



The Assignment of Additional Spectrum for Wireless Broadband Call for Expression of Interest

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1. Preamble

In March 2014, the Malta Communications Authority ('MCA' or 'the Authority'), published a consultation paper¹, outlining a proposed methodology for the assignment of additional spectrum for wireless broadband. Following consideration of the various responses received, a decision entitled 'Assignment Process for Additional Spectrum for Wireless Broadband' was published by the Authority in July 2014 (Decision No. MCA/D/14-1933) [hereinafter referred to as the 2014 Decision]². The 2014 Decision outlined the radio spectrum assignment and management process for the 800 MHz, 1800MHz and the 2.5 GHz bands.

With the latest developments in the local mobile industry, the deployment of the above mentioned frequency bands has become paramount for the mobile operators. In view of these developments, the MCA has consulted upon revising the 2014 Decision. The main aim behind the consultation was to align the established assignment and management principles for the spectrum bands in question with the current market circumstances. After taking into consideration the responses received, the amending Decision 'Assignment Process for Additional Spectrum for Wireless Broadband' was published by the Authority in October 2017 (Decision No. MCA/D/17-2971)³.

An authorised electronic communication service provider ('ECS') has recently lodged a formal request with the MCA for the assignment of spectrum in the 800 MHz and 2.5 GHz band to be used for the provision of electronic communications networks and services.

In line with the MCA Decision, the Authority is hereby publishing a Call for Expression of Interest to determine the demand for spectrum in the pertinent bands.

¹ <https://www.mca.org.mt/node/5069>.

² <http://www.mca.org.mt/sites/default/files/attachments/decisions/2014/MCA-Decision-800-final.PDF>.

³ https://mca.org.mt/sites/default/files/MCA-D-17-2971_Amended%20MCA%20Decision%20_14-1933.pdf#overlay-context=consultations-decisions/mca-decision-assignment-process-additional-spectrum-wireless-broadband.

2 Definitions

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

| Term | Definition |
|-------------------------|--|
| Applicant | <p>The legal or natural person submitting an Expression of Interest as per Section 7 of this document.</p> <p>In the cases of joint ventures, the term applies to the individual entities forming part of the joint venture.</p> |
| Authority or MCA | Malta Communications Authority. |
| Bands | The 800 MHz (790 – 821MHz / 832 – 862 MHz), the 1800 MHz (1710 – 1785 MHz / 1805 – 1880 MHz) and the 2.5 GHz (2500 - 2690 MHz) bands. |
| Call | The Call for Expression of Interest. |
| Government | The Government of Malta. |
| Licensee | A successful applicant which, after settling the Initial Payment, is awarded a licence relating to the right of use for the relevant spectrum band at the Grant Stage of the Award process as described in the MCA Decision MCA/D/17-2971. |

3 Introduction

The MCA, as the competent authority responsible for the effective management of the radio frequency spectrum, invites undertakings who wish to obtain access to rights of use of radio frequencies in 800 MHz, 1800 MHz and the 2500 MHz bands in the Maltese territory to express their interest in line with the provisions outlined in this document.

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

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

Any frequency assignment pursuant to this Call will be limited to the Applicants that indicate an interest in these frequencies in line with the requirements established in this document.

Should the demand for a distinct radio frequency spectrum band, as established in response to this Call, not exceed the availability of the radio frequency spectrum in the pertinent band, the Authority reserves the right not to issue a Call for Applications but to grant the relevant rights of use for the distinct band directly to those Applicants that submit an Expression of Interest.

Should a Call for Applications not be required, all Applicants submitting an Expression of Interest will be required to participate in a process leading to a Qualification Phase carried out by the MCA. At that stage the MCA will specify the requirements that the Applicant must satisfy in order to qualify for the award of a licence for the rights of use of the radio frequency spectrum band in question. Failure by

the Applicant to provide any of the required information or a failure to pass the Qualification Phase assessment, will result in the discarding of the relevant expression of interest and the disqualification of the Applicant from being awarded a licence for the band in question.

Should the demand for one or more distinct radio frequency spectrum bands, as established in response to this Call, exceed the availability of the radio frequency spectrum in the pertinent band/s, an invitation to participate in a binding Call for Applications leading to the grant of the rights of use for the indicated radio frequency spectrum band/s shall be published.

Only Applicants that have submitted a valid Expression of Interest in line with the requirements established in this document shall be allowed to participate in the said Call for Applications.

The terms and conditions of the licence will be communicated to the Applicants either through a Call for Applications or, where demand does not exceed supply, during the Qualification Phase process. Applicants will be required to submit a bid bond / performance guarantee in the form of a Bank Guarantee in order to be granted the right to use the radio frequency spectrum band.

The publication of this Call does not bind the Government and/or the Authority to assign the radio frequency spectrum or to proceed to a further stage in the process for the assignment of this radio frequency spectrum bands.

An Expression of Interest must be submitted to the MCA by completing the form contained in Annex 1 hereof. This has to be submitted in accordance with the instructions given in section 7 of this document.

4 Spectrum bands being assigned

The spectrum bands that are the subject for this Expression of Interest are the 800 MHz (790 - 862 MHz), the 1800 MHz (1710 – 1785 MHz / 1805 – 1880 MHz) and the 2.5 GHz (2500 - 2690 MHz) bands.

In this respect the Authority is sounding the market to see whether there is an interest for all the available spectrum in these bands. To date, the 800 MHz and the 2.5 GHz bands are entirely unassigned. In addition following the 2011 re-assignment process for the grant of rights of use of radio spectrum in the 900 MHz and 1800 MHz bands, there are still six unassigned channels in the 1800 MHz band (Channel 5 and Channel 11 to Channel 15).

The **800 MHz** (790 – 862 MHz) band provides 60 MHz of paired spectrum. The Authority has adopted the harmonised channelling arrangement as established in the EU Commission Decision 2010/276/EU which results in a total of six (6) paired 5 MHz channels. The channelling plan is as per Figure 1 below.

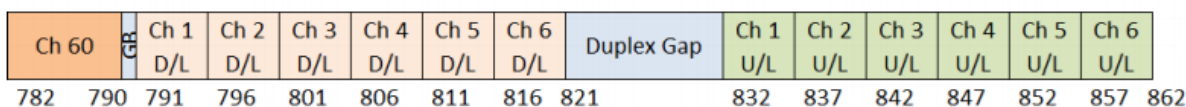


Figure 1: Channelling Plan for the 800 MHz Band

A paired 5 MHz channel is considered to be a single lot ('Lot'). A total of six (6) Lots shall be assigned by the Authority during this Award.

The **1800 MHz** (1710 – 1880 MHz) band provides 150 MHz of paired spectrum. The Authority has adopted the harmonised channelling arrangement as established in the EU Commission Decision 2009/766/EC which results in a total of fifteen (15) paired 5 MHz channels. The channelling plan is as per Figure 2 below.

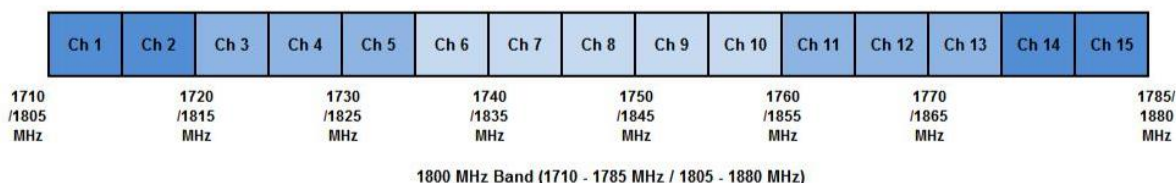


Figure 2: Channelling Plan for the 1800 MHz Band

A paired 5 MHz channel is considered to be a single lot ('Lot'). A total of six (6) Lots shall be assigned by the Authority during this Award.

The **2.5 GHz** (2500 – 2690 MHz) band provides a combination of paired (FDD) and unpaired (TDD) channels, which in both instances are based on a channel bandwidth of 5 MHz. The Authority has adopted the harmonised channelling arrangement as established in the EU Commission Decision 2008/477/EC which results in a total of fourteen (14) paired (FDD) 5 MHz channels together with an additional ten (10) TDD or FDD downlink 5 MHz channels. The channelling plan is as per Figure 3 below.

| 5 MHz Channels FDD Uplink | | | | | | | | | | | | | | 5 MHz Channels TDD or FDD Downlink (External) | | | | | | | | | | 5 MHz Channels FDD Downlink | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---------------------------|---|---|---|---|---|---|---|---|----|----|----|----|----|---|---|---|---|---|---|---|---|---|----|-----------------------------|---|---|---|---|---|---|---|---|----|----|----|----|----|------|--|--|--|--|--|--|--|--|--|--|--|--|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | | | | | | | | | | | | | | |
| 2500 | | | | | | | | | | | | | | 2570 | | | | | | | | | | 2620 | | | | | | | | | | | | | | 2690 | | | | | | | | | | | | | |

Figure 3: Channelling Plan for the 2.5 GHz Band

A paired 5 MHz channel is considered to be a single lot ('Lot'). A total of fourteen (14) Lots shall be assigned by the Authority during this Award. Five (5) unpaired 5 MHz channels will be grouped into two distinct 25 MHz lots, with the lot comprised of Channels 6 to 10 having greater technical constraints.

Interested parties must not apply for specific frequencies in the respective band/s but are to submit the Expression of Interest for any number of Lots in the Spectrum Band/s subject to the applicable Spectrum Caps for the band/s in question.

The Applicant must state:

- The maximum number of Lots in the respective 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 any of the bands will cover the interest it might register in all stages of the Award process for the respective band including a possible auction.
- Its preferred assignment of Lots ('Preferred Option') for each of the respective bands.

An Applicant must not apply for spectrum in excess of the established Spectrum Cap⁴ and, or its declared Maximum Interest.

The overall demand for Lots in the respective band/s will be determined by the Authority on the basis of the interest as expressed by all the Applicants.

As part of its Expression of Interest, the Applicant should also identify its specific paired or unpaired 5 MHz channels of first choice, giving its reasons for such a preference. This shall not detract in any way from the Authority's sole discretion to assign to the Successful Applicant/s the specific frequency channels (i.e. Lots) in the way it deems fit, taking in particular into account spectrum efficiency considerations.

⁴ The Spectrum Caps and the respective spectrum cap relaxation mechanisms are established in the amended decision MCA/D/17-2971.

5 Licence information

The Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta)⁵, all other relevant national laws, and applicable decisions of the MCA, will apply to the undertaking granted a licence for the rights of use of radio frequency spectrum in these bands.

The rights and obligations of the undertaking will be stated in the terms and conditions set forth in the licence and from the provisions of the relevant laws.

The licence granted for the rights of use of radio frequency spectrum does not in itself authorise the undertaking to provide services. The undertaking that will be awarded the rights of use of the aforementioned radio frequency spectrum will be required to operate such networks and provide services under a general authorisation in line with the Electronic Communications Networks and Services (General) Regulations (SL. 399.28 of the Laws of Malta)⁶.

The radiocommunications apparatus comprising an electronic communications network is regulated by the General Authorisation (Radiocommunications Apparatus) Regulations (S.L.399.40 of the Laws of Malta)⁷. Licensees will be required to comply with the various provisions of these Regulations with regard to their radiocommunications apparatus.

5.1 Use of Radio Frequency Spectrum

The radio frequency spectrum shall be used by the Licensee only to establish and operate a terrestrial mobile system capable of providing electronic communications services in accordance with the terms and conditions as stated in the licence, unless otherwise previously authorised in writing by the Authority.

⁵ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8866&l=1>.

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

⁷ <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11475&l=1>.

5.2 Licence Term

The licence granted for the rights of use of radio frequencies will be granted for a term of fifteen (15) years.

5.3 Network Rollout and Coverage Obligations

The Licensees will be required to make any technology they offer available on a nationwide basis within twenty-four (24) months from the grant date, and to maintain it from then onwards for the whole duration of the licence. The twenty-four (24) month timeframe shall commence from the grant date.

5.4 Interference Mitigation Conditions

800 MHz band

The conditions established in the EU Decision on the harmonisation of the 800 MHz band (2010/267/EU) will apply. In addition, the potential candidates or licensees for the 800 MHz band, as per the MCA Decision, will need to contribute and participate in the establishment of an interference mitigation fund.

1800 MHz band

The conditions established in the EU Decision on the harmonisation of the 900 MHz and 1800 MHz bands (2009/766/EC as amended) will apply.

2.5GHz band

The Authority will adopt the technical conditions established in the EU Decision on the harmonisation of the 2500 – 2690 MHz band (2008/477/EC).

5.5 Payment for use of Radio Frequency Spectrum

Undertakings that are granted a licence for the rights of use of radio frequency spectrum will be required to pay a radio frequency spectrum fee in line with the provisions as per Part B of the Eighth Schedule of the Electronic Communications Networks and Services (General) Regulations (SL 399.28 of the Laws of Malta).

The Licensee shall upon the commencement of the licence term and thereafter annually, in advance, for the duration of this licence, pay to the Authority the fees stipulated in the aforesaid Regulations or any other legislation concerning spectrum fees.

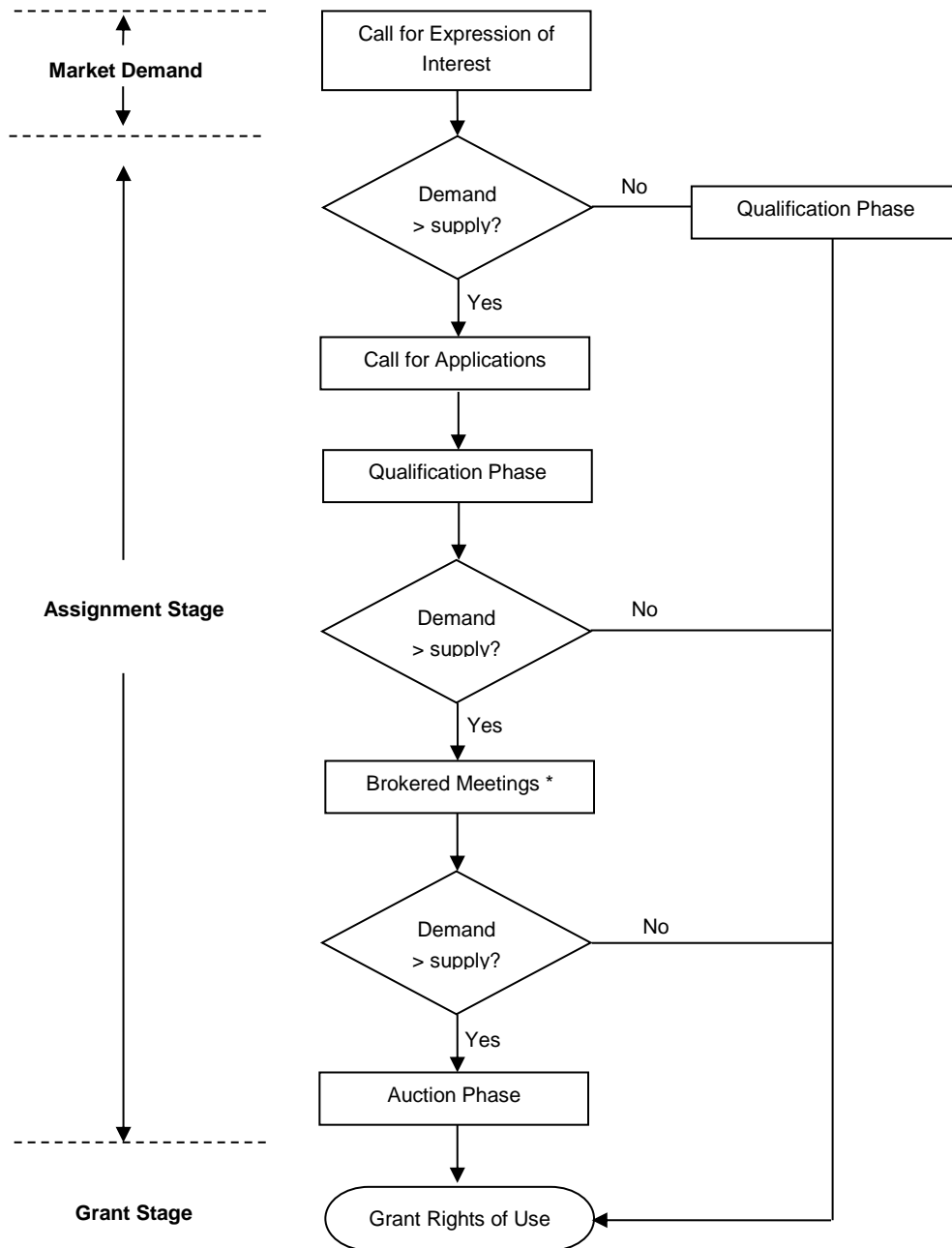
6 Assignment Process

As stated earlier in this document, should the demand for the spectrum not exceed availability, the MCA reserves the right not to issue a Call for Applications but to grant the relevant rights of use directly to those Applicants that have expressed an interest for the respective bands.

However, if the demand for the distinct radio frequency spectrum exceeds availability, then a Call for Applications will be extended to Applicants that submitted a valid Expression of Interest.

This section provides an overview of the process as established in the MCA's amended Decision MCA/D/17-2971 on the "Assignment Process for Additional Spectrum for Wireless Broadband" published in October 2017 that will be adopted to identify the Successful Applicants following this Call for Expression of Interest.

6.1 High-Level Process Overview



- The **Call for Expression of Interest** in which parties may express interest in acquiring spectrum in any of the bands;

- The **Call for Applications**, whereby parties that showed interest in the Expression of Interest submit applications to participate in the process;
- The **Qualification Phase, during which phase** the MCA assesses whether Applicants have the necessary standing to fulfil the licence obligations should they be successful in acquiring the radio frequency spectrum rights. This process will not rank Applicants;
- The **Brokered Meetings Phase, during** which phase meetings will be held at the Authority's discretion and will be carried out with the qualified Applicants to reach an agreement on an assignment plan that addresses the requirements of all the qualified Applicants;
- The **Auction Phase**, during which phase qualified Applicants will be able to bid for the various Lots; and
- The **Grant of Rights of Use**, where 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.

6.2 Direct Assignment process

In the case where the demand for the individual radio frequency spectrum bands does not exceed availability, the MCA will proceed with the granting of the said individual spectrum band directly to those parties who have submitted a valid expression of interest.

In this regard all parties submitting an expression of interest will be required to participate in a process leading to a Qualification Phase carried out by the MCA. Failure to provide any of the required information or a failure to pass the Qualification Phase assessment will result in the discarding of the relevant expression of interest.

The aforesaid Qualification evaluation will include but will not be limited to the following areas:

- The Applicant's credentials⁸;
- The Applicant's experience in establishment, operation and commercialisation of electronic communications networks;

⁸ Applicants for wireless broadband spectrum need to be registered as an operating company in Malta.

- The Applicant's business plan; and
- Access to adequate financing for the venture.

Moreover, Applicants participating in the Qualification Phase will be required to submit a bid bond / performance guarantee in the form of a bank guarantee.

6.3 Call for Applications process

This process is to be implemented only if the Expressions of Interest results in a situation where the demand for one or more radio frequency spectrum bands exceeds availability.

In such an event the MCA will invite Applicants who have submitted a valid Expression of Interest to participate in a Call for Applications for the pertinent radio frequency spectrum band/s.

In this case, Applicants will be subjected to a qualification evaluation on the basis of the set criteria, including but not limited to:

- The Applicant's credentials⁹;
- The Applicant's experience in establishment, operation and commercialisation of electronic communications networks;
- The Applicant's Business plan with regard to the spectrum in question; and
- Access to adequate financing for the venture.

The Authority will consider the demand for spectrum from the Qualified Applicants as expressed in their Preferred Option in the Application Form. If demand does not exceed supply, the Authority will proceed with the granting of the rights of use of radio frequencies. If, on the other hand, there is excess demand for spectrum, the Authority will determine whether to proceed to the Brokered Meetings Stage or directly to the Auction Phase.

⁹ The applicants for wireless broadband spectrum needs to be registered as an operating company in Malta.

7 Submission of Expressions of Interest

7.1 Submitting an Expressions of Interest

Completed expression of interest forms (to be found in Annex 1) must be received by the Authority by no later than 12:00 hrs of the 10th November 2017.

The Applicant is to submit a copy of the said application in hard (paper) copy. All Expressions of Interest received will remain sealed until the Closing Date. In the case where the Applicant is not registered as an authorised ECS undertaking with the MCA, and is a company then a certified copy of the Memorandum and Articles of Association of the applicant company must be included with the application form. Submissions received after the Closing Date will not be considered and will be returned to the Applicant.

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

Submissions should be clearly labelled "**Expression of Interest – Additional Spectrum for Wireless Broadband**", and the name and address of the Applicant should be clearly visible on the outside of an appropriately sealed envelope/package.

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

The Chairman
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913
Malta

All costs incurred in connection with the preparation, production and submission of the Expressions of Interest will be borne exclusively by the Applicant. Regardless of the outcome of the process,

Applicants may, under no circumstance, claim reimbursement from the Authority of any costs related, to their submission.

7.2 Opening of Expressions of Interest

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

7.3 Confidentiality

Submitted information will be made public by the Authority subject to the Authority's Internal Guidelines on Confidentiality published on 16 December 2004.

Annex 1 – Expression of Interest Form

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

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

This form may be completed electronically to facilitate processing and sent to spectrum.mca@mca.org.mt. However, as specified in section 7.1 of this document, in all cases an original copy of the duly filled in application form together with, (where applicable) an original copy of the Memorandum and Articles of Association of the applicant company, must be submitted to the MCA in an envelope clearly marked “**Expression of Interest – Additional Spectrum for Wireless Broadband**” which is to be addressed to:

The Chairman
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913
Malta

Part I: Information Required from the Applicant

1. Applicant Contact Details

| | | |
|-----|---|--|
| 1.1 | Applicant's Name | |
| 1.2 | Business postal address of Applicant | |
| 1.3 | Company Registration Number | |
| 1.4 | Telephone Number | |
| 1.5 | Fax Number | |
| 1.6 | website address | |
| 1.7 | Postal address of registered office ¹⁰ | |
| 1.8 | VAT number | |

¹⁰ In the case of registered companies whose business address differs from that of the address of their registered office.

2. Principal Contact Details

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

3. Provide the Company's Profile

4. Spectrum being requested

| | |
|---|----------------|
| a) Frequency band | 800 MHz |
| b) Amount of Paired Spectrum (two-way/FDD) in MHz | |
| c) Equivalent Amount of Paired Spectrum specified in Lots | |
| d) Any preferred channels (incl. Reference to channelling plan) | |

| | |
|---|-----------------|
| a) Frequency band | 1800 MHz |
| b) Amount of Paired Spectrum (two-way/FDD) in MHz | |
| c) Equivalent Amount of Paired Spectrum specified in Lots | |
| d) Any preferred channels (incl. Reference to channelling plan) | |

| | |
|---|--------------------------------------|
| a) Frequency band | <input type="text" value="2.5 GHz"/> |
| b) Amount of Paired Spectrum (two-way/FDD) in MHz | <input type="text"/> |
| c) Equivalent Amount of Paired Spectrum specified in Lots | <input type="text"/> |
| d) Any preferred channels (incl. Reference to channelling plan) | <input type="text"/> |
| e) Amount of Unpaired Spectrum in MHz | <input type="text"/> |
| f) Equivalent Amount of Unpaired Spectrum specified in Lots | <input type="text"/> |
| g) Any preferred channels (incl. Reference to channelling plan) | <input type="text"/> |

5. Description of Network and, or Service:

a) Description of service/s to be provided¹¹:

b) Description of network/s to be operated, including high-level network maps¹¹:

6. Geographical Scope

Please indicate geographical scope of the network and, or service:

¹¹ Any additional details should be provided in separate attachments.

7. Estimated Date of Commencement of the Relevant Activity

Please indicate the estimated date of commencement of activities.

Month:

Year:

Part II: Declaration

I / We hereby declare that:

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

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

Date: _____

Data Protection Clause

In terms of the Data Protection Act (Chapter 440 of the Laws of Malta), the Authority will process any personal data supplied on this application form or subsequently supplied by yourself, whether orally or in writing, for all or any of the following:

- the proper processing of your application form as submitted;
- preventing, detecting and/or prosecuting fraud, any administrative non-compliance, and any other non-compliant or criminal activity or omission which the Authority is bound to report and/or act upon whilst meeting any other legal or regulatory obligations;
- establishing, exercising or defending any legal action;
- internal management, research and statistics, systems administration, the development and improvement of the Authority's services;
- the proper conduct of our obligations arising under any law or statutory instrument and the protection and promotion of our legitimate interests; and
- to make public the necessary information as specified in the relevant law and/or instrument.

Relevant data will be disclosed or shared as appropriate with all our employees and with other third parties if pertinent to any of the purposes listed above.

By signing this form, you confirm that you are giving your explicit consent, in terms of the Data Protection Act, on behalf of yourself and all the other persons specified in this form, for the Authority to process your respective personal information as outlined above and you confirm that you have brought this Data Protection notice to the attention of these other persons and obtained their respective consents.

The Authority undertakes to implement appropriate measures and safeguards for the purpose of protecting the confidentiality, integrity and availability of all data processed.

This Data Protection Clause forms an integral part of the Application Form for the Call for Expression of Interest for Additional Spectrum for Wireless Broadband.