant in this section will enable the Authority to analyse the technical and commercial aspects of the proposal and assess its feasibility. In order to facilitate the provision of this information, an Input Form (TEA Input Form – see section 8.1.3.1) is being made available for download from the following link - <http://www.witech.it/TEA%20MCA.exe>.

In conducting its evaluation, the Authority will seek to verify the consistency of the proposals made in the technical, financial and business plans.

In particular, the Authority will seek to verify that:

- The best-estimate assumptions on which the prospective information is based are reasonable and, in the case of hypothetical assumptions, such assumptions are consistent with the purpose of the information;
- The prospective information is properly prepared on the basis of the assumptions;
- All material assumptions are adequately disclosed, including a clear indication as to whether they are best-estimate assumptions or hypothetical assumptions; and
- The prospective financial information is prepared on a consistent basis with historical financial statements, using appropriate accounting principles.

8.1.3.1. TEA Input Form

This tool will require the Applicant to input information concerning the Applicant's:

- Market Analysis;
- Technical Analysis; and
- Economic and Financial Analysis.

The information should cover the first ten (10) years of operation and will be used to calculate the Net Present Value (NPV) and Internal Rate of Return (IRR) of the Applicant's plan.

One input form is being made available which is customised for both GSM and UMTS networks. The Applicant is required to fill the form as applicable for its circumstances. If an Applicant intends to use the spectrum in question for both GSM and UMTS services, the Applicant should submit two versions of the form - one with information relating to the GSM business plan and the other with information relating to the UMTS plan.

The TEA input forms should be supplemented with documentation that covers any assumptions and/or data and relevant calculations, which form the basis of the Applicant's plans.

An in-built user guide, which can be accessed through the 'Help' button of the tool itself, is also available for download together with the Application Form.

Note:

The input forms should be provided to the Authority as part of the soft copy (electronic) submission. This can be done using the Export function in the tool as outlined in the user guide.

The data input through these forms should also be included in the hard (paper) copy submission. Applicants can print the final version of their input forms by using the Report function in the tool as outlined in the user guide.

The Applicant should appropriately apportion the costs of common network elements between the GSM and UMTS networks prior to inputting the relevant data in the applicable input forms.

Costs should cover not only immediate network deployment but also any envisaged future upgrades throughout the 10-year period.

Inflation should be ignored when preparing the financial projections.

All sums inputted in the forms and supporting documentation must be expressed in Euro (€). Originals of bank and annual financial statements submitted as supporting documentation are exempted from this requirement.

8.1.3.1.1 Market Analysis

This section of the TEA Tool requires the Applicant to provide information on the following aspects:

- planned territorial and population coverage;
- service profiles;
- its existing customer base, if any, and predicted penetration and churn rates; and
- expected revenues.

8.1.3.1.2 Technical Analysis

This section of the TEA Tool requires the Applicant to provide information on the proposed network architecture, in particular details of:

- Radio access network; and
- Backhaul network.

The Applicant is required to provide:

- Key technical specifications for the radio equipment and end-user equipment on which the plan is based;
- Key parameters for determining path loss;
- Average usage patterns for the various service profiles;
- Estimates for additional network capacity requirements to handle other services, for example, roaming services;
- Information on existing radio access and backhaul equipment, if any;
- Information on the envisaged spectrum utilisation;
- Key information on the design of the backhaul network; and
- Rollout plans for the radio access equipment and backhaul network.

8.1.3.1.3 Economic and Financial Analysis

This section of the TEA Tool requires the Applicant to provide financial projections for the first ten (10) years of operation. Applicants are required to submit information with respect to:

- Personnel costs;
- CAPEX costs for the radio access network, user equipment, backhaul network and the core network;
- Depreciation criteria for the various network elements;
- OPEX costs for the network as well as sales, general and administrative costs; and
- Equity and financing levels.

8.1.3.2. Supplementary Information

In order to substantiate and complement the information provided through the TEA Input Form, the Applicant is requested to submit further information as follows.

8.1.3.2.1. Equipment Specifications

Technical specifications of the equipment on which the plan is based are to be provided. These need only be made available in the soft copy (electronic) submission.

8.1.3.2.2. Network Features

The Applicant is also required to clearly demonstrate its ability to comply with the obligations arising from the rights of use and the relevant legislation such as, but not limited to, lawful interception, emergency call (112) requirements and EMF.

8.1.3.2.3. Rollout and Coverage

The Applicant is required to submit the following supplementary information:

- A 'coverage and rollout' plan clearly indicating the 99% geographical coverage (which must be illustrated on maps of an appropriate scale) within the 24-month timeframe from grant as stipulated in the rights of use.
- Data on which the coverage calculations are based and any relevant documentation such as any relevant specifications, depending on the technology in use.
- Any assumptions made, including assumptions on obtaining sites and planning permissions.

8.1.3.2.4. Business Plan

The Applicant is required to provide the detailed business plan supporting the financial and technical analysis provided through the TEA input form, including amongst other things:

- A market analysis with an industry description and outlook, as well as an evaluation of both existing and future competition and any possible entry barriers.
- A demand analysis with an outline of the target market including its demographics, size and needs.
- A marketing analysis including the product range, lead times involved, pricing/tariff structure including gross margin targets and the growth strategy. This should include a justification of the ability of the product/service in question

to meet the customer needs, leading to an identification of the forecasted market share.

The Applicant should outline the grounds on which any estimates are based and include any relevant market research data and market test results. In particular when assumptions are made in areas that are material and are subject to a high degree of uncertainty, this uncertainty and the resulting sensitivity of results needs to be clearly indicated.

8.1.3.2.5. Project Financing

The Applicant will be required to prove that it has at its disposal the financial resources necessary in support of its proposed business plan. For this purpose, the Applicant is required to provide a comprehensive financing plan for the development of the electronic communications network and the company's operations, including the market introduction of the service. Such a plan shall cover documentation of the access to equity and borrowed capital. The documentation must include all aspects relating to the financing of both the development and operation (the amount of existing equity, owners' guarantees for additional injection of equity, credit lines / commitments from creditors, etc.).

In particular, the Applicant should expand on how it is to be funded to implement the proposed project:

- a) Explain the bank sources and provide letters from financial institutions confirming negotiations, if any, including full details of security to be provided, if any;
- b) Explain shareholder funding and sources of shareholding funds, including if sourced by way of loan, full details of lenders to shareholders and full details of security interests, if any;
- c) Explain third party funding arrangements and full details of security interests, if any.

Detailed proof of such funding should be included in the Application. In particular, the Applicant should provide full names and addresses of lenders and contact persons who may be contacted by the Authority for verification.

Any constraints relating to equity and borrowed capital such as the need to maintain certain financial key ratios, restrictions on dividend payments, etc., shall be fully described.

The Authority requires that the data presented in this section is:

- Consistent with the assumptions presented in the business and financial plans; and
- Adequately supported by official documentation.

8.2. Results of Qualification Stage

Following the assessment on the basis of the qualification criteria outlined in Section 8.1, the Authority will proceed to identify the Qualified Applicants. Applications of the Qualified Applicants will be considered for the award of rights of use.

If no Applications satisfy the qualification requirements set forth in this Call for Applications, the Authority reserves the right to cancel this Award process and consequently not to grant the rights of use of frequencies within this specific process launched by this Call for Applications.

8.3. Assessment of Demand

The Authority will consider the demand for spectrum from the Qualified Applicants as expressed in their Preferred Option in Part I.A.4 of the Application Form. If demand does not exceed supply in both Bands, the Authority will proceed with the granting of the rights of use of radio frequencies as outlined in Section 11. If, on the other hand, there is excess demand in any of the Bands, the Authority will determine whether to proceed to the Brokered Meetings Stage or directly to the auction.

8.4. Notification to Applicants

At this stage the Authority will notify all the Applicants of the outcome of the Qualification Stage and the result of the assessment of demand. In addition the Authority will inform the Qualified Applicants of the next stages in the process as outlined in the subsequent sections.

The Bank Guarantee of the unqualified Applicants will be released at this stage.

9. Brokered Meetings

In the event that demand (based on the Applicants' Preferred Options) exceeds the availability of spectrum in any of the Bands, the Authority reserves the right, at its own discretion and without binding itself to do so, to carry out a set of brokered meetings with the Qualified Applicants. The objective of these meetings will be to reach an agreement on an assignment plan that is accepted by all the Qualified Applicants.

In order to protect commercial interests, the meetings will be held separately with each Qualified Applicant and all information will be kept confidential.

In developing the proposals, cognisance will be taken of the spectrum requests put forward by the Applicant, the preferences indicated (i.e. its Preferred and Alternative Options as described in Section 4), its business and technical plans and the outcome of the discussions during the meetings.

If all the Applicants accept the proposal developed for them, the Authority will proceed with the granting of rights of use in accordance with the agreement reached.

In the absence of a full agreement being reached at the end of the brokered meetings, an attempt will be made to reach agreement to assign parts of the spectrum, whereby only the remaining Lots would be auctioned.

Any proposed solution reached between the Authority and each of the Qualified Applicants will be binding on the individual Applicants but not on the Authority in view of the fact that the Authority must ensure that the proposed solution is acceptable to all the Qualified Applicants.

In the event that no agreement (whether full or partial) is reached between the Qualified Applicants and the Authority, or should the Authority decide not to hold brokered meetings, all the spectrum in both Bands will be auctioned.

10. Auction Stage

In the event that an auction is required, all Qualified Applicants, as determined in Section 8 of the Call for Applications, automatically become Bidders in the auction. No parties other than the Qualified Applicants will be permitted to bid in the auction.

Any available spectrum in the 900 MHz and 1800 MHz bands 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 900 MHz and/or the 1800 MHz band, as well as the Prices that they have to pay as Initial Payment for these Lots.

Details of the Auction Rules are provided in Appendix E of this Call for Applications.

11. Grant Stage

During the Grant Stage, the Authority will determine the specific channels that will be awarded to the Successful Applicants in line with the number and type of Lots awarded to each Applicant during the Assignment Stage. This stage will be concluded with the issuance of the Licence documents.

11.1. Assignment of Specific Lots

Once the outcome of the Assignment Stage is known, the Authority will proceed with the award of the specific contiguous channels to each Successful Applicant taking due account of the Applicant's preferences and justifications as submitted in the Application Form (Part I.A.6). The Authority will not be bound in any way to assign the frequencies in accordance with the Applicant's expressed preferences. The Authority will have the sole and unlimited discretion to award the particular channels in the way it deems best in the interest of spectrum efficiency.

Should there be no reasonable justification for the Authority to assign the frequencies in a manner that does not reflect the Applicants' preferences, then a lottery will be held in the presence of the interested parties (at a date, time and location that will be announced in due course) to determine the specific spectrum assigned to each Successful Applicant.

Any assignment made by the Authority will be final and binding and the Applicant will have no right to object to, or reject such an assignment without becoming subject to the sanctions mentioned in Section 11.4.

11.2. Payment of Fees

Following the completion of the Assignment Stage, and the identification by the Authority of the specific channels to be assigned to each Successful Applicant, the Authority will inform each Successful Applicant in writing of:

- The specific channels assigned to the Applicant; and
- The Initial Payment due, including a date by when the payment must be made.

The Initial Payment by the Successful Applicants will consist of the following:

- For Lots assigned outside the auction process: the spectrum fee for the first licence year of €224,000 per 5 MHz paired channel in line with Legal Notice 449 of 2010; and
- For Lots assigned through an auction: the Price determined during the auction process.

It should be noted that, where an auction is held, and the amount of a Successful Applicant's Initial Deposit⁷ is an amount that is less than its Initial Payment, the Authority will notify the Successful Applicant of the deadline by when the Applicant must pay the Authority an additional sum which is equal to the shortfall.

Should, for any reason, a Successful Applicant fail to effect the necessary payments by the established timeframe, **the Applicant will be considered to have withdrawn its Application. The Bank Guarantee and any Deposits made by that Applicant will be forfeited.**

On the other hand, where the amount of a Successful Applicant's Initial Deposit is greater than or equal to its Initial Payment, the Authority will refund to the Successful Applicant the difference (if any) between the amount of that Successful Applicant's Deposit and the Initial Payment (but not any interest which may have accrued on the Deposit).

11.3. Amendment of Bank Guarantee

Prior to the grant of rights of use, the Authority will notify the Successful Applicant whether pursuant to Section 7.7 of this Call for Applications, the Successful Applicant needs to extend its Bank Guarantee beyond 31st December 2015.

If the Bank Guarantee is issued for periods of one year or more, the Applicant needs to provide a written commitment that it will retain the Bank Guarantee in place for the period specified above.

Should, for any reason, a Successful Applicant fail to effect the necessary changes by the established timeframe, **the Applicant will be considered to have withdrawn its Application. The Bank Guarantee and any Deposits made by the Applicant will be forfeited.**

⁷ As defined in the auction rules

11.4. Grant of Right of Use of Frequency

Once the Initial Payment has been effected and, where applicable, an extended Bank Guarantee submitted, the Licence document, based on the sample document that is attached to this Call for Applications in Appendix C, will be issued to Successful Applicants.

Should, for any reason, the Successful Applicant not accept the grant within an established timeframe, the Applicant will be considered to have withdrawn its Application. The Bank Guarantee and any Deposits made by the Applicant will be forfeited.

In the event that a Successful Applicant withdraws its Application at this stage, the Authority reserves the right to:

- Re-assess the Preferred Option for the remaining Qualified Applicants; or
- Recalculate the outcome of the auction based on the bids submitted by the remaining Qualified Applicants; or
- Carry out any process that it deems fit in order to ensure an efficient outcome and efficient spectrum usage.

In this eventuality, the Authority reserves the right to revise the number of Lots that had been assigned to the remaining Successful Applicants, if necessary, but only in so far as the said remaining Successful Applicants are not prejudiced by this revision in relation to the original assignment.

11.5. Return of Deposits and Bank Guarantees

In the event that an auction would have been held, the Authority will, at the Grant Stage return the Initial Deposits made prior to the auction (without any interest that may have accrued) and release the Bank Guarantees to the Unsuccessful Applicants.

11.6. Announcement of Results

Upon conclusion of the Grant Stage, the Authority will publicly announce:

- the number and identity of Applicants that participated in the Award process;
- the identity of the Successful Applicants;

- the frequencies awarded to each Successful Applicant; and
- in the case of an auction, the Initial Payment paid by each of the Successful Applicants.

Appendix A - Application Form

Application Form and Declaration by the Applicant:

Licence for the Rights of Use of Radio Frequency Spectrum in the 900 MHz and 1800 MHz Bands.

The Application Form is in three parts:

Part I should be completed in type or block letters by all Applicants.

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;
- In the case of a partnership, a co-operative, a company or other body corporate or incorporate, by the person or persons duly authorised to act for, and on behalf of, the partnership, co-operative, company or other body corporate or incorporate as the case may be.

Part III is a declaration of consent to the disclosure of information (to be executed by the authorised Applicant representatives, on behalf of the Applicant, by each director individually and by each shareholder in respect of which information is submitted herein).

Where the Applicant is located overseas, the Application must include an address for service of notice in Malta and the Applicant must, as a minimum, be registered as an overseas company in accordance with Maltese Law.

An Application from a European Union (EU) registered company will be accepted with the proviso that a Maltese address is also provided and that there will be a definite commitment in writing to register a company in Malta should the Applicant eventually be successful.

Part I: Information Required

A. General Information

1. Details of Applicant

1.1	Name of Applicant	
1.2	Business postal address of Applicant	
1.3	Telephone number	
1.4	Fax number	
1.5	Web-site address	
1.6	Postal address of registered office (in the case of registered companies whose business address differs from that of the address of their registered office)	
1.7	Company registration number	

2. Principal Contact Person

The person listed below is nominated by the Applicant as the Authorised Representative. Registration information and all other documentation and information regarding this Award will be forwarded to the Authorised Representative.

2.1	Name of contact person	
2.2	Title	
2.3	Postal address	
2.4	Telephone number	
2.5	Mobile number	
2.6	Fax number	
2.7	Email address	

3. Maximum Interest

Kindly indicate the total maximum number of Lots (highest number of combined Lots in both Bands) and the maximum number (quantity) of Lots in each Band (Maximum Interest) that you may eventually apply for throughout the course of the process.

Total Maximum Number of Lots: _____

Band	Maximum Number of Lots
900 MHz	
1800 MHz	

4. Preferred Option

Kindly indicate your preferred combination in terms of the number (quantity) of Lots in any of the two spectrum Bands. This option will be used by the Authority to determine the overall demand for the channels in each Band at the end of the Qualification Stage.

Note: The number of Lots requested in each Band is subject to a Spectrum Cap (an overall cap of eight (8) Lots will be applied over both Bands with a limit of four (4) Lots in the 900 MHz band).

In no case shall the number of Lots exceed the Spectrum Cap or the Total Maximum Interest or the individual band Maximum Interest indicated in Part I.A.3 above.

Band	Number of Lots
900 MHz	
1800 MHz	

5. Alternative Options

Kindly indicate your alternative preferences, with respect to the available spectrum Lots, that would suit your needs in the case that demand for the spectrum (determined on the basis of the Applicants' Preferred Options) exceeds supply.

Note 1: The number (quantity) of Lots requested in each Band is subject to a Spectrum Cap (an overall cap of eight (8) Lots will be applied over both Bands with a limit of four (4) Lots in the 900 MHz band).

In no case shall the number of Lots exceed the Spectrum Cap or the Total Maximum Interest or the individual band Maximum Interest indicated in Part I.A.3 above.

Note 2: The Preferred Option is not to be listed below.

900 MHz Band (Number of Lots)	1800 MHz Band (Number of Lots)	Alternative Preference (1 – best)
		1
		2
		3

6. Channel Preference

Kindly indicate your preference for specific channels with respect to the available spectrum Bands. For definition of the band frequencies reference should be made to Appendix B.

Lots will be considered in the sequence listed. Therefore if, for example, three (3) Lots are awarded, the first three listed channels will be considered.

Band	Preferred Channels (Channel Number)	Preference (1 – best)
900 MHz		1
		2
		3
		4
1800 MHz		1
		2
		3
		4
		5
		6
		7
		8

7. Spectrum Requirements & Channel Preference - Justification

(List **technical** reasons to justify why the Applicant should be assigned rights of use in accordance with the stated preferences)

B. Corporate Ownership

1. Information on the Applicant

The following information is being requested from the Applicant⁸:

- (i) Confirmation that none of the shareholders are acting as fiduciaries or trustees for any other person; if they are, then full disclosure of the names, addresses and ID card numbers of all principals or beneficiaries as the case may be, and the same declarations/information from them as is requested from direct shareholders is required;
- (ii) The information in this section must be provided in relation to each and every parent company of the Applicant, and of the Applicant's parent company, leading up to the ultimate beneficiary stakeholders of the Applicant;
- (iii) Confirmation that there exists no agreement, written or verbal, relating to the sale of the shares in the Applicant; if there are any, full disclosure of the agreement and the persons entitled thereto is required. This refers to both issued shares involving existing shareholders and new shares to be issued by the Applicant.

The following questions must be answered by the Applicant and the declaration below signed by the authorised representative thereof⁹:

If the answer to any of the questions below is **yes**, please give full particulars on a separate sheet **making clear reference to the question in relation to which the information is being provided.**

	YES / NO
(a) Has the Applicant or any related company ever applied for and been refused a licence or an equivalent authorisation or registration to conduct business in Malta or elsewhere?	
(b) Has the Applicant or any related company failed to satisfy a judgement debt under a court order in Malta or elsewhere within a year of the making of the order?	
(c) Has the Applicant or any related company made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?	
(d) Has the Applicant or any related company ever had an official receiver or provisional administrator or liquidator appointed over any of its property in Malta, or has the substantial equivalent of any such person been appointed in any other jurisdiction? If so, give full particulars.	

⁸ If the Applicant has already produced this information before to the Authority, Applicant need not reproduce it here. A mere indication in full of the document wherein the information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, the Applicant must provide full information relating to that part of the document that is no longer applicable.

⁹ If the Applicant has already answered these questions in relation to another application, a mere indication in full of the document in which these questions were answered, and of the relevant part of that document would suffice. However, if any answers given previously need to be modified, whether in part or in full, the Applicant must reply to these questions in full. In any case, the declaration must be signed by the authorised representative of the Applicant.

<p>(e) Has the Applicant or any related company ever had a garnishee order or warrant of seizure or the substantial equivalent of such warrants served on it in any jurisdiction?</p>	
<p>(f) Has the Applicant or any related company ever had a notice of resolution for dissolution and consequential winding up in Malta, or had the substantial equivalent of such a notice given in any other jurisdiction?</p>	
<p>(g) Has a petition ever been served in Malta for the compulsory liquidation of the Applicant or any related company or has the substantial equivalent of such a petition ever been served in any other jurisdiction?</p>	
<p>(h) Has an inspector or other authorised officer however so described of any government department, public authority or agency, professional association or other regulatory body appointed under any Maltese Law or equivalent overseas enactment, ever investigated the affairs of the Applicant or any related company?</p>	
<p>(i) Has the Applicant or any related company ever been censured, prosecuted, warned as to future conduct, disciplined or publicly criticised by, or made the subject of a court order at the instigation of any supervisory or regulatory authority?</p>	
<p>(j) Has the Applicant or any related company ever been refused entry in Malta or elsewhere to any professional body or trade association?</p>	
<p>(k) Is the Applicant or any related company engaged or does it expect to be engaged in Malta or elsewhere in any litigation which may have a material effect on the resources of the undertaking?</p>	
<p>(l) Has the Applicant or any related company ever been found non-compliant with the obligations relating to the payment of social security and taxes in accordance with the legal provisions of Malta or the country in which it is established?</p>	
<p>(m) Has the Applicant or any related company at any time been convicted of any offence by any court, in Malta or elsewhere? If so, when giving particulars, state the court by which you were convicted, the offence, the penalty imposed and the date of conviction.</p>	
<p>(n) Has the Applicant or any related company, in Malta or elsewhere, been censured, disciplined or criticized for grave professional misconduct?</p>	
<p>(o) Has the Applicant or any related company ever been subject of conviction by final judgement of participation in a criminal organisation (as defined in Article 2(1) of Council Joint Action 98/733/JHA), corruption (as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/733/JHA respectively), fraud (within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities) or money laundering (as defined in Article 1 of Council Directive</p>	

91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering)?	
(p) Has the Applicant or any related company ever been party to a lawsuit (provide details)?	
(q) Has any interest or share in the profits ever been pledged or hypothecated as a security for a debt, or deposited as a security for the performance of an act, or to secure the performance of a contract?	

Declaration:

This declaration must be completed by the authorised representative/s of the Applicant in block capitals or typed.

I, _____ declare that the particulars supplied above are true to the best of my knowledge and belief.

Signature/s:

Position in undertaking:

Date:

2. Information on the Directors of Applicant

The following information is being requested from the Directors of the Applicant¹⁰:

- (i) A list of all directorships currently or previously held in other companies by each of the directors of the Applicant;
- (ii) Name, address, nationality, place and date of birth, occupation and brief curriculum vitae (with relevant experience) of each director;
- (iii) A certified copy of the (Maltese) ID card or passport (in the case of non-holders of Maltese ID cards) of each director;
- (iv) A recent bank reference on each director;
- (v) A recent police conduct certificate from the authorities in the place of residence of the directors.

The following questions must be answered by the Applicant's Directors and the accompanying declaration below duly signed by them¹¹:

Please answer Yes or No to the following questions. If the answer to any of the questions below is **yes**, please give full particulars on a separate sheet **making clear reference to the question in relation to which the information is being provided.**

	YES / NO
(a) Have you at any time been a director or managing director of any undertaking whose licence or authorisation in relation to its commercial activity to operate has, during the period of your involvement or within 12 months thereafter, been revoked, cancelled, restricted, suspended or surrendered under any law?	
(b) Have you at any time been a director or senior executive of any undertaking whose application for a licence to conduct any business in Malta or elsewhere has, during the period of your involvement or within 12 months thereafter, been refused or withdrawn?	
(c) Have you at any time been convicted of any offence by any court, in Malta or elsewhere? If so, when giving particulars, state the court by which you were convicted, the offence, the penalty imposed and the date of conviction.	
(d) Have you, in Malta or elsewhere, been censured, disciplined or criticized by any professional body to which you belong or have belonged or made the subject of a court order at the instigation of any regulatory authority or have you ever held a practising certificate subject to conditions?	

¹⁰ If the Applicant has already produced this information before to the Authority, the Applicant need not reproduce it here. A mere indication in full of the document wherein this information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, the Applicant must provide full information relating to that part of the document that is no longer applicable. Certificates and documentation required must be updated to the date of this Application.

¹¹ If the Applicant's directors have already answered these questions in relation to another application, a mere indication in full of the document in which these questions were answered, and of the relevant part of that document would suffice. However, if any answers given previously need to be modified, whether in part or in full, the Applicant's directors must reply to these questions in full. In any case, the declaration must be signed by the directors.

<p>(e) Have you, or has any company, with which you are, or have been associated as a director or managing director, by reason of any matters relating to it at a time when you were so associated, been the subject of an investigation, in Malta or elsewhere, by a governmental, professional or other regulatory body?</p>	
<p>(f) Have you incurred a judgement debt under a court order in Malta or elsewhere or made any compromise arrangement with your creditors within the last ten (10) years?</p>	
<p>(g) Have you in Malta or elsewhere, been dismissed from any office or employment or barred from entry to any profession or occupation?</p>	
<p>(h) Has any company with which you were associated as a director or managing director in Malta or elsewhere been wound up or otherwise made any compromise or arrangement with its creditors or ceased trading, either when you were associated with it or within 12 months after you ceased to be associated with it? Has anything analogous to any of these events occurred under the laws of any other jurisdiction?</p>	
<p>(i) Have you been concerned with the management or conduct of affairs of any undertaking which, by reason of any matter relating to it at a time when you were so concerned, has been censured, warned as to future conduct, disciplined or made subject to a court order at the instigation of any regulatory authority in Malta or elsewhere?</p>	
<p>(j) Have you, in conjunction with the formation or management of any body corporate, partnership or unincorporated undertaking, been adjudged by a court in Malta or elsewhere to have civil liability for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof?</p>	
<p>(k) Has any body corporate, partnership, firm or unincorporated undertaking with which you are associated as a director, executive or manager been compulsorily wound up or dissolved either by order of any court or because it was adjudged bankrupt or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within five years after you ceased to be associated with it? If so, give full particulars.</p>	
<p>(l) Are you presently or do you expect to be engaged in any litigation in Malta or elsewhere, other than in a professional capacity?</p>	
<p>(m) Have you ever become bankrupt or availed yourself of the laws relating to bankruptcy or insolvency?</p>	
<p>(n) Have you ever been subject of conviction by final judgement of participation in a criminal organisation (as defined in Article 2(1) of Council Joint Action 98/733/JHA), corruption (as defined in Article 3 of the Council Act of 26 May 1997 and</p>	

Article 3(1) of Council Joint Action 98/733/JHA respectively), fraud (within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities) or money laundering (as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering)?	
(o) Have you ever been found non-compliant with the obligations relating to the payment of social security and taxes in accordance with the legal provisions of Malta or of any other country?	

CERTIFICATION

I certify that the above information is complete and correct to the best of my knowledge and belief.

Date:

Signature:

Name of Director:

3. Information on the Shareholders of the Applicant

The following information is being requested from the Applicant¹²:

- (i) Overview of the Applicant, mainly including details of its date of formation, a highlight of significant developments since and its current legal status;
- (ii) A detailed description of the Applicant's ownership structure including all direct and indirect ownership interests, together with a summary of any agreements which have a determinative influence on the Applicant's decision making power. The information should include any foreseeable changes in this respect;
- (iii) For each stakeholder, shareholder, bearer of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the Applicant, the following information is to be submitted:
 - The stakeholder's relationship to the Applicant (e.g., number and type of capital shares or securities held, nominal value of capital shares as well as voting and dividend rights associated with any and all types of shares), syndicate / consortium agreements;
 - In the case of natural persons:
 - a. Name, nationality, place and date of birth and occupation of each Shareholder; and
 - b. Certified copies of ID cards or passports (in the case of non-holders of Maltese ID cards), where not already submitted under Part I.B.2 above.
 - In the case of legal entities:
 - a. Name (company), postal address of registered office, telephone number, fax number, date and place of establishment, website address, company registration number;
 - b. Parent company of the group; and
 - c. Certified copy of memorandum and articles of association in case of shareholding companies together with a recent good standing certificate.

In cases where the Applicant has a large number of stakeholders (shareholders), the information indicated is to be provided on all shareholders or group of shareholders (where shareholders are members of the same Group of Companies or are otherwise linked together) that hold shares with voting rights in excess of 5% in the Applicant.

Where any of the Applicant's shareholders that fall beyond the above threshold are regulated companies under the relevant financial services legislation, the Applicant must provide information as to the place of incorporation of the companies, their regulatory status and the nature of the fund. Apart from this information, where the said shareholders are collective investment schemes, all the information related to the shareholders listed in paragraphs (i), (ii) and (iii) above must be provided in relation to the Manager of the scheme.

In cases where the Applicant is a company quoted on a Stock Exchange, it must provide information in relation to the said listing and must provide the above mentioned information in relation to those shareholders or group of shareholders (where shareholders are members of the same Group of Companies or are otherwise linked together) that hold shares in excess of 25%.

¹² If the Applicant has already produced this information before to the Authority, the Applicant need not reproduce it here. A mere indication in full of the document wherein this information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, the Applicant must provide full information relating to that part of the document that is no longer applicable. Certificates and documentation required must be updated to the date of this Application.

In cases where capital shares or other securities issued by the Applicant are administered on behalf of their owner by third parties (for example trustees), such facts are to be noted in the submission and the aforementioned information should refer to the actual owner, or principal beneficiary of the shares/securities.

The Authority reserves the right to request further information in relation to the above.

The following questions must be answered by those Applicant's shareholders that satisfy the criteria mentioned above:

- (1) I declare that I am the beneficial owner of the Shares indicated by my name in the documents forming part of the Application to the Authority and that the personal details set out above are correct.
- (2) I declare that the remittance of all and any funds which have been or which at any time in the future may be remitted for the account of the Company as payment of allotment monies for the Shares is not and will not be the proceeds of an offence and consequently does not and will not constitute a money laundering offence in the Prevention of Money Laundering Act, 1994.

Date:

Signature:

Name of Shareholder:

C. Company Standing

The Applicant should provide information as requested in Section 8.1.1.

**If necessary use additional sheets.
These should be appended to this
page.**

For MCA Internal Use Only

D. Competence and Experience

Managerial Competence:

The Applicant should provide details of the managerial staff of the organisation applying for the rights of use of radio frequencies. Further details of the required information can be found in Section 8.1.2.1.

Experience:

The Applicant should provide details of the organisation applying for the rights of use of radio frequencies. Further details of the required information can be found in Section 8.1.2.2.

If necessary use additional sheets. These should be appended to this page.

For MCA Internal Use Only

E. Technical and Commercial Plans

TEA Input Forms:

The Applicant should provide a hard copy of the TEA Input Forms. Further details on the required information can be found in Section 8.1.3.1.

Supplementary Information:

The Applicant should provide the supplementary information, as requested in Section 8.1.3.2.

If necessary use additional sheets. These should be appended to this page.

For MCA Internal Use Only

Part II: Declaration

I / we have read all the documentation associated with this Call for Applications and hereby declare that I / we agree to abide with the terms and conditions therein.

The Authority will endeavour to minimise the potential of interference. I / we accept that the Authority will not be liable for any interference received and that I / we will comply with whatever the Authority requests in preventing interference being caused by this system to other licensed users of the radio spectrum.

I / we hereby declare that the information provided is accurate and complete in all respects.

I / we confirm that all the information submitted in support of this Application is complete and true and that I / we understand that knowingly making false statements for this purpose is tantamount to a criminal offence.

I / we understand that misrepresentation or failure to submit any information requested by the Authority shall be deemed as a good and sufficient cause to disqualify the Application or for an eventual revocation of the rights of use if such misrepresentation or failure is discovered at a later stage.

I / we understand that should the information provided in relation to this Application cease to be correct, or if there are any changes in the information provided in the Application between the date the Application was submitted and the date it is determined, it is my responsibility to advise the Authority immediately. Failure to do so could result in any rights of use subsequently issued being reviewed and possibly suspended or revoked.

The Authority may request confirmation or further information from any appropriate third parties in respect of evidence or documentation I / we have provided in support of this Application. I / we agree to authorise the Authority to request and receive information about us from such third parties.

I / we accept that a right of use does not confer any right of ownership of the radio frequency spectrum. It allows the assigned radio frequency channels to be used during the term of the rights of use in accordance with the conditions of the rights of use.

I / we accept to provide a Bank Guarantee in the appropriate form as indicated in Section 7.7 and Appendix D of this Call for Applications, issued by a bank or other financial institution as described in Section 7.7 of this Call for Applications, which will be effective from date of Application and will remain so effective up to the 31st December 2015 or 3 years from the Commencement Date of the Licence, whichever comes last.

I / we accept that if I / we withdraw or amend the Application after the expiry of the Application Deadline mentioned in the Call for Applications, the Bank Guarantee will be forfeited.

I / we hereby accept that any possible legal dispute between the Authority, and an Applicant / Bidder or a Licensee 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.

I / we hereby certify that I / we have not entered into and will not enter into any agreements or arrangements of any kind with any competitor/Applicant regarding this

Award process, the amount to bid, bidding strategies on which I / we or competitors will or will not bid. I / we understand that if this certification is found not to be true and complete in every respect, then:

- I / we will be disqualified from the Award process; and
- Any rights of use that may have already been issued to me / us as a result of this Award may be revoked.

I / we hereby certify that the receipt of passwords by my / our Authorised Representatives implies that the Authority may assume that any bids submitted in the auction using such passwords are submitted on my / our behalf. I / we am / are responsible for reporting any suspicion of loss or breach of confidential security codes immediately.

I / we hereby certify that no member identified in the Application, is or was subject to criminal investigations or proceedings in Malta or abroad which might reasonably adversely affect their business or materially affect my / our ability to participate in the Award process or to satisfy the terms of any rights of use awarded, and there is no reason to believe that any such investigation or proceeding might occur during the Award process.

I / we hereby certify that no member identified in the Application is party to any civil litigation or proceedings which may be expected to have a material adverse impact on my / our ability to participate in the Award process or to satisfy the terms of any rights of use awarded pursuant to this Call for Applications.

I / we further declare that in the event that we are awarded the right of use of radio frequency spectrum pursuant to this Call for Applications

- I / we will, at all times, comply in every respect with the conditions attached to the grant of rights of use;
- I / we will, at all times, comply with lawful decisions and directives of the Malta Communications Authority and with the obligations at Law.

Signed:

Name Full name(s) of Signatory/Signatories:	Signature	Position Position held (as applicable if Applicant is a company, co-operative or other body corporate):

Date: _____

Part III: Declaration of Consent to Disclosure of Information

(To be executed by the authorised Applicant representatives, on behalf of the Applicant, by each director individually and by each shareholder in respect of which information is submitted herein)

I, the undersigned, _____(name and surname) residing at: _____
_____ (address) and holding the Maltese identity card numbered _____ (in the case of Maltese ID card holders) or _____ (nationality) passport numbered _____(in the case of non-Maltese ID card holders):

Understand that the Authority reserves the right to investigate all relevant data and facts to its satisfaction;

Authorise the Authority to conduct a complete and comprehensive investigation to determine the accuracy of all information gathered and I hereby release, waive, discharge and agree not to hold the Authority responsible for the receipt and use of such data, other than for unlawful processing of such information, acquired during investigations and inquiries;

Do hereby expressly consent, for the purposes of the Professional Secrecy Act, 1994 to the disclosure of all information you may have relating to the undersigned, including confidential information and that information which may constitute personal information in the terms of the Data Protection Act (Cap. 440 of the Laws of Malta) in so far as it relates to financial, security or public order matters.

When executed by an individual, nothing in this consent permits disclosure of any personal information relating to my personal health of any type or sensitive personal data as defined by the Data Protection Act.

This consent is given to you to provide information only to the Malta Communications Authority to enable it to verify statements and other facts in relation to the consideration of an Application I / we have made to such Authority.

This consent is given to:

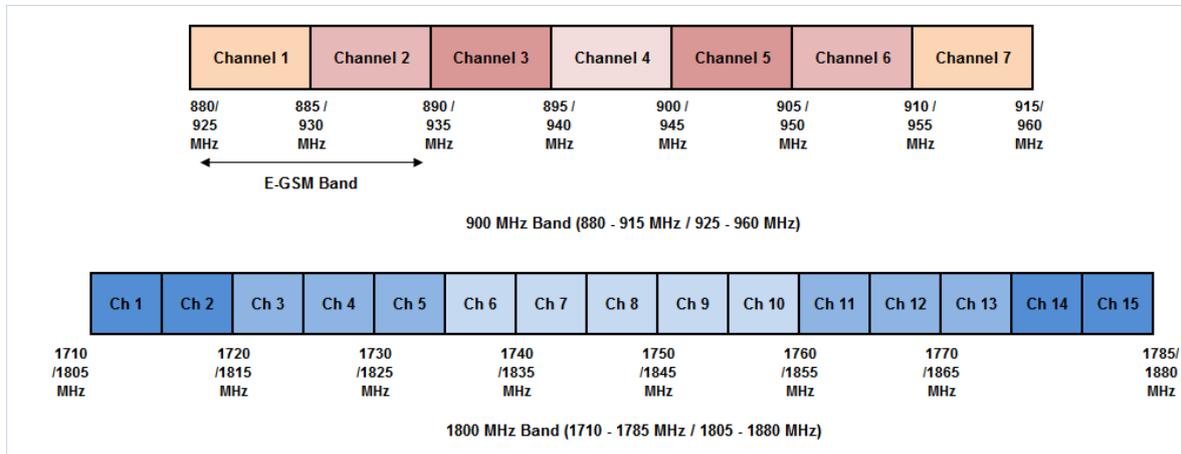
- a) any credit institution, insurance company, investment service licensee or any trustee authorised to do business in Malta or within the European Union;
- b) the Government of Malta and any authority established by law in Malta or in the European Union; and
- c) any law enforcement agency or authority in Malta or in the European Union.

Signature

(Name in Block Letters)

Appendix B - Further Spectrum Band Information

The available frequencies are being assigned in alignment with the following plan:



This channelling plan has been devised on the basis of the 3rd Generation Partnership Project (3G PP) technical standard TS 36.104. The channel numbers listed in the tables below are to be used when identifying your preference.

900 MHz Band:

Channel Number	Downlink Carrier Frequency (MHz)	Uplink Carrier Frequency (MHz)
1	927.45	882.45
2	932.45	887.45
3	937.45	892.45
4	942.45	897.45
5	947.45	902.45
6	952.45	907.45
7	957.45	912.45

1800 MHz Band:

Channel Number	Downlink Carrier Frequency (MHz)	Uplink Carrier Frequency (MHz)
1	1807.45	1712.45
2	1812.45	1717.45
3	1817.45	1722.45
4	1822.45	1727.45
5	1827.45	1732.45
6	1832.45	1737.45
7	1837.45	1742.45
8	1842.45	1747.45
9	1847.45	1752.45
10	1852.45	1757.45
11	1857.45	1762.45
12	1862.45	1767.45
13	1867.45	1772.45
14	1872.45	1777.45
15	1877.45	1782.45

Appendix C - Sample Licence

SAMPLE LICENCE¹³

GRANT OF RIGHTS OF USE OF RADIO FREQUENCY SPECTRUM AND RELATED RADIOCOMMUNICATIONS APPARATUS FOR THE ESTABLISHMENT AND OPERATION OF A TERRESTRIAL MOBILE SYSTEM CAPABLE OF PROVIDING ELECTRONIC COMMUNICATION SERVICES

Date of Issue:	
Date of Expiry:	
Name of Licensee:	
Registered Address:	
Company Registration Number:	

Article 1. Definitions

1.1 Any reference in this Licence to the "ECRA" is a reference to the Electronic Communications (Regulation) Act (Cap. 399 of the Laws of Malta), and subject to Article 1.2 of this Licence, the provisions of the said Law shall apply to this Licence.

1.2 In this Licence, unless the context otherwise requires:

"Authority" means the Malta Communications Authority;

"the Commencement Date" means ;**[enter date]**

"coverage territory" means all the islands of the Maltese Archipelago, excluding the territorial waters and airspace thereof, within which access by users to the services being provided over the relevant network is possible;

"the Expiry Date" means ;**[enter date]**

"the Radiocommunications Apparatus" means all the apparatus comprising the mobile network as defined in Annex II to this Licence;

¹³ This is a specimen Licence.

Prior to the issue of a Licence to an undertaking, the Authority reserves the right to amend any of the contents of this specimen Licence if it considers this to be necessary to:

- i. further clarify the said contents;
- ii. comply with any requirements at national / European law; and to
- iii. reflect any further obligations that the Licensee assumes as a result of the process for the grant of rights of use of the radio frequency spectrum.

“the Radio Frequency Spectrum” means that defined in Annex I to this Licence;

“R&TTE Regulations” means the Radio Equipment and Telecommunications Terminal Equipment and the Mutual Recognition of their Conformity Regulations (S.L. 427.41 of the Laws of Malta);

“the Licensee” means ***[enter name of licensee including company details, if applicable]***

Article 2. Grant of Licence

3.1 By virtue of this Licence, the Authority hereby assigns to the Licensee the right of use of the Radio Frequency Spectrum and the right to install and use the Radiocommunications Apparatus, for the purpose of establishing and operating a terrestrial mobile system capable of providing electronic communication services according to the conditions listed hereunder.

Article 3. Licence Duration

3.1 This Licence shall commence on the Commencement Date and shall remain in force until the Expiry Date, unless otherwise lawfully terminated in accordance with the ECRA and/or this Licence.

3.2 This Licence shall cease to have effect immediately on the Expiry Date.

3.3 Irrespective of whether the Licensee is still using the Radio Frequency Spectrum, the right of use of which is granted to it by virtue of this Licence, the Authority shall, at any time prior to the expiry of this Licence, have the right to commence any procedures necessary for the re-assignment of the rights of use of the Radio Frequency Spectrum upon the expiry of this Licence.

Article 4. Use of Radio Frequency Spectrum

4.1 The Radio Frequency Spectrum shall be used by the Licensee only to establish and operate a terrestrial mobile system capable of providing electronic communication services in accordance with the parameters laid down in Annex I to this Licence and subject to the terms, conditions and limitations stated in this Licence, unless otherwise previously authorised in writing by the Authority.

4.2 The Licensee shall at all times ensure that the Radio Frequency Spectrum is used efficiently and in accordance with the Authority’s directions.

4.3 The Radio Frequency Spectrum shall only be used by the Licensee. The right of use of the Radio Frequency Spectrum may not be assigned or transferred to third parties, unless otherwise previously authorised in writing by the Authority:

Provided that a change in any way whatsoever in the ownership of shares with voting rights of the Licensee shall be considered to constitute an assignment or transfer of the Radio Frequency Spectrum.

4.4 The Licensee shall immediately in writing inform the Authority of any changes effected to its corporate structure, including, but not limited to, any changes in shareholding, and to its registered address.

Article 5. Fee for Right of Use of Radio Frequency Spectrum

5.1 The Licensee shall immediately upon issue of this Licence and thereafter annually, in advance, for the duration of this Licence, pay to the Authority the fees stipulated in the relevant legislation:

Provided that the Licensee shall effect such payments punctually and that any late payments shall be subject to the maximum interest rate applicable at law:

Provided further that any non-payment or late payment of dues under this Article shall also constitute a breach of this Licence and entitle the Authority to terminate the same Licence.

5.2 All payments effected by the Licensee in accordance with Article 5.1 of this Licence are **not** refundable by the Authority and/or Government of Malta.

Article 6. Non-Interference

6.1 The Licensee shall comply with any directives and, or decisions however so described, issued by the Authority in relation to harmful interference.

6.2 The Licensee shall ensure that the Radiocommunications Apparatus at all times complies 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 that such system does not cause harmful interference with, seriously reduce the quality of, or repeatedly disrupt the lawful use or operation, of any other electronic communications networks and, or services.

6.3 The Licensee shall ensure that its Radiocommunications Apparatus does not cause harmful interference with, seriously reduce the quality of, or disrupt the lawful use or operation of, any other electronic communications networks and, or services.

6.4 Neither the Authority, nor the Government of Malta, shall be held responsible in any manner whatsoever by the Licensee for any harmful interference that may hinder the use or operation of its Radiocommunications Apparatus.

Article 7. Exposure to Electromagnetic Fields

7.1 The Licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) and any other appropriate standards as may be specified by law or by the Authority.

7.2 The Licensee shall comply with any decisions however so described issued by the Authority in relation to electromagnetic radiation, and shall ensure that its Radiocommunications Apparatus at all times complies with the technical and performance standards generally accepted by the industry, or as may be prescribed by the Authority in line with national and European Community Law, or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.

7.3 The Licensee shall ensure that its Radiocommunications Apparatus is not installed or operated at a location and in a manner such as to be the cause of the

aggregate non-ionising radiation emissions exceeding the limits published by the ICNIRP or any other appropriate standards as may be specified by law or by the Authority.

Article 8. Rollout and Coverage Requirements

8.1 The Licensee shall ensure that access to its terrestrial mobile system capable of providing electronic communication services is made available to users in the Coverage Territory in accordance with the coverage requirements and timeframes set out in Annex III of this Licence and the conditions listed in this Licence such that users can adequately access its terrestrial mobile system capable of providing electronic communication services network:

Provided that the Licensee's obligations under this article shall not apply if subsequent to a request in writing by the Licensee, the Authority agrees in writing that it is not practicable for the Licensee to carry out its obligations under this article.

Article 9. Conditions of Use of the Radiocommunications Apparatus

9.1. The Radiocommunications Apparatus shall be maintained so as to remain compliant with the provisions of the R&TTE Regulations:

Provided that any licensees that enjoyed a valid Radiocommunications Licence however so described before the issue of this Licence are exempt from the requirement to be compliant with the provisions of the R&TTE Regulations.

9.2. The Radiocommunications Apparatus shall be used by the Licensee only to establish and operate a terrestrial mobile system capable of providing electronic communication services in accordance with the parameters laid down in Annex I to this Licence and subject to the terms, conditions and limitations stated in this Licence, unless otherwise previously authorised in writing by the Authority.

9.3. This Licence does not authorise the Licensee to transfer the ownership, authorise the use or dispose of the Radiocommunications Apparatus, or any part thereof, in any way whatsoever, without the prior express consent in writing by the Authority:

Provided that a change, in anyway whatsoever, in the ownership of shares with voting rights of the Licensee shall be considered to constitute an assignment or transfer of the Radiocommunications Apparatus.

9.4. The Radiocommunications Apparatus shall be operated exclusively by personnel duly authorised by the Licensee and under the responsibility of the Licensee.

9.5. The Licensee shall not permit any unauthorised persons to operate the Radiocommunications Apparatus.

9.6. The Licensee shall ensure that persons authorised to operate the Radiocommunications Apparatus mentioned in Annex II to this Licence observe the terms, conditions and limitations of this Licence.

Article 10. Information

- 10.1. The Licensee shall facilitate and ensure access to any information that the Authority may, in accordance with its functions at law, request.
- 10.2. The Licensee shall promptly provide the Authority, in such a manner and at such times as the Authority may reasonably request, any information related to the use of the Radio Frequency Spectrum and/or the Radiocommunications Apparatus assigned to the Licensee, or any other information that the Authority considers necessary to ensure compliance with this Licence and, or with the provisions of any law, or for statistical purposes.

Article 11. Further Compliance

- 11.1. The Licensee shall comply with:
- a) all laws;
 - b) any orders, decisions or other directives, however so described, of the Authority; and
 - c) all the articles of this Licence.
- 11.2. Nothing in this Licence shall absolve the Licensee from any legal requirement to obtain any other permissions, authorisations or licences, however so described, as may be necessary for the provision of the service and for the exercise of its rights and the discharge of its obligations under this Licence:

Provided that failure on the part of the Licensee to comply with any other requirements shall not exempt the Licensee from any failure to discharge its obligations under this Licence:

Provided further that the Licensee shall be solely responsible for all costs, expenses and other commitments, however so described, whether financial or otherwise, in respect of the Licence and the provision of the service, and the Authority shall bear no responsibility for any such costs, expenses or commitments.

Article 12. Termination

- 12.1. Without prejudice to any other measures, including the imposition of penalties however so described, that may be taken at law for the non-observance of the conditions of this Licence, this Licence may be withdrawn at any time by the Authority if any of the conditions laid down at law or in any part of this Licence are not observed.
- 12.2. This Licence shall automatically be terminated with immediate effect and returned by the Licensee to the Authority, in any of the following cases:
- a. upon the expiration of the term of the Licence;
 - b. upon the Licence being handed back in accordance with Article 13 of this Licence;
 - c. upon renunciation by the Licensee;
 - d. upon revocation of this Licence in accordance with the articles of this Licence and, or of law;
 - e. upon insolvency, liquidation or bankruptcy of the Licensee; or
 - f. upon the winding up or dissolution of the Licensee.

- 12.3. In addition to the above, if the Authority is of the view that the spectrum, the rights of use of which are awarded by virtue of this Licence, is not being utilised efficiently, it will communicate its view to the Licensee and the Licensee will have three months to rectify the situation, failing which the Authority will be entitled to terminate without further warning the rights of use being granted herein.
- 12.4. The termination of this Licence on any of the grounds mentioned in paragraphs (c) to (f) of Article 12.2 and Article 12.3 of this Licence will be without prejudice to the obligation of the Licensee to pay with immediate effect upon termination the fee for the right of use of Radio Frequency Spectrum laid down in Article 5.1 of this Licence that would have been paid by the Licensee for the subsequent three years of this Licence and fulfil any obligation arising prior to the said termination.
- 12.5. The termination of this Licence on any of the grounds mentioned in paragraphs (b) to (f) of Article 12.2 and Article 12.3 above will be without prejudice to any measures that may be taken by the Authority with respect to the Licensee's failure to comply with its rollout and coverage obligations as mentioned in Article 8 of this Licence.
- 12.6. The termination of this Licence in relation to the Rights of Use of Spectrum will entitle the Authority to automatically re-assign the spectrum in question to third parties.

Article 13. Hand back¹⁴

- 13.1. Without prejudice to Article 12.5 of this Licence, in the event that the Authority so authorises, on the grounds that the overall demand for any number of the radio frequencies in any of the bands listed in Appendix B of the Call for Applications, or part thereof, never exceeded the available number of radio frequencies in those bands, the Licensee may choose to hand back to the Authority that number of the radio frequencies listed in Annex I in that band for which demand never exceeded supply.
- 13.2. The right of the Licensee to hand back the Licence in accordance with Article 13.1 of this Licence will be without prejudice to its obligation to effect any payments due to the Authority at the time of the hand back in accordance with Article 5.1:

Provided that any payments that would have already been duly effected by the Licensee to the Authority in accordance with Article 5.1 will not be reimbursed by the Authority upon hand back:

Provided further that the balance, that would have become due to the Authority for the payment of the fee between the date of the hand back and the fourteenth anniversary date, shall no longer be due to the Authority.

Article 14. Rights and Remedies of the Authority

- 14.1. In addition to its power to terminate this Licence in accordance with Article 12 above, the Authority shall, in accordance with its powers at law, have the power to impose administrative fines on the Licensee for any non-compliance with the

¹⁴ The inclusion of this Article in the Licence will depend on the demand for spectrum registered throughout the process. This Article, if included in the Licence, will be reworded accordingly.

conditions of this Licence and, or call upon any bank guarantees issued by the Licensee in favour of the Authority where the conditions for such an action occur.

- 14.2. The Authority may add to, or amend or revoke any of the terms and conditions of this Licence, including the Radio Frequency Spectrum, the right of use of which is being granted by this Licence, when such additions or amendments are necessary as a result of any international obligations entered into by the Authority or by the Government of Malta, or by the need to ensure compliance with the ECRA or any other law, or by the need to ensure efficient frequency planning:

Provided that the Authority shall not be held responsible in any manner whatsoever for any damages suffered or expenses incurred by the Licensee as a result of any amendment of the terms or conditions of this Licence:

Provided further that the Authority should inform the Licensee in advance and take into account its views if relevant impact is foreseeable on the Licensee's terrestrial mobile system capable of providing electronic communication services and if circumstances so permit, grant a reasonable timeframe for the implementation of the relevant additions and, or amendments to the conditions.

- 14.3. If any article of this Licence is declared to be unenforceable by any court of law or tribunal however so described, such declaration shall have no effect on the enforceability of the remaining articles of this Licence, all of which will remain in force until the termination of this Licence.

- 14.4. The Authority and any persons duly authorised by the Authority to act on its behalf, shall have the right to carry out inspections and measurements on any site and equipment, being operated by the Licensee at any reasonable time, for the purpose of ensuring that the Licensee is abiding with the articles of this Licence and, or with any legal requirements:

Provided that in cases of urgency the Authority may carry out any such inspections outside normal business hours.

- 14.5. All the articles under this Licence shall for the purpose of law be considered as decisions imposed by the Authority and any failure to abide with any such articles may, without prejudice to any other measures that the Authority may in accordance with law take, be sanctioned by the imposition of the appropriate fines in accordance with law.

- 14.6. The ECRA, any other national laws, directives and decisions however so described of the Authority shall apply to the Licensee for all purposes and shall form an integral part of this Licence.

Signed in duplicate.

Philip Micallef
Chairman
Malta Communications Authority

(Licensee)

Annex I - Description of Radio Frequency Spectrum and Technical Parameters

Radio Frequency Spectrum:

Spectrum bands assigned - To be completed on Assignment

List of Terrestrial Systems that can operate in these Bands:

The following technical parameters shall be applied as an essential component of conditions necessary to ensure coexistence in the absence of bilateral or multilateral agreements between neighbouring networks, without precluding less stringent technical parameters if agreed among the operators of such networks.

Systems	Technical Parameters
GSM complying with the GSM Standards, as published by ETSI, in particular EN 301 502 and EN 301 511	
UMTS complying with UMTS Standards, as published by ETSI, in particular EN 301 908-1, EN 301 908-2, EN 301 908-3 and EN 301 908-11	1. Carrier separation of 5 MHz or more between two neighbouring UMTS networks 2. Carrier separation of 2,8 MHz or more between a neighbouring UMTS network and a GSM network

Annex II – Radiocommunications Apparatus

Manufacturer	
Model	

SAMPLE

Annex III – Coverage Requirements and Timeframes

The following indicates the percentage of access in coverage territory of the Licensee's services that shall be ensured by the Licensee within the timeframes set hereunder in accordance with Article 8 of this Licence:

Coverage Territory	Timeframe (From Date of Issue of Licence)
99 %	Within 24 months

SAMPLE

Appendix D - Bank Guarantee

Malta Communications Authority Form of Bank Guarantee

The Chairman, Malta Communications Authority,

Our Letter of Guarantee No: _____ for _____ Euro (€ _____) by order of:

Name of Applicant

Reference is made to the application (hereinafter referred to as the 'Application') for the grant of rights of use of radio frequencies in the 900 MHz and 1800 MHz bands (hereinafter referred to as the 'Licence') made by

Name and Address of Applicant

hereinafter referred to as 'the Applicant', whereby the Applicant *inter alia* undertakes:

- to abide by the conditions laid down in the Call for Applications relating to the award of rights of use of radio frequencies in the 900 MHz and 1800 MHz bands and the applicable Auction Rules, issued by the Malta Communications Authority (hereinafter referred to as the Authority);
- to correctly submit an Application and accompanying documentation that may be required for participation in this procedure;
- not to withdraw or amend its Application for the Licence at any point in time prior to the award of the Licence by the Authority;
- in the event that the Authority carries out brokered meetings to attempt to achieve a solution between all Applicants for the assignment of the rights of use of the spectrum, to actively participate in these brokered meetings;
- in the event that an auction process for the purposes of granting the Licence for the rights of use of spectrum is carried out, to participate in this auction process;
- not to decline an assignment of rights of use that is in line with the Preferred Option as stipulated in its Application;

- to accept the rights of use assigned to it by the Authority in line with the outcome of the agreement reached at the Brokered Meetings Stage and, or the outcome of the Auction Stage;
- in the event that it will be awarded the Licence, to unreservedly accept the Licence and all conditions therein;
- in the event that it will be awarded the Licence by the Authority, to fulfil its Licence obligations, in particular, but without limitation, its 'Rollout' and 'Coverage' obligations, and abide by any decision and directive issued by the Authority in relation to the rights of use;
- in the event that it will be awarded the Licence by the Authority, to make the necessary payments stipulated in the Call for Applications; and
- in the event that it will be awarded the Licence, to renew or maintain an effective bank guarantee in favour of the Authority guaranteeing the conditions contained herein for the duration of three years from the date of commencement of the Licence or up to the 31st December 2015, whichever date comes later.

At the request of the Applicant, we _____
(insert name of bank / financial institution) hereby guarantee to pay you on demand a maximum sum of _____ **Euro (€ _____)**, in the event that the obligations in the Application and, or the Licence are not duly performed by the Applicant.

It is understood that this Guarantee will become payable on your first written demand which must be sent to _____,
(insert address of bank / financial institution) accompanied by this document. It shall not be incumbent upon us to verify whether such a demand is justified.

For avoidance of doubt and for all intents and purposes of law, it is hereby specifically declared that although this instrument gives rise to legal relations between the Guarantor and the Beneficiary, this Guarantee does not exempt the Applicant from any obligations, acts of performance or undertakings assumed under the Application, Licence and, or law.

This Guarantee expires on the **31st December 2015**, whether this document is returned to us or not, and unless it is extended by us, or returned to us for cancellation before the date, any demand made by you for payment must be received in writing not later than the aforementioned expiry date. On such expiry date all our obligations hereunder shall be automatically terminated.

This document shall be returned to us for cancellation, on utilisation or expiry, or in the event of the Guarantee being no longer required

This Guarantee is personal to yourselves and is not transferable or assignable.

Authorised Signatories

I accept in their entirety the conditions set out above.

The Applicant

Appendix E - Auction Rules

The Auction Stage determines how many of the Lots available in the auction are awarded to each successful Bidder, and the Prices that successful Bidders must pay for these Lots.

E.1 Overview of the Auction

1. The auction will consist of a single round of bidding. During this round, each Bidder is invited to submit a list of Bids, each Bid consisting of:
 - a number of Lots in the 900 MHz band and/or in the 1800 MHz band to which the Bid refers (the Bid Package);¹⁵ and
 - an amount (the Bid Amount) that the Bidder would be willing to pay as the Initial Payment for a Licence that includes all the Lots specified in the Bid Package. The value of the Bid Amount must not be less than the sum of the applicable first year Spectrum Fees for the Lots in the Bid Package. For the avoidance of doubt, the Bid Amount would include the first year Spectrum Fees.

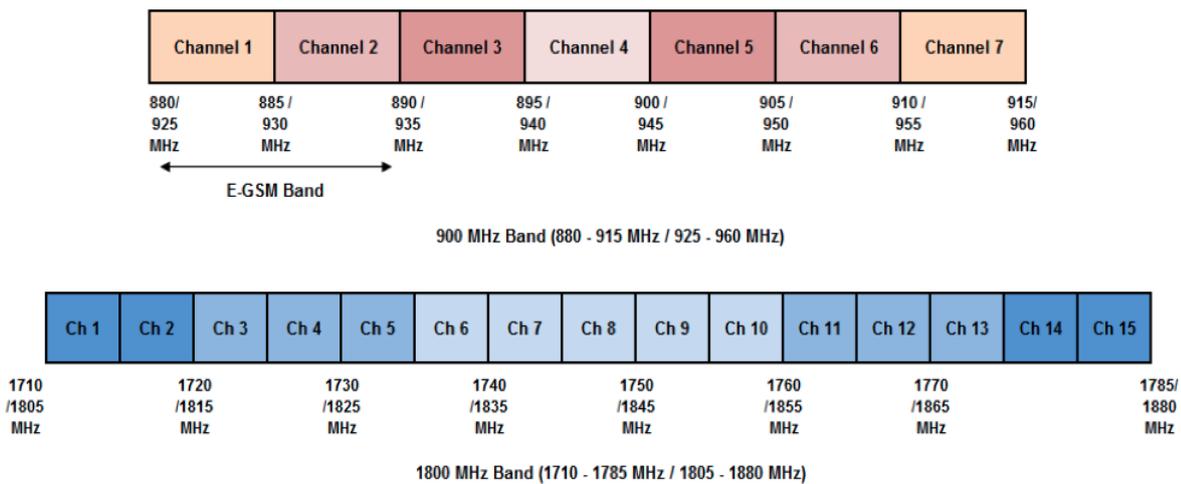
Bids are mutually exclusive, and therefore no more than one Bid from each Bidder may be selected as a Winning Bid.
2. During the scheduled Bidding Round of the auction, each Bidder is required to submit a list of all of its Bids to the Auctioneer using an official Bid Form provided by the Auctioneer. The Bidder may only submit one list of Bids. Once a Bidder has submitted a list of Bids, this list cannot be extended, amended or withdrawn. Details of how Bidders should submit their Bids will be provided to Bidders, along with the official Bid Forms, well in advance of the start of the auction.
3. Once the Bidding Round has closed, each Bidder will be asked by the Auctioneer to submit a Deposit equal to 50% of the highest Bid Amount in the list of Bids that the Bidder has submitted. The Bidder will be given a period of no less than **2 working days** to submit its Deposit. If a Bidder fails to submit the Deposit to the required level within the period given by the Auctioneer, the Auctioneer will deem all the Bids submitted by this Bidder as invalid, and the Bank Guarantee submitted by the Bidder on Application will be forfeited.
4. Once the Auctioneer has approved the valid Bids submitted by Bidders who submitted the required Deposits, a dedicated Electronic Auction System (EAS) will be used for the determination of Winners and Prices to be paid, based on all approved valid Bids submitted by all Bidders. The Winner Determination procedure is described in Section E.8 of this Appendix.
5. Following the declaration of Winners of the Auction Stage, the Award process will proceed to the Grant Stage described in Section 11 of the Call for Applications.

¹⁵ See Table 1 for a list of all possible combinations when all the Lots in this award are offered in the auction.

E.2 Lots in the Auction

6. As described in Section 4 of the Call for Applications, the spectrum available for this Award has been packaged into 2 x 5 MHz Lots:
 - 7 Lots of 2 x 5 MHz in the 900 MHz band; and
 - 15 Lots of 2 x 5 MHz in the 1800 MHz band.
7. Thus, there are 22 Lots in total, as shown in Figure 1, which will be made available on a national basis.

Figure 1: Band plan of Lots offered in the Award



8. In the auction, there will be two distinct Lot categories:

- a 900 MHz Lot Category; and
- an 1800 MHz Lot Category.

As explained in paragraph 2 Bidders may bid for multiple packages, each package consisting of a number of Lots in any of the two Lot Categories. **For the purpose of bidding, Lots are treated as identical within each category. Therefore, Bidders may only bid for a number of 2 x 5 MHz Lots in the relevant spectrum band; they cannot bid for specific frequencies within a given band.**

E.3 Bids

9. Bids consist of:
 - a Bid Package; and
 - a Bid Amount.
10. The Bid Package is the number of Lots in each category to which the Bid applies. It is specified by indicating on the official Bid Form, the number of Lots in the 900 MHz band and/or the number of Lots in the 1800 MHz band included in the package.

11. The Bid Amount is the maximum price to the nearest Euro, specified by the Bidder, that the Bidder is willing to pay as the Initial Payment for a Licence that includes all the Lots specified in the Bid Package. The Bid Amount must not be less than the sum of the applicable first year Spectrum Fees for the Lots in the Bid Package. For avoidance of doubt, the minimum Bid Amount for all the possible packages is provided in Table 1. There is no maximum Bid Amount.
12. The Bidder may submit multiple Bids, provided that these Bids are specified for different Bid Packages. The Bidder must submit all its Bids at once in a single list on the form to be provided by the Auctioneer. The process for submitting Bids is described below.
13. Bids from the same Bidder are mutually exclusive, i.e. at most one Bid from each Bidder may be selected as a Winning Bid.
14. Each Bid is evaluated as a whole. The Bid Package is deemed to be indivisible, and thus the Auctioneer may not assign a subset of the Bid Package to a Winner.

E.4 Bid Restrictions

15. Each Bid Package is subject to the following Spectrum Caps:
 - an overall cap of eight 2 x 5 MHz Lots in total (across both the 900 MHz and 1800 MHz bands); and
 - a cap of four 2 x 5 MHz Lots in the 900 MHz band.

Therefore, the Bidder will not be able to submit Bids for Bid Packages that include more than 8 Lots in total, and in any case will not be able to bid on packages that contain more than 4 Lots in the 900 MHz band.

In addition, the number of Lots that a Bidder may bid for in the auction is limited by the Maximum Interest that the Bidder registers at the Application Stage (overall and within each band – See Section 4 of the Call for Applications), net of any Lots awarded, if any, as part of the brokered meetings. For example, a Bidder that registers a Maximum Interest for 3 Lots and is awarded 2 Lots as part of the brokered meetings agreement, would only be able to bid on 1 Lot.

E.5 Examples of Valid Bids

16. The Bidder may only bid for packages that contain a number of Lots that is smaller than or equal to the Maximum Interest that the Bidder has registered for each band and overall in its Application. Therefore, the Bidder needs to ensure that the Maximum Interest it registers for each band and overall allows it to

submit all the Bids it wishes. Where a Bidder, for example, registers the greatest allowed Maximum Interest on Application (i.e.

- Overall Maximum Interest - 8 Lots
- Maximum Interest in 900 MHz band – 4 Lots
- Maximum Interest in 1800 MHz band – 8 Lots)

the maximum number of Bid Packages that the Bidder may bid for, assuming that all the Lots available for the award are offered in the auction, is 34. These Bid Packages, along with the minimum Bid Amount that applies to each Bid Package, are shown in Table 1. If any Lots are awarded as part of the brokered meetings, some of the Bid Packages shown in Table 1 will not be offered in the auction.

Table 1: Full list of potential Bid combinations (assuming that all the Lots available for the award are offered in the auction)

Bid Package	Number of Lots			Minimum Bid Amount
	Total number of Lots	Lots in the 900 MHz band	Lots in the 1800 MHz band	
1	1	1	0	€224,000
2	1	0	1	€224,000
3	2	2	0	€448,000
4	2	1	1	€448,000
5	2	0	2	€448,000
6	3	3	0	€672,000
7	3	2	1	€672,000
8	3	1	2	€672,000
9	3	0	3	€672,000
10	4	4	0	€896,000
11	4	3	1	€896,000
12	4	2	2	€896,000
13	4	1	3	€896,000
14	4	0	4	€896,000
15	5	4	1	€1,120,000
16	5	3	2	€1,120,000
17	5	2	3	€1,120,000
18	5	1	4	€1,120,000
19	5	0	5	€1,120,000
20	6	4	2	€1,344,000
21	6	3	3	€1,344,000
22	6	2	4	€1,344,000
23	6	1	5	€1,344,000
24	6	0	6	€1,344,000
25	7	4	3	€1,568,000
26	7	3	4	€1,568,000
27	7	2	5	€1,568,000
28	7	1	6	€1,568,000
29	7	0	7	€1,568,000
30	8	4	4	€1,792,000
31	8	3	5	€1,792,000
32	8	2	6	€1,792,000
33	8	1	7	€1,792,000
34	8	0	8	€1,792,000

17. Where a Bidder registers a smaller number of channels as its Maximum Interest, the Bidder will be able to submit Bids for a correspondingly smaller number of Bid Packages. For example, assuming that all the Lots available for the award are offered in the auction, a Bidder registering:
- Overall Maximum Interest - 3 Lots
 - Maximum Interest in 900 MHz band – 3 Lots
 - Maximum Interest in 1800 MHz band – 3 Lots
- would only be able to bid for packages 1 to 9 in Table 1. Similarly, a Bidder registering:
- Overall Maximum Interest - 3 Lots
 - Maximum Interest in 900 MHz band – 3 Lots
 - Maximum Interest in 1800 MHz band – 0 Lots
- would only be able to bid for packages 1, 3 and 6.

E.6 Submitting Bids

18. The auction comprises a single round of bidding. Each Bidder is required to submit a single Bid Form.
19. Following the determination that an auction process is required for this Award, the Authority will notify Bidders of:
- the Lots offered in the auction;
 - the start time and end time for the Bidding Round; and
 - the place or places for submission of sealed Bids.
20. The Authority has discretion over the time, place(s) and duration of the round. However, it is anticipated that the round will take place over a 5-working day period and will close at 16:00 hrs CET on a business day, and that completed Bid Forms should be submitted by recorded delivery (official postal/courier service) or hand delivered to a specified address. Any Bid Forms received outside the specified round time will be rejected. For the avoidance of doubt, it is not sufficient to dispatch a Bid Form within the specified round time; rather, the Bid Form must be received by the Auctioneer within the specified round time. The Bidder is advised to submit its Bid Form well in advance of the end of the Bidding Round. The Bid Forms received shall not be inspected by the Auctioneer or any third party until the Bidding Round has closed.
21. The Authority will give written confirmation of receipt of the Bid Form submitted by a Bidder. Only one Bid Form from each Bidder will be accepted by the Auctioneer. In the event that more than one Bid Form is received from a Bidder, the one received first will be the one considered. Once a Bid Form has been received, the list of Bids contained in it cannot be expanded, amended or withdrawn.

22. The Bidder must submit its Bids on the Bid Form provided by the Auctioneer. The Bid Form will have specified Bid Package entries for up to 34 Bids (as listed in Table 1), and provide a field for the Bidder to specify a Bid Amount for each Bid. Only valid Bids will be accepted. If a Bidder specifies an invalid Bid Amount for a Bid (i.e. a Bid Amount that is smaller than the minimum Bid Amount specified in Table 1), such Bid will be rejected.
23. The completed Bid Form must be submitted according to the procedures specified by the Authority. Prior to the auction, the Authority will distribute guidance to all Bidders on the procedures for submitting Bids, along with the distribution of official Bid Forms.
24. If a Bidder fails to submit a list of Bids in the official Bid Form provided by the Auctioneer, it will forfeit the Bank Guarantee and will not be awarded any Lots in the auction.

E.7 Validation of Bids submitted

25. Once the Bidding Round has ended, the Auctioneer will inspect all the submitted Bid Forms received so as to determine whether any Bids are invalid. Any invalid Bids will be discarded. The decision taken by the Auctioneer will be final. The following criteria apply when validating Bids:
 - If a Bid Form has not been submitted according to the Auction Rules, for example if it was delivered late or cannot be authenticated as having been submitted by an authorised Bidder in line with the Bid submission guidelines, then all Bids on the form will be deemed invalid.
 - If a Bidder submitted more than one Bid Form, only the first Bid Form received by the Authority will be considered. All other Bid Forms submitted by the Bidder will be deemed invalid.
 - If a Bidder submits a Bid Form where any Bid Packages have been altered from the original Bid Form provided by the Auctioneer, any Bid Forms submitted by that Bidder will be deemed invalid.
 - If any information in the Bid Form is unclear, the Authority may ask the Bidder for clarification of its intentions, on condition that such clarification does not alter the substance of the Bid. The Authority shall determine whether to authorise the clarification or otherwise and its decision shall be final.
 - If a Bidder submits a Bid for a Bid Package for which that Bidder is not eligible to bid, then that specific Bid will be rejected, but the validity of other Bids will not be affected.
 - If a Bidder submits a Bid for a Bid Package with a Bid Amount that is less than the minimum Bid Amount for that package, then that specific Bid will be rejected, but the validity of other Bids will not be affected.

26. If a Bidder fails to submit any valid Bids, it will forfeit the Bank Guarantee and will not be awarded any Lots in the auction.
27. Once the Bidding Round has closed, each Bidder will be asked by the Auctioneer to submit a Deposit equal to 50% of the highest Bid Amount in the list of Bids that the Bidder has submitted. The Bidder will be given a period of no less than **2 working days** to submit its Deposit.
28. If a Bidder fails to submit the Deposit to the required level within the period given by the Auctioneer, the Auctioneer will deem all the Bids submitted by this Bidder as invalid, and the Bank Guarantee submitted by the Bidder on Application will be forfeited.
29. Following the deadline for submission of Deposits, the Auctioneer will approve the valid Bids. All approved Bids will be used to determine Winners and Prices using the methodology described below.

E.8 Winner Determination

30. The Winning Bids will be selected from all approved Bids by identifying the combination of Bids whose summation of Bid Amounts results in the highest value, subject to the conditions that:
 - Bids from the same Bidder are mutually exclusive and therefore at most one Bid from each Bidder is selected; and
 - All selected Bid Packages can be awarded to Bidders given the available Lots.
31. If there is a single combination of Bids that meets the above criteria, this will be the winning combination and will determine the Winning Bids and Winning Bidders.
32. If two or more combinations meet these criteria (i.e. if there is a tied outcome), this will be resolved in the following way:
 - The combination that results in the greatest amount of spectrum being awarded to Bidders (i.e. the outcome that results in the least amount of spectrum remaining unawarded) will be chosen.
 - If more than one combination results in the same amount of spectrum awarded, the combination that results in the largest number of Winning Bidders will be chosen.
 - If more than one combination results in the same amount of spectrum awarded to the same number of Bidders, a random process will be used to select the winning outcome.
33. The tie-breaking criteria set out above yield a unique solution. This solution will be the winning outcome that determines the Winning Bids and Winning Bidders.
34. Consider the simple example for an auction with 7 Lots in Lot Category. Suppose that there are three Bidders:
 - Bidder A: Bid Package - 3 Lots; Bid Amount - €30;

- Bidder B: Bid Package - 4 Lots; Bid Amount - €40;
- Bidder C: Bid Package - 2 Lots; Bid Amount - €15.

The possible combinations of Bid Packages, taking at most one Bid from each Bidder, are as follows:

- Alternative 1 - Bidder A – 3 Lots at €30
- Alternative 2 - Bidder B - 4 Lots at €40
- Alternative 3 - Bidder C - 2 Lots at €15
- Alternative 4 - Bidders A and B – 7 Lots at €70
- Alternative 5 - Bidders A and C – 5 Lots at €45
- Alternative 6 - Bidders B and C – 6 Lots at €55
- Alternative 7 - Bidders A, B and C – 9 Lots at €85

Of these, Alternative 7 cannot be accommodated with the given supply of 7 Lots, and cannot therefore be considered.

Of the remaining alternatives, Alternative 4 uniquely produces the highest total Bid Amount (€70).

Therefore, the Bids from Bidders A and B are the Winning Bids and Bidder A is awarded 3 Lots and Bidder B 4 Lots respectively. The Price to be paid will be determined in line with Section E.9 below.

E.9 Price Determination

35. Each Winning Bid has an associated Price for all the Lots included in that Bid.
36. The Price that the Winning Bidder(s) would actually pay would hence be established following the outcome of the Winner Determination process.
37. Prices are calculated in such a manner that each Winning Bidder, and each group of Winning Bidders jointly, pay the minimum amount that they could have bid without changing the outcome of the Winner Determination process outlined in Section E.8 above.
38. Details of how the Prices will be calculated will be provided to the Bidders well in advance of the start of the auction.

E.10 Unassigned Lots

39. It is possible that at the end of the auction, the number of Lots awarded to Bidders in a given Lot Category (i.e. one of the two Bands) may be less than the

total number of Lots available in that category, either due to deficient demand or because the Winner Determination produces a set of Winning Bids whose aggregate demand for Lots is less than supply.

E.11 Information Policy

40. All Bidders will receive the same information (other than details in relation to their own bidding options and Bids, which are private and confidential up to the conclusion of the auction).
41. Once the Auctioneer has determined the Prices, the results of the auction will be announced to all Bidders. The following information will be released to all Bidders:
 - the identity of the Winning Bidders;
 - the Bid Package that each Winning Bidder has secured; and
 - the auction Price to be paid by each Winning Bidder.

E.12 Exceptional Circumstances

42. Exceptional circumstances are determined by the Auctioneer. They may include, for example, a major logistical failure that impedes bid submission or concern about possible collusion amongst Bidders.
43. In the case of exceptional circumstances, the Auctioneer has the discretion to:
 - cancel or postpone the schedule of the Bidding Round if this is not yet underway;
 - postpone the deadline for bid submission if the Bidding Round is in progress;
 - void all Bids received in the auction, and either cancel the auction or start the auction again;
 - grant additional time to one or more Bidders for submitting their Bids; or
 - disqualify a Bidder and void all the Bids received from this Bidder.

Save where otherwise provided in these auction rules, or in the Call for Applications, in the event that an individual Bidder breaches the Auction Rules and, or the rules in the Call for Applications, the Bidder may be permitted to continue in the auction subject to the payment of a penalty, or alternatively disqualified from the auction, depending on the severity of the breach. If a Bidder is disqualified from the auction, all its Bids will become void and its Bank Guarantee will be forfeited. In such circumstances, the Authority reserves the right to recalculate the outcome of the auction and, if necessary, revise the Bid Packages provisionally awarded to Bidders.