

# COMMISSION

## COMMISSION DECISION

of 13 May 2009

### on the selection of operators of pan-European systems providing mobile satellite services (MSS)

(notified under document number C(2009) 3746)

(2009/449/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS) <sup>(1)</sup>, and in particular Article 5 thereof,

Whereas:

(1) In order to facilitate the development of a competitive internal market for mobile satellite services (MSS) across the Community and to ensure gradual coverage in all Member States, Decision No 626/2008/EC creates a Community procedure for the common selection of operators of mobile satellite systems that use the 2 GHz frequency band in accordance with Commission Decision 2007/98/EC <sup>(2)</sup>, comprising radio spectrum from 1 980 to 2 010 MHz for earth to space communications, and from 2 170 to 2 200 MHz for space to earth communications.

(2) The Commission published a call for applications for pan-European systems providing mobile satellite services (MSS) (2008/C 201/03) on 7 August 2008 <sup>(3)</sup>. The deadline of 7 October 2008 was set for the submission of applications.

(3) Applications from ICO Satellite Limited, Inmarsat Ventures Limited, Solaris Mobile Limited and TerreStar Europe Limited were received within the deadline.

(4) On 24 October 2008 requests for additional information regarding the fulfilment of admissibility requirements were sent to ICO Satellite Limited, Inmarsat Ventures Limited and TerreStar Europe Limited. All the three applicants responded by 7 November 2008.

(5) By Decision C(2008) 8123 of 11 December 2008 on the admissibility of applications submitted in response to the call for applications for pan-European systems providing mobile satellite services (MSS) (2008/C 201/03) the Commission decided that the four applications submitted by, respectively, ICO Satellite Limited, Inmarsat Ventures Limited, Solaris Mobile Limited and TerreStar Europe Limited are admissible. The Decision was forthwith notified to the applicants, and the list of admissible applicants was published on the Commission website <sup>(4)</sup>.

(6) Information regarding the completion of the critical design review was provided, in addition to the application, by ICO Satellite Limited, Inmarsat Ventures Limited and TerreStar Europe Limited no later than 80 working days after the submission of their application (by 6 February 2009), in accordance with the Annex to Decision No 626/2008/EC.

(7) Moreover, correspondence including additions to the technical or operational content of the application was provided by TerreStar Europe Limited and ICO Satellite Limited after the deadlines for submission of the application and for submission of information regarding the completion of the critical design review, and could therefore not be taken into account.

(8) In the first selection phase the Commission should assess, within 40 working days following publication of the list of admissible applicants, whether applicants have demonstrated the required level of technical and commercial development of their respective mobile satellite systems. Such assessment should be based on the satisfactory completion of milestones one to five as set out in the Annex to Decision No 626/2008/EC. The credibility of applicants and the viability of the proposed mobile satellite systems should be taken into account throughout the first selection phase.

(9) To facilitate the implementation of the comparative selection procedure, and in particular in order to assist the Commission in preparing decisions connected with the selection procedure, a working group of the Communications Committee on the comparative selection procedure for pan-European systems providing mobile satellite services (MSS) was established.

<sup>(1)</sup> OJ L 172, 2.7.2008, p. 15.

<sup>(2)</sup> OJ L 43, 15.2.2007, p. 32.

<sup>(3)</sup> OJ C 201, 7.8.2008, p. 4.

<sup>(4)</sup> [http://ec.europa.eu/information\\_society/policy/ecomm/current/pan\\_european/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/current/pan_european/index_en.htm)

- (10) For the analysis and evaluation of applications in the first selection phase, the Commission sought the advice and assistance of external experts, selected through a competitive tendering procedure on the basis of their expertise and high level of independence and impartiality.
- (11) Following a detailed analysis, and comprehensive deliberations in meetings, a consolidated report including conclusions on the completion of the milestones was produced by the experts and communicated to the Commission.
- (12) The conclusions of the first-phase evaluation by the external experts were discussed by the experts of Member States in the framework of the working group of the Communications Committee on the comparative selection procedure for pan-European systems providing mobile satellite services (MSS). The outcome of these discussions was presented and discussed in the Communications Committee.
- (13) The Commission took into account the consolidated report of the external experts as well as the opinion of the Member States' experts expressed in the working group on the comparative selection procedure for pan-European systems providing mobile satellite services (MSS) for the purposes of the first selection phase assessment.
- (14) The outcome of the Commission's assessment is that Inmarsat Ventures Limited and Solaris Mobile Limited have demonstrated the required level of technical and commercial development of their respective mobile satellite systems and should be eligible applicants, while ICO Satellite Limited and TerreStar Europe Limited have not demonstrated the required level of technical and commercial development of their respective mobile satellite systems and should not be eligible applicants.
- (15) Milestone one is entitled 'Submission of International Telecommunications Union (ITU) request for coordination' and requires that the applicant provide clear evidence that the administration responsible for the ITU filing of a mobile satellite system to be used for the provision of commercial MSS within the territories of the Member States has submitted the relevant ITU Radio Regulations Appendix 4 information. All the four applications contained clear evidence in this regard, which led the Commission to consider that this milestone had been satisfactorily completed by all four applicants.
- (16) Milestone two is entitled 'Satellite manufacturing' and requires that the applicant provide clear evidence of a binding agreement for the manufacture of the satellites required for the provision of commercial MSS within the territories of the Member States. The document shall identify the construction milestones leading to the completion of manufacture of satellites required for the provision of commercial MSS. The document shall be signed by the applicant and the satellite manufacturing company. The applications of Inmarsat Ventures Limited and Solaris Mobile Limited were supported by clear evidence in this regard, which led the Commission to consider that this milestone had been satisfactorily completed by these applicants.
- (17) Milestone three is entitled 'Satellite launch agreement' and requires that the applicant provide clear evidence of a binding agreement to launch the minimum number of satellites required for the continuous provision of commercial MSS within the territories of the Member States. The document shall identify the launch dates and launch services and the contractual terms and conditions concerning indemnity. The document shall be signed by the mobile satellite system operator and the satellite launching company. All the four applications were supported by clear evidence in this regard, which led the Commission to consider that this milestone had been satisfactorily completed by all four applicants.
- (18) Milestone four is entitled 'Gateway earth stations' and requires that the applicant provide clear evidence of a binding agreement for the construction and installation of gateway earth stations that would be used for the provision of commercial MSS within the territories of the Member States. All the four applications were supported by clear evidence in this regard, which led the Commission to consider that this milestone had been satisfactorily completed by all four applicants.
- (19) Milestone five is entitled 'Completion of the critical design review'. Critical design review is defined as 'the stage in the spacecraft implementation process at which the design and development phase ends and the manufacturing phase starts'. The milestone requires that the applicant provide clear evidence of the completion, no later than 80 working days after the submission of the application, of the critical design review in accordance with the construction milestones indicated in the satellite manufacturing agreement. The relevant document shall be signed by the satellite manufacturing company and shall indicate the date of the completion of the critical design review. The applications of ICO Satellite Limited, Inmarsat Ventures Limited and Solaris Mobile Limited were supported by clear evidence in this regard, which led the Commission to consider that this milestone had been satisfactorily completed by these applicants.

- (20) As regards milestone two [...] (\*). [...] (\*) lack of contractual and up-to-date evidence for the construction milestones leading to the completion of manufacture of the satellites required for the provision of commercial MSS led the Commission to consider, in accordance with Article 5(1) of Decision No 626/2008/EC, that this milestone had not been satisfactorily completed by ICO Satellite Limited.
- (21) [...] (\*) The inconsistency between the information provided in the application and the information in relation to the critical design review provided subsequently, and the lack of clear evidence of the completion of the critical design review for the satellite referred to in the satellite manufacturing agreement as included in the application, led the Commission to consider, in accordance with Article 5(1) of Decision No 626/2008/EC, that milestone five in conjunction with milestone two had not been satisfactorily completed by TerreStar Europe Limited.
- (22) Inmarsat Ventures Limited requested in its application 15 MHz of spectrum for earth to space communications and 15 MHz of spectrum for space to earth communications. Solaris Mobile Limited requested in its application 15 MHz of spectrum for earth to space communications and 15 MHz of spectrum for space to earth communications.
- (23) Since the combined demand for radio spectrum requested by Inmarsat Ventures Limited and Solaris Mobile Limited does not exceed the amount of radio spectrum available identified in Article 1(1) of Decision No 626/2008/EC, the two applicants should be selected in accordance with Article 5(2) of Decision No 626/2008/EC.
- (24) Any selection decision adopted as a result of the first selection phase should identify the respective frequencies which each selected applicant shall be authorised to use, in each Member State, in accordance with Title III of Decision No 626/2008/EC.
- (25) The frequencies should be identified on the basis of objective, transparent, non-discriminatory, and proportionate criteria. In this regard, the principle of effective management of radio frequencies, as enshrined in Article 9 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(1)</sup>, should apply. In accordance with this principle, the two
- times 30 MHz to be used should be divided into contiguous sub-bands of equal bandwidth for both earth to space communications (the uplink) and space to earth communications (the downlink) in order to allow the most efficient use of the sub-bands. The lower pair of sub-bands should consist of 1 980-1 995 MHz for earth to space communications (the uplink) and of 2 170-2 185 MHz for space to earth communications (the downlink); the upper pair of sub-bands should consist of 1 995-2 010 MHz for the uplink and of 2 185-2 200 MHz for the downlink. As required in Section 4.4 of the call for applications 2008/C 201/03, the Commission has taken into account the indications of preferences of the eligible applicants as provided in their applications. [...] (\*).
- (26) Within 30 working days of the publication of the list of selected applicants, those applicants that intend not to use the radio frequencies should inform the Commission thereof in writing.
- (27) According to Article 7 of Decision No 626/2008/EC, Member States shall ensure that the selected applicants, in accordance with the time-frame and the service area to which the selected applicants have committed themselves, in accordance with Article 4(1)(c), and in accordance with national and Community law, have the right to use the specific radio frequency identified in the Commission decision adopted pursuant to Articles 5(2) or 6(3) and the right to operate a mobile satellite system. They shall inform selected applicants of those rights accordingly. Decision No 626/2008/EC also stipulates that the right to use the specific radio frequencies should be granted to the selected applicants as soon as possible after their selection, in accordance with Article 5(3) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>(2)</sup>.
- (28) The measures provided for in this Decision are in accordance with the opinion of the Communications Committee delivered on 2 April 2009,

HAS ADOPTED THIS DECISION:

#### Article 1

ICO Satellite Limited and TerreStar Europe Limited are not eligible applicants as a result of the first selection phase of the comparative selection procedure provided in Title II of Decision No 626/2008/EC.

(\*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

<sup>(1)</sup> OJ L 108, 24.4.2002, p. 33.

<sup>(2)</sup> OJ L 108, 24.4.2002, p. 21.

*Article 2*

Inmarsat Ventures Limited and Solaris Mobile Limited are eligible applicants as a result of the first selection phase of the comparative selection procedure provided in Title II of Decision No 626/2008/EC.

As the combined demand for radio spectrum requested by the eligible applicants retained as a result of the first selection phase of the comparative selection procedure provided in Title II of Decision No 626/2008/EC does not exceed the amount of radio spectrum available identified in Article 1(1) of Decision No 626/2008/EC, Inmarsat Ventures Limited and Solaris Mobile Limited are selected.

*Article 3*

The frequencies which each selected applicant shall be authorised to use in each Member State in accordance with Title III of Decision No 626/2008/EC shall be the following:

- (a) Inmarsat Ventures Limited: from 1 980 to 1 995 MHz for earth to space communications and from 2 170 to 2 185 MHz for space to earth communications;
- (b) Solaris Mobile Limited: from 1 995 to 2 010 MHz for earth to space communications and from 2 185 to 2 200 MHz for space to earth communications.

*Article 4*

The selection of Inmarsat Ventures Limited and Solaris Mobile Limited and the identification to the selected applicants of the respective frequencies provided for by Articles 2 and 3 is condi-

tional upon no information in writing being provided, within 30 working days of the publication of the list of selected applicants by the Commission, by the relevant selected applicant to the effect that the applicant intends not to use the radio frequencies identified.

*Article 5*

This Decision is addressed:

1. to the Member States; and
2. (a) to ICO Satellite Limited, 269 Argyll Avenue, Slough SL1 4HE, United Kingdom;
- (b) to Inmarsat Ventures Limited, 99 City Road, London EC1Y 1AX, United Kingdom;
- (c) to Solaris Mobile Limited, 30 Upper Pembroke Street, Dublin 2, Ireland;
- (d) to TerreStar Europe Limited, c/o TerreStar Global Ltd, 2nd Floor, 145-157 St John Street, London EC1V 4PY, United Kingdom.

Done at Brussels, 13 May 2009.

*For the Commission*  
Viviane REDING  
*Member of the Commission*