



Level 27, 135 King St
Sydney NSW 2000

GPO Box 3648
Sydney NSW 2001

tel: (02) 9230 9133

www.accc.gov.au

Our ref: IRD213204
Your ref: ACMA2022/723
Contact officer: [REDACTED]
Contact phone: [REDACTED]

23 March 2023

Nerida O'Loughlin PSM
Chair
Australian Communications and Media Authority
Belconnen ACT 2617

cc: James Cameron, Authority Member, Australian Communications and Media Authority (ACMA)

Dear Ms O'Loughlin

Consultation on allocation limits: 3.8 – 3.95 GHz band apparatus licences

Thank you for your letter dated 8 February 2023 regarding the allocation of apparatus licences in the 3.8 – 3.95 GHz band in metropolitan and regional areas.

We note your request for formal allocation limits advice and the Australian Competition and Consumer Commission (ACCC) will provide advice as requested by 30 September 2023.

The ACMA's proposed approach to allocation limits

You have also asked for the ACCC's preliminary views on the ACMA's proposal for limits for the allocation.

The ACCC is aware that this allocation is the third in a suite of four allocations of licences in the wider 3.4 – 4.0 GHz band.

We note the ACMA's intention to use this allocation to support a mix of existing and new use cases for the spectrum in the band. We also note the ACMA's view that the different allocations and licensing approaches for spectrum within the wider 3.4 – 4.0 GHz band are important to achieve the objective of supporting a range of users and use cases, set out in the ministerial policy statement for the band.

The ACCC recognises that allocation limits are a broad regulatory tool that may be used for a variety of purposes, including but not limited to promoting competition in downstream markets. Your letter stated that the ACMA considers the primary objective of allocation limits for the 3.8 – 3.95 GHz band would be to support a range of users and use cases in particular localised contexts.

I note the ACMA's intention to publicly consult on allocation limits for this allocation that would in effect limit the national mobile network operators (Telstra, Optus, and TPG Telecom or together the MNOs), as well as NBN Co from acquiring licences in the 3.8 – 3.95 GHz band for a specified period of time. I understand the intention of this proposal is to provide priority access to the band for other operators, particularly smaller providers of local-area wireless broadband services.

Following this exclusion period, the ACMA has stated its intention to apply cross band-limits on the MNOs and NBN Co in line with those that by that time would have been applied for the purpose of the 3.4 GHz and 3.7 GHz auctions in late 2023.

The ACCC considers that this proposed approach is likely to enable smaller operators, including local-area wireless broadband providers to access spectrum within the band.

Such an approach may also promote competition and encourage investment, including in discrete areas of regional Australia, following the cessation of the nil-limit period for existing licensees in the band via the secondary cross-band limit.

The ACCC's approach to the ACMA's request for advice

Historically, the ACCC has considered the need for allocation limits and the nature of any such limits through the lens of promoting competition in downstream markets. This is especially the case for the allocation of spectrum licences primarily used in the provision of wide-area wireless broadband services.

For this allocation, I recognise that the ACMA intends to use allocation limits to achieve a wider suite of policy objectives. I also note the ACMA's intention to consult publicly on its proposed allocation limits regime.

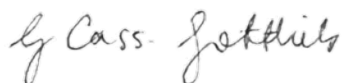
Given the ACCC's preliminary view that the proposed limits are likely to support the ACMA's objectives for this allocation and for the wider band, this allocation is an opportunity to reduce regulatory burden on industry by streamlining the consultation process for the ACCC's allocation limits advice.

It is our intention to form that advice using submissions made in response to the ACMA's consultation process, and to undertake further targeted consultation where necessary, rather than undertaking a separate public consultation process on the same issue. I understand that stakeholders will be informed of, and need to consent to, their submissions being shared with the ACCC.

I have asked ACCC staff to continue working closely with ACMA staff as they develop the ACMA's draft Applicant Information Pack and other consultation materials to assist in obtaining information necessary for the ACCC to form its advice on allocation limits.

If you have any questions regarding this letter, please contact Tara Morice, Acting General Manager, Mobiles, Transmission and Consumer, on [REDACTED] or at [REDACTED].

Yours sincerely



Gina Cass-Gottlieb
Chair

Australian Competition and Consumer Commission