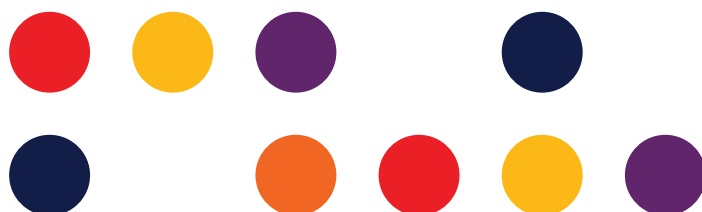


Area-wide apparatus licences in the 3.8 GHz band in metropolitan and regional Australia

ACMA

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Public version



Submission

TPG Telecom welcomes the opportunity to respond to the ACMA's "*Area-wide apparatus licences in the 3.8 GHz band in metropolitan and regional Australia: Licensing, allocation process technical framework and pricing arrangements*" consultation paper (June 2023) (**Consultation Paper**).

TPG Telecom supports the AMTA submission to the Consultation Paper and makes the following additional comments.

TPG Telecom supports:

- the ACMA adopting allocation Option 2 and a quantum limit of 50 MHz;
- the ACMA limiting the term of area wide licences (**AWLs**) to 13 December 2030;
- the ACMA's proposal to not include renewal statements or related statements, provided the ACMA also proceeds with its proposal to include an advisory note on each AWL.¹

The policy reasons provided by the ACMA to exclude 2.3 GHz spectrum from allocation limits for the upcoming 3.4/3.7 GHz spectrum auction do not apply to the AWLs allocation process. Accordingly, 2.3 GHz spectrum holdings should be factored into the cross-band limit for the purposes of AWLs.

TPG Telecom consents to its submission being shared with the ACCC.

Allocation Option 2 supports ACMA's policy objectives

TPG Telecom recommends the ACMA adopt a general allocation window approach and proceed with allocation Option 2. The ACMA should reject Option 1. This would be consistent with the ACMA's policy objectives, including supporting innovation and competition.

TPG Telecom considers the AWLs could be used by MNOs to provide capacity in specific areas for 5G mobile networks (and potentially 6G in the future). For TPG Telecom, this network capacity could be used to provide mobility and fixed wireless access services, enabling a range of downstream use cases.

In past advice to the ACMA on allocation limits for the 3.4-4.0 GHz band, the ACCC has assessed competition in the mobile services market, the fixed broadband services market and the private wireless enterprise market.²

¹ The Consultation Paper states the advisory note will note "*that when deciding whether to renew a licence, the ACMA may have regard to whether the spectrum has been used and whether there is unmet demand for spectrum in the 3.4 - 4.0 GHz band*" (page 15).

² ACCC, *Allocation limits advice for the 3.4–4.0 GHz Remote spectrum allocation*, Public version, November

The ACCC and ACMA should consider the potential harm caused by the imposition of an initial nil MHz limit on MNOs in the context of the mobiles market, particularly given the ACMA's decision on allocation limits for the upcoming 3.4/3.7 GHz spectrum auction.

TPG Telecom considers the imposition of a nil MHz limit would not support competition in the mobiles market. Instead, Option 1 creates a unique arbitrage opportunity that will encourage speculation. Even if this were not the case, Option 1 would still be contrary to the long-term public interest derived from use of the spectrum. Specifically, it is contrary to the ACMA's requirement to ensure the efficient allocation and use of the spectrum in circumstances where 5G mobile services are demonstrably the most efficient use of the spectrum.

The ACCC has previously stated *"5G is becoming an important differentiator as the MNOs' flagship brands focus on non-price factors such as speed, coverage, technology, and customer service. Given the importance of 5G, an MNO not being able to provide a quality 5G network will erode competitive vigour in the market."*³

There is a significant risk of duopoly outcomes following the 3.4/3.7 GHz spectrum auction, because of an entrenched imbalance in spectrum holdings. **[c-i-c]**

The adoption of a nil MHz limit would not recognise that MNOs also develop new and innovative technologies, including private mobile networks. For example, TPG Telecom recently developed a standalone private mobile network for Yancoal's Mount Thorley Warkworth mining operations in the NSW Hunter Valley region. The adoption of Option 1 would therefore impact competition in the private wireless enterprise market.

If the ACMA adopts Option 2, the allocation principles enable the ACMA to *"consider for each applicant the extent to which refusal to issue the licence applied would affect the ability of the applicant to deploy services."* This would enable the ACMA to consider other policy considerations if there are competing AWL applications.

TPG Telecom does not agree with the ACMA's comments that a nil MHz limit may be required *"given that it is possible that not all potential applicants will be ready to apply at the point of the allocation window"*.⁴ Applicants have been advised AWLs will be allocated in Q1 2024, meaning they have at least 6 months to prepare for the allocation. TPG Telecom considers this is sufficient time to prepare.

2021; ACCC, *Allocation limits advice for the 3.4 GHz and 3.7 GHz spectrum allocation*, Public version, August 2022.

³ ACCC, *Allocation limits advice for the 3.4 GHz and 3.7 GHz spectrum allocation*, Public version, August 2022, page 13.

⁴ Consultation Paper, page 26.

Quantum policy and cross-band limits

TPG Telecom's preference for a quantum policy is 50 MHz, followed by 60 MHz and 70 MHz. We note 50 MHz is a 3GPP defined carrier. A 50 MHz limit would support the efficient and equitable allocation of AWLs, by maximising the number of potential licensees.

In relation to the cross-band limit, TPG Telecom remains of the view 2.3 GHz spectrum is directly substitutable with C-band spectrum and should be elevated from other mid-band spectrum. This is supported by the ACMA, which stated:⁵

- *"the ACMA agrees that 2.3 GHz band spectrum is more directly substitutable for the 3.4 GHz to 4.0 GHz band than other 'midband' spectrum that is subject to spectrum licensing."*
- *"The 2.3 GHz band is more directly substitutable for the 3.4 GHz to 4.0 GHz band than other midband spectrum due to the similarity in frequency range, the bandwidths available and the use of time division duplex when operating devices."*

Despite the above, the ACMA decided to disregard 2.3 GHz spectrum for the purposes of the upcoming 3.4/3.7 GHz auction due to other reasons related to auction design and process – i.e. uniformity and consistency of geographic areas and potential delays in commencement of the auction.

Given the ACMA's comments, the ACCC must consider 2.3 GHz spectrum directly substitutable with 3.4-4.0 GHz spectrum in its advice. The ACCC and ACMA must consequently include 2.3 GHz spectrum in cross-band limits for the purposes of the AWLs allocation.

The policy reasons provided by the ACMA to exclude 2.3 GHz spectrum from allocation limits do not apply to the AWLs allocation process, given the ACMA is undertaking an administrative allocation process, rather than an auction process. If the ACMA needs to undertake further consultation in relation to cross-band limits, there is ample time to undertake this process between now and when the ACMA intends to allocate AWLs in Q1 2024 – i.e. at least 5 months.

TPG Telecom recommends the ACMA apply a cross-band limit for at least 12 months, regardless of whether it adopts Option 1 or Option 2.

Preferences if allocation Option 1 is adopted

If the ACMA adopts Option 1, then TPG Telecom recommends the ACMA limit licences allocated during the nil MHz period to a shorter amount of time – e.g. up to 18 months. This will ensure the ACMA can assess whether the spectrum has been used as part of a renewal

⁵ Explanatory Statement to *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*.

process. This will avoid a situation where the ACMA issues a licence with an initial term of 5 to 6 years and the spectrum is not used, however the ACMA has no recourse to ensure the spectrum is efficiently allocated and meet other demand for the spectrum.

If the ACMA decides to proceed with allocation Option 1, TPG Telecom considers the nil MHz limit on MNOs and NBN Co should expire after 3 months. The ACMA should adopt an 'allocation principles' approach to the second allocation process.

Proposed definition of “associates”

TPG Telecom does not support including the words “acts in concert with a named person” in the proposed definition of “associate” in the *Draft Radiocommunications (Area-Wide Licence Allocation Limits) Determination 2023*.

The words “in concert” are not contained in the definition of “associates” in the *Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023*. It is unclear why the ACMA proposes to include “in concert” and the relationships it intends to capture through these words.

The meaning of “in concert” is broader than an “arrangement, agreement or understanding”. Its inclusion would mean the ACMA is imposing a higher threshold for “associates” for the purposes of AWLs, than it does for spectrum auctions. This also runs contrary to the ACMA’s stated intention in the Consultation Paper to adopt a “simplified associates policy”.