

# Future Use of Spectrum

## Multi-Band Spectrum Award Consultation

Document Number: 18/2020

Date: 11 September 2020



*Oaseirys Çhellinsh*  
Communications Commission

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# CONSULTATION ON MULTI-BAND SPECTRUM AWARD

## 1 Executive Summary

- 1.1. The radio spectrum is a valuable and limited natural resource and it is incumbent on the Commission to ensure that it is managed accordingly in the best interests of the Isle of Man. Following analysis of responses to the Consultation on the Future Use of Spectrum<sup>1</sup> the Commission remains of the view that the most appropriate and effective approach is to conduct a competitive award process to determine access to the available spectrum.
- 1.2. The primary purpose of this consultation is to signal the Commission's preliminary views and gather industry thoughts on the forthcoming spectrum award process and the options available. This will in turn allow the Commission to design an appropriate process for ensuring that access to the spectrum is awarded to parties that will make the most efficient use of it in the interests of the Manx consumer and economy, on a fair and non-discriminatory basis.
- 1.3. In carrying out its duties in relation to determining access to the radio spectrum the Commission must be aware of its own statutory duties, as set in the Telecommunications Act 1984 (the Act), which state that the Commission must exercise its functions in the manner it considers is best calculated to:
  - a) "secure that there are provided throughout the Island, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them"; and,
  - b) "promote the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in the Island (including in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, services provided and apparatus supplied."

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<sup>1</sup> <https://consult.gov.im/communications-commission/future-use-of-spectrum/>

- 1.4. The Commission is of the view that the maximum amount of spectrum possible is made available, on a service and technology neutral basis, in a fair, transparent, and non-discriminatory way. As such the Commission proposes to release two bands of spectrum in the Isle of Man:
- c) Within the 694 – 790MHz range (the 700MHz Band) there is potential to release up to 80MHz of spectrum;
  - d) There is scope to release all of the 3410 – 3800MHz band (the 3.6GHz Band).
- 1.5. If the Commission was to only release smaller portions of the Award Spectrum there is a significant risk this would artificially constrain supply which would result in an artificially inflated value for the spectrum. This in turn would likely negatively impact on the investment cases and rollout of new technologies, ultimately to the detriment of the Manx consumer. Releasing all the spectrum that is available in the band is more likely to result in access fees being at a level that reflects its true value.
- 1.6. The spectrum will be made available on a service and technology neutral basis to facilitate telecoms development, providing the greatest degree of flexibility for operators to design and plan their networks in a way that best serves the different demand for services on the Island while also allowing for the development of new applications and services. This is in line with the decisions that the EU has adopted in relation to the bands under consideration<sup>2</sup> which should provide sufficient certainty to operators as to what coexistence measures would apply.
- 1.7. To promote sustainable competition and enable the market to tailor their spectrum holdings to best suit their business case the spectrum within each band will be divided into lot sizes in order to balance facilitating different use cases and keeping award process complexities to a minimum. A cap on the number of lots any party can obtain control of during the award and ensuring the spectrum is allocated in contiguous blocks will allow the number of access seekers to be maximised whilst facilitating bandwidths that are large enough to allow for the provision of high speed broadband services.

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0687&qid=1565342823703&from=EN> and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0235&from=EN> respectively.

- 1.8. The Commission is working to prepare a spectrum award process and details of the Commissions preliminary views on the options available and how the spectrum will be treated during the award are outlined below.

## 2 Spectrum for Award

- 2.1. The Commission's consultation on the Future Use of Spectrum (CD/03/2020)<sup>3</sup> outlined the bands under consideration for inclusion in an award process, these were:
  - e) 694 – 790 MHz (the 700 MHz Band);
  - f) 3410 – 3800 MHz (the 3.6 GHz Band); and,
  - g) 24.25 – 27.50 GHz (the 26 GHz Band)
- 2.2. Following consideration of the responses received, the Commission determined that it was appropriate to award access to the 700 MHz and 3.6 GHz bands at this time; the Commission also outlined its view on the need for a competitive award process and signalled that it would consult further on the appropriate award type.
- 2.3. While the issue of the award format is explored later in this document, it is important at the outset to outline the way in which the available spectrum would be treated during the award process, specifically how it would be divided into lots, whether caps would apply, and any restrictions that may apply on the use of the spectrum.

### A. Lots

- 2.4. The Commission set out its view that it should follow, where practical, decisions and best practices adopted by EU jurisdictions<sup>4</sup> in its consultation on the Future Use of Spectrum.
- 2.5. It could be argued that the opportunity for adopting a different approach to other jurisdictions in order to foster innovation may be attractive. In reality that approach may be counter-productive; many spectrum bands are harmonised on either a global or regional level which results in manufacturers being able to produce high volumes of equipment that can be readily used in many different markets. This in turn results in lower prices for consumers due to the economies of scale that can be achieved.
- 2.6. Simply put the Manx market is not large enough to entice manufacturers to produce equipment solely for use here, and even if they did it would likely be more expensive than equipment using harmonised standards. To adopt such an approach would

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<sup>3</sup> <https://consult.gov.im/communications-commission/future-use-of-spectrum/>

<sup>4</sup> While it is currently a member of the EU, it is likely that in the event of Brexit the UK would still broadly follow the EU spectrum allocations and technical specifications.

deprive Manx consumers from being able to benefit from lower equipment costs. Given the range of possible services the Commission intends to adopt a 'service and technology neutral' approach to awarding access to the spectrum. This is in line with international norms and would not prevent the rollout of any fixed, mobile, or nomadic services, harmonised or otherwise, and allows the market to react to demand over time.

- 2.7. However, there is a need to place some restrictions on how the available spectrum is organised to ensure there are no compatibility issues between users. This is most apparent when considering the type of duplex system to be employed in each band – either Frequency Division Duplex (FDD) or Time Division Duplex (TDD). TDD is generally considered a more spectrally efficient system and allows all the available spectrum to be used for both uplink and downlink.
- 2.8. The Commission's primary objective in this regard is to divide the spectrum into lots that are small enough to allow different users to express their demand for potentially different use cases, but large enough to avoid unnecessary complexity. It would not be reasonable to assume that all parties interested in spectrum would require the same quantum. Therefore allowing potential bidders to only bid for the amount of spectrum they require is likely to encourage new entrants.
- 2.9. Additionally, given the different amount of spectrum available in each band to be awarded it would not necessarily be appropriate to have the same lot size for each band, therefore each band is considered separately.
- 2.10. There is a total of 80 MHz available to be licensed in the 700 MHz band. Access seekers are likely to value the coverage that this band can achieve due to its favourable propagation characteristics; this could include wideband data transmission, voice services, or machine-to-machine/Internet of Things (IoT) type applications, which are typically narrow-band applications.
- 2.11. The Commission is of the view that it would be appropriate to divide the band into 16 lots of 5 MHz each; this would allow users interested in use cases that require comparatively little bandwidth, such as machine-to-machine or IoT applications to express a demand for the spectrum. Users interested in acquiring spectrum for wideband applications, such as LTE or 5G, can potentially acquire multiple lots to satisfy their demand as these services typically operate carriers that are multiples of 5, typically 20 and 40 MHz in this band.

2.12. It is acknowledged that 5 MHz is likely to be at the upper end of what some providers may require, however the Commission is of view that the potential benefits of reducing the lot sizes any further would be outweighed by the complexity that would be added to the award process.

2.13. It is intended to award access to the 700MHz Band in line with the UK, and many other jurisdictions, in a way that would be compatible with the majority of the radio standards in use at present. To that end it is intended to utilise a FDD arrangement in the band as well as the provision of spectrum for Supplementary Downlink as per the UK allocation, please see Figure 1 below.

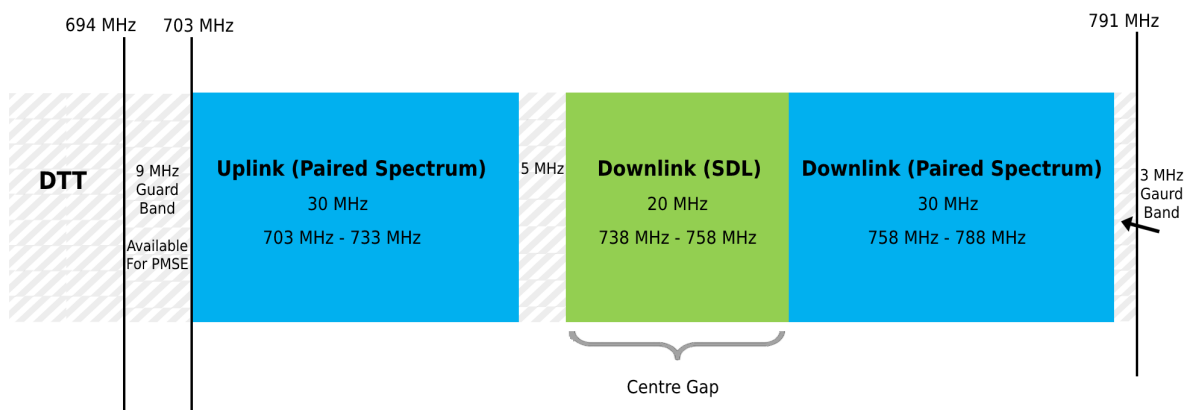


Figure 1 - 700 MHz Band Plan

2.14. As with the 700 MHz Band, when considering the 3.6 GHz Band, the Commission is of the view that the best approach to adopt is one that aligns most closely with the majority of other jurisdictions and standards to ensure Manx operators can benefit from economies of scale. There are currently services being provided utilising the 3.6 GHz Band and to facilitate the rollout of future services it was necessary to address this. The Commission previously notified incumbents in the 3.6 GHz band of its intentions to re-farm the band in its entirety, which will result in the revocation of existing licences<sup>5</sup>. This was also clearly outlined in the Commission’s initial consultation on the future use of the band (06/19<sup>6</sup>).

<sup>5</sup> The Commission will continue to liaise with operators currently using the 3.6 GHz band in its project to clear the band to facilitate any potential rollout of new services. The issue of transition will be dealt with in the next round of consultation in this award process.

<sup>6</sup> [https://consult.gov.im/communications-commission/future-use-of-spectrum/supporting\\_documents/Consultation%20Future%20Use%20of%20Spectrum%20Final.pdf](https://consult.gov.im/communications-commission/future-use-of-spectrum/supporting_documents/Consultation%20Future%20Use%20of%20Spectrum%20Final.pdf)



2.15. In the 3.6 GHz Band there is a total of 390 MHz of spectrum available (see Figure 2 below), and the Commission is therefore of the view that it would be inappropriate to treat the band in the same manner as the 700 MHz Band. It is of the view that adopting a larger lot size would achieve the balance between facilitating different use cases and keeping award process complexities to a minimum. Therefore it is considered that lot sizes of 10 MHz would be most appropriate. It is less likely that there would be as much demand for narrowband services in the 3.6 GHz band as perhaps there would in other bands and, given the amount of spectrum available, it would be disproportionate to reduce lot sizes further.

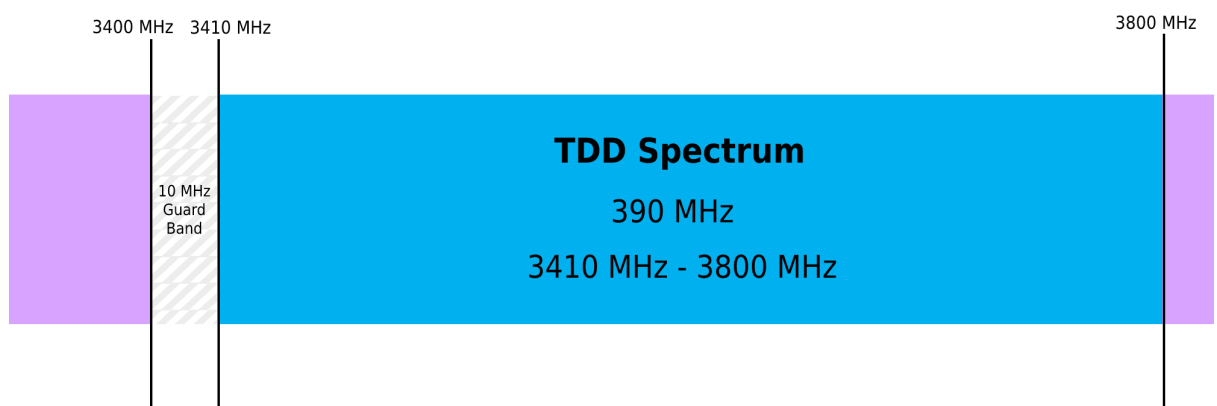


Figure 2 - 3.6 GHz Band Plan

2.16. The Commission is of the view that the band should be awarded for TDD services only; it would not be possible to allow for FDD use in the band without unnecessarily constraining the amount of spectrum available. There is a requirement that the spectrum be managed efficiently<sup>7</sup> and to allow FDD operations in the band would be at odds with this requirement. The band has been harmonised for the use of TDD services so there is a well-developed equipment ecosystem that would allow Manx operators to benefit from economies of scale.

## B. Award Caps

2.17. There is an obligation on the Commission to ensure that access to the spectrum is fair, reasonable, and non-discriminatory; these are the guiding principles informing the award process design. An important aspect of the award process design is putting in place Award Caps – a mechanism that puts a cap on the amount of spectrum any

<sup>7</sup> Both the UK Wireless Telegraphy 2006 and the Isle of Man Communications Bill 2018 both specify that the spectrum is to be efficiently managed.

single party can gain access to, directly or indirectly. In terms of implementing the award caps, the detail will be set out in the Information Memorandum for the award, but it is important to provide clarity as to what caps would apply in this award.

- 2.18. There is a risk that competition could weaken as a result of significant asymmetry in overall spectrum holdings; this could have a detrimental effect on competition, prices, and consumer choice of providers and services. The Commission acknowledges that such asymmetries may occur due to other competitive forces, and they are not necessarily always a cause for concern. However, the Commission is conscious of the need to avoid any predatory behaviour or extreme outcomes in an award process such as this. By putting in place Award Caps, the Commission's aim is to strike a balance between ensuring operators gain access to sufficient spectrum to provide their services, while at the same time ensuring no party, or parties, can unreasonably prevent other parties accessing the spectrum.
- 2.19. The Award Caps that the Commission intends to implement are based on the amount of spectrum that is available and the services that are likely to be rolled-out in the band. In respect of the 700 MHz Band there is a total of 80 MHz of spectrum available, however 60 MHz of this can only be awarded on a paired basis, the remaining 20 MHz is for Supplementary Downlink only. A likely use for this band is for wideband mobile data services, such as LTE or 5G networks, and possibly some IoT or machine-to-machine applications. To facilitate the potential rollout of wideband services the Commission intends to put in place an Award Cap that would limit a single party, including any entities under its control, to a total of 15 MHz of paired spectrum and 10 MHz of Supplementary Downlink spectrum.
- 2.20. The net effect of the Award Cap would be that at least two operators can gain access to the spectrum which should encourage competition in relevant markets. Additionally, any parties seeking access to the spectrum for narrowband applications would not be adversely impacted by the cap.
- 2.21. In the 3.6 GHz Band there is considerably more spectrum available; there is a total of 390 MHz available on a TDD basis, therefore there is no requirement for paired spectrum or the Supplementary Downlink as in the 700 MHz band.
- 2.22. With the foregoing in mind, the Commission intends to implement an Award Cap of 100 MHz for any single party, including any entities under its control. This is considered the upper bandwidth requirement for next generation mobile services, such as 5G, and

would be sufficient for multiple LTE channels. The foregoing is also true for Fixed Wireless Access services that could potentially use the 3.6 GHz Band.

2.23. The Commission is of the view that the proposed Award Caps in the 3.6 GHz Band would ensure that there is competition in any of the mobile markets reliant on the band as there is scope for multiple operators. It is also a possibility that there could be operators using the band to provide Fixed Wireless Services. Again, the Commission is of the view that the proposed Award Caps would allow such operators to provide services that could be substitutable for their fixed line equivalents. Therefore, the Award Caps should be sufficient to safeguard access to the band while encouraging competition in the relevant retail markets.

### **C. Fees**

2.24. As part of this consultation the Commission intends to deal with the appropriate manner for setting fees for accessing spectrum rights of use. The Commission's intention is to provide clarity, and an opportunity for comment, on how it will determine the appropriate fees, the resulting work will be published as part of the next phase of this process. The Commission is also seeking to provide certainty as to how this issue will be dealt with; fairness and objectivity require that fees are based on objective factors and that the methodology used is transparent.

2.25. The radio spectrum is a valuable limited natural resource, therefore the Commission must promote efficient use of spectrum. A commonly held principle in spectrum management is that the users that most value it should gain access to it on a fair and non-discriminatory basis. This ensures that the Manx consumer and economy derive the maximum benefit from the radio spectrum.

2.26. The Commission also acknowledges that there can be a high degree of uncertainty as to the true value of the spectrum and that one single party does not have sufficient information to decide what it should be. Many other jurisdictions have held market-based competitive award processes, typically auctions, to determine both access and levels of fees for the 700 MHz Band, 3.6 GHz Band, and other substitutable bands. Therefore, the Commission is of the view that the most appropriate way to determine a reserve value for the spectrum would be to benchmark against the results of these award processes.

2.27. It should be noted at this point that fees would be calculated on a price per MHz of spectrum, per head of population; this has the effect of removing the size of the jurisdiction from the fee.

2.28. The fees are largely influenced by the amount of spectrum that is to be awarded, it is typically seen that the less spectrum available the higher the fees; in the Isle of Man the maximum amount of spectrum that can be possibly awarded in each band is being made available to ensure there is no artificial shortage created. The use of a benchmarking approach also affords the opportunity to remove any outliers in this regard.

### 3 Regulatory Impact Analysis

- 3.1. When considering implementing regulation on the industry as a whole, or individual players, the Commission should first consider the impact of its decision to ensure it is proportionate, appropriate, and justified. This recognises that regulation, regardless of its potential benefits, is not without its costs. To that end a Regulatory Impact Assessment (RIA) is widely used to analyse the potential benefits and impacts that a decision or decisions may have on stakeholders.
- 3.2. The RIA is used to establish that if regulation is required, that it is proportionate, appropriate, and justified, and that available options have been considered in an objective manner. The Commission has had due regard to the Isle of Man Government's Guidelines on the Use of Impact Assessments for Primary Legislation and European guidelines and best practice. It should also be noted that the remedies and the associated obligations are consistent with the conditions licences issued under the Telecommunications Act 1984 and in that sense can be considered appropriate and proportionate.
- 3.3. In line with the abovementioned guidelines and its legislative obligations the Commission must consider all options taking account of Relevant Stakeholders. In this context Relevant Stakeholders are the Licenced Operators, consumers, and in a general sense the wider interests of the Isle of Man.

#### 3.1 Regulatory Objectives

- 3.4. The Commission has a number of Regulatory Objectives in relation to awarding access to the spectrum which stem from the Act. Additionally, while not bound to follow it, the Commission must also be cognisant of current public policy on telecommunications. Public policy is currently set by the National Telecommunications Strategy which was unanimously agreed by Tynwald in October 2018.

##### **A. Promoting Sustainable Competition**

- 3.5. The Commission's primary function is to ensure that consumers continue to benefit from strong competition. It is clear that the bands in question are strategically important, for example they have been identified as 'Pioneer Bands' by the European

Commission<sup>8</sup> and National Regulatory Authorities in all regions are actively seeking to award access to them with many award processes already completed.

- 3.6. Both the 700 MHz and the 3.6 GHz Bands have characteristics that make them particularly suitable for mobile and Fixed Wireless Access broadband services. The Commission considers that making these bands available in a timely manner to meet consumer demand, would have the effect of increasing capacity for mobile broadband services, and to enable the industry to take advantage of opportunities for innovation.
- 3.7. Next generation Fixed Wireless Access services have the potential to offer a greater degree of choice in the retail broadband market and thereby increase competition to the benefit of the consumer. The Isle of Man is in a somewhat unique position of being able to grant access to larger tranches of spectrum that most other jurisdictions and therefore can potentially see the rollout of higher quality broadband data services.
- 3.8. There are other use cases for the Bands to be awarded including, IoT and Machine-to-Machine services, and nomadic services in addition to those already mentioned. By awarding the spectrum on a service and technology neutral basis the Commission would not stifle any particular use case, and by adopting the proposed approach to lots it would allow demand for different services to be expressed.
- 3.9. When viewed in the round the Commission is of the view that awarding access to these Bands is likely to benefit competition, and by extension the Island, in the long term. To that end, the Commission is making the maximum amount of spectrum that it can available in the award process to ensure this benefit is achieved.

## **B. Encouraging Investment**

- 3.10. A central tenet of the National Telecommunications Strategy is ensuring that high-speed internet connectivity is available throughout the Island as it is seen as a key factor in the economic attractiveness of the Island. The Government has awarded the National Broadband Plan contract to ensure all parts of the Island benefit from investment in key infrastructure. The Commission is of the view that the rollout of services in the 700 MHz and 3.6 GHz Bands should be seen as an important complement to this.

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<sup>8</sup> <https://ec.europa.eu/digital-single-market/en/news/commission-decides-harmonise-radio-spectrum-future-5g>

- 3.11. At present consumers tend to value connectivity above all; smart devices with the ability to connect to the internet over multiple networks have blurred the lines that traditionally existed between fixed and mobile services. Consumers expect to be able to use their device to access their desired services regardless of location so, when at home the device would likely be utilising the fixed line infrastructure using Wi-Fi, and when out-and-about would access the same services using 3G or 4G mobile networks. As such, it is crucial that while there is a significant, and welcome investment in securing the Island's fixed line infrastructure, the investment in its mobile infrastructure continues in parallel.
- 3.12. One impact of the recent CoVid-19 pandemic was to shine a light on the reliance on telecommunications for almost aspects of economic and social life on the Island. It has also heralded a change in how people are working with more people working remotely than ever before. It is therefore essential that the Island has sufficient capacity in all of its networks, in all areas, to cope with future demand. Encouraging investment in wireless networks across the Island should be seen as essential in safeguarding the Island against future disruptive events that may occur. The Commission is seeking to ensure that the number of access seekers can be maximised whilst facilitating suitable bandwidths
- 3.13. The Commission believes it is in consumers' interests for there to be a number of credible telecoms providers as this would support retail competition in supplying services to consumers. This also provides resilience to guard against any future crisis that may arise. This is also in line with the Commission's obligation to ensure it is fostering an environment that encourages the development of services and products for which there is a demand.

**C. Fair, Reasonable, and Non-Discriminatory**

- 3.14. The Commission is bound to making decisions in a fair, reasonable, and non-discriminatory manner and it holds openness and transparency as key values. In matters such as this the Commission believes that adopting a process that facilitates participation and focuses on the efficient use of the radio spectrum best serves the interests of all stakeholders.

## 3.2 Options

3.15. The Commission must consider all options available to it, taking into account Relevant Stakeholders, and determine the course of action that is most beneficial for all Relevant Stakeholders. In this context Relevant Stakeholders are identified as:

- a) Consumers - for the purpose of this Assessment, consumers include both business and residential consumers;
- b) Industry Stakeholders - which includes those with current rights of use and those seeking access to spectrum, including new entrants; and,
- c) Public Interest – this includes stakeholders with an interest in the social and economic impact of this process on the Island<sup>9</sup> and taking an overall view of telecoms infrastructure as Critical National Infrastructure.

3.16. In its response to the previous consultation on the Future Use of Spectrum the Commission concluded that it was appropriate to award access to the 700 MHz and 3.6 GHz bands. The focus of this consultation and this Regulatory Impact Assessment is to determine the appropriate mechanisms to be used to determine who will gain access to the Bands in question.

3.17. The options for determining access to the spectrum can be considered to fall within one of the following broad headings:

- a. **Administrative Award** where access is determined directly by the Commission based on applications submitted; and,
- b. **Competitive Award** where access is determined based on a competitive process such as comparative analysis, typically referred to as a 'Beauty Contest' or an auction.

3.18. It is clear that based on present use of the spectrum, and from information received from Industry, that it is possible there will be excess demand for the spectrum. This would rule out an Administrative Award process as the Commission must ensure that

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<sup>9</sup> While Consumers can often have interests aligned with the Public Interest, it is not necessarily true that they will always be the same. For example, it could be argued that Consumers would like to see prices continually falling whereas this may not result in sustainable competition and therefore at odds with the Public Interest.



access is determined in a fair, open, and transparent manner. Therefore the Commission believes that its Objectives would best be met through employing a competitive award.

3.19. There are a number of advantages to utilising a competitive process to determine access to the spectrum. A properly designed competitive process would ensure that participants do not incur fees above the true market value for the spectrum. Competitive awards generally ensure that the successful parties are the most efficient operators; this in turn helps ensure the timely and successful allocation and utilisation of the spectrum. The Decision for the Commission therefore becomes which competitive process best meets its Regulatory Objectives.

#### **A. Beauty Contest vs Auction**

3.20. In a beauty contest, the Commission would have to set a number of criteria, possibly with different weightings, against which proposals would be assessed. Candidates' offers are then evaluated to determine the offerings that have the best balance of those criteria. The success, or otherwise, of a process such as this depends on the information available to the Commission to determine the appropriate value of accessing the spectrum, and the ability to compare all bids on a like-for-like basis.

3.21. A beauty contest typically selects the operators on criteria that are not necessarily objectively measurable, this is compounded in this instance by the Commission adopting a service and technology neutral approach. It is unlikely that bids by operators seeking to provide different services, for example IoT and Fixed Wireless Access services, could be compared on an objective like-for-like basis.

3.22. Auctions are used around the world for awarding licences and assigning spectrum rights of use. They best support the main regulatory objectives of technical and economic efficiency and are well suited for assigning valuable spectrum rights for numerous reasons. Principally the main drawback of a beauty contest is the lack of information regarding the true value of the spectrum, however, a properly designed auction process would ensure that access to the spectrum is awarded to the operator that values it most. It is reasonable to assume that the operator that values it most would use the spectrum efficiently to deliver services for which demand exists.

3.23. Auctions are a comparatively quick method of delivering a result and would represent less of a burden to participants. Auctions also have the added advantage of being less

prone to external influence and interference and therefore could be considered fair and non-discriminatory processes, especially when compared to a beauty contest.

3.24. An auction would best meet the important objective of Encouraging Sustainable Competition as participation is open to all and decisions regarding potential services and investments are made by the market, not the regulatory authority. Ultimately the Consumer and Public Interest both stand to benefit from operators that value spectrum access highly being successful bidders as they are most likely to invest in rolling out sustainable services.

### **3.3 Impact and Proposed Decision**

3.25. It can be seen from the foregoing that adopting a Competitive Award process would likely be the preferred option for most stakeholders. From a consumer perspective it would be preferable as it is the option that is most likely to Promote Sustainable Competition which has inherent benefits for Consumers in terms of choice and quality of service. The public interest is likely to be best served by a Competitive Award process as successful bidders are more likely to invest in infrastructure based on the value they would have placed on spectrum access.

3.26. Industry is most likely to prefer a Competitive Award process as it is inherently a fairer, non-discriminatory process with less chance of external influence and interference. An Administrative Award process is also less likely to be able to objectively assess different use cases which may arise. In an open auction process, where the access to the spectrum is awarded on a service and technology neutral basis, the same issues do not arise and all participants have an equal opportunity to gain access to the amount of spectrum they require.

3.27. Finally, the Public Interest is likely to be best served through the use of a Competitive Award process. The Commission considers that Public Interest Stakeholders are likely to value investment in telecoms infrastructure most highly. A Competitive Award process is more likely to ensure that parties who value access to the spectrum most get it, as stated previously it is reasonable to assume that those who value the spectrum most are most likely to invest in the infrastructure required to make use of it. This, paired with the service and technology neutral approach, have the effect of ensuring that the Island's telecoms infrastructure would evolve in line with economic and social demand not regulatory obligations.

3.28. Given the foregoing, the Commission is of the preliminary view that the use of an auction process rather than a beauty contest is preferable, given the efficiency, transparency benefits, and inherent non-discriminatory nature of auctions.

## 4 Next Steps

- 4.1. The Commission is inviting responses by 26<sup>th</sup> October 2020.
- 4.2. When submitting any views please indicate if you are responding on behalf of an organisation. To ensure that the process is open and transparent, responses can only be accepted if you provide your name with your response. Unless specifically requested otherwise, any response received may be published either in part or in its entirety. Please mark your response clearly to confirm if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
- 4.3. If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please clearly mark any confidential sections. If asked to keep part or all of a response confidential, the Commission will treat this request seriously and try to respect it. However, sometimes the Commission may be required to make publically available all responses, including those that are marked as confidential, in order to meet legal obligations.
- 4.4. All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018).
- 4.5. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.
- 4.6. The purpose of this consultation is not to be a referendum, but an exercise to gather sufficient evidence with which to make the most informed decision possible. In any consultation exercise the responses received do not guarantee changes will be made to the Commission's proposals. Responses will be fully considered before the Commission publishes any Decision(s). As such it is important for respondees to ensure they have included sufficient rationale, objective justification, and/or evidence in their responses.
- 4.7. If you wish to discuss the issues and questions raised in this consultation, or simply seek clarification, please contact the Commission.
- 4.8. This consultation can be viewed on the Government Consultation Hub <https://consult.gov.im> or through the Commission's web page [www.iomcc.im](http://www.iomcc.im)

4.9. Following the closing date all responses will be considered. The Commission will prepare and publish a summary of the responses and its consideration of the responses received, and any further consultation and/or decision(s).

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## Annex 1. Legislative Basis

### A. Legislative Background

4.10. The Commission is responsible for issuing licences for telecommunications and broadcasting services on the Island. Under the Telecommunications Act 1984 (of Tynwald) (the Act) its powers include:

- specifying the nature of the telecommunications systems and services which operators are permitted to operate and provide under the licence<sup>2</sup>; and,
- setting conditions on such operation and provision<sup>3</sup>.

4.11. Spectrum management is the responsibility of the UK Office of Communications (Ofcom).

### B. UK legislation relevant to spectrum licensing in the Isle of Man

4.12. Ofcom licenses and regulates the use of radio spectrum in the Island, under the Wireless Telegraphy Act 2006 (of Parliament) (WTA), which is extended to the Isle of Man, with Tynwald's consent, by Order in Council. The Commission works closely with Ofcom to ensure that Isle of Man Government policies are taken into account in licensing decisions.

4.13. The use of spectrum in the Isle of Man is also governed by international agreements between the UK and other countries on the use to which various bands of radio spectrum can be put and the avoidance of interference across borders.

4.14. The licensing of spectrum, in the UK and in the Isle of Man, is carried out by Ofcom, by virtue of the powers given to it by the WTA and the Communications Act 2003. Ofcom's principal and secondary duties are in Section 3 of the Communications Act 2003 (General duties of Ofcom), which provides that:

- 1) It shall be the principal duty of OFCOM, in carrying out their functions—
  - a) to further the interests of citizens in relation to communications matters; and
  - b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, [...]—

- a) the optimal use for wireless telegraphy of the electro-magnetic spectrum;  
[...]

4.15. Moreover, Section 3 of the WTA (Duties of OFCOM when carrying out functions) further specifies Ofcom's duties as follows:

- 1) In carrying out their radio spectrum functions, OFCOM must have regard, in particular, to—
  - a. the extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy;
  - b. the demand for use of the spectrum for wireless telegraphy; and
  - c. the demand that is likely to arise in future for the use of the spectrum for wireless telegraphy.
- 2) In carrying out those functions, they must also have regard, in particular, to the desirability of promoting—
  - a. the efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;
  - a. the economic and other benefits that may arise from the use of wireless telegraphy;
  - b. the development of innovative services; and
  - c. competition in the provision of electronic communications services.

4.16. For the purposes of the spectrum relevant to this consultation, the respective roles of the Commission and Ofcom in coordinating the award of spectrum licences in the Isle of Man are as follows:

- the Commission ascertains the level and nature of demand for the spectrum in the specified bands. It identifies whether a selection process is needed. Eventually, when the assessment and selection process is completed, it makes a recommendation to Ofcom in relation to the issuing of licences under the WTA

to Isle of Man operators, specifying the spectrum bands and the allocations within these bands that should be included within such licences; and

- Ofcom issues licences for spectrum use under the WTA where it is satisfied the Commission's recommendation is consistent with its own statutory duties.