

INTRODUCTION

Cable&Wireless Worldwide welcomes the opportunity to comment on Ofcom's consultation on the Review of Spectrum pricing. The document provides a comprehensive outline of Ofcom's proposed approach and we are pleased to be able to add to the debate on this issue. We do not intend to set out responses to all the questions posed by the consultation rather we make some general comments about Ofcom's proposed use of AIP with particular emphasis on the implications of the proposals to the satellite sector.

GENERAL COMMENTS

C&W Worldwide believes that the general principles set out in the consultation may be suitable for some spectrum uses, however we are concerned that the application of a one size fits all approach to all spectrum uses where congestion is identified as an issue will result in serious consequences for some services. In particular satellite services have a unique international dimension and are subject to international regulation and cross border use. There is a risk that the application of AIP pricing and auction sales could fragment access to service and drive satellite use outside of the UK if prices increases are too high.

Indeed, the international dimension of satellite spectrum raises serious doubts as to the suitability of AIP for managing the efficient use of spectrum for satellite services. For example it is the satellite operator who controls the access price for the spectrum to service providers and not the regulator. This price will be set by reference to what the satellite provider believes the market will bear, taking into account issues such as congestion. Accordingly in territories where demand is high – access charges are similarly high. It is therefore essential that when regulators set licence fees to service providers/spectrum users that they do not set them at a level which in combination with access fees renders service provision uneconomical within that territory.

The relative level of the licence fees and spectrum access costs are unique to satellite services because for all other uses of spectrum there is no dependence upon a third party to actually make access to any spectrum necessary. This factor in combination with the various international regulatory and technical co-ordinations means that the consequences of Ofcom setting fees too high under AIP will be significant. If Ofcom sets AIP pricing too high it will result in UK operators exiting the market, however the satellite coverage will still continue to exist but, only foreign service providers who do not have to pay the Ofcom fees for their hub stations would be able to compete economically for any UK business.

C&W Worldwide is concerned that while the theory behind the proposal - that use of AIP can ensure the optimal use of spectrum - may appear reasonable, there is a lack of any empirical evidence to demonstrate that AIP does in fact ensure optimal use of spectrum. For example there is no proof that use of AIP encourages investment and innovation. Ofcom's proposals are made purely on the basis of economic rationale and fail to sufficiently take into account other means of ensuring optimal use of spectrum such as in the case of satellite where technical coordination on an international basis may be more appropriate than AIP for dealing with congestion issues. Generally we believe that further detail including empirical evidence is required to ensure clarity over what Ofcom is trying to achieve with AIP. In particular we don't believe that the discussion around AIP has been sufficiently progressed by Ofcom since AIP was debated the first time around and certainly with reference to satellite services, Ofcom has adduced no evidence to alleviate our fears that the imposition of AIP will drive UK service providers out of the market.

AIP AS A SPECTRUM MANAGEMENT TOOL

C&W Worldwide supports Ofcom's aim to ensure the efficient use of spectrum. However, we are cautious as to whether AIP is the best tool to achieve this and therefore strongly agree that where AIP pricing is used it should be done in combination with other spectrum management tools with the objective of securing optimal use of the radio spectrum in the long term. In our view it is essential that over reliance is not placed on the role of AIP as a

particular spectrum management tool. In particular there is a risk that assessments of market value and opportunity cost can be wrongly made resulting in prices being set too high in relation to the commercial possibilities of the particular spectrum use. In the long run this can damage investment and competition.

According to Ofcom AIP is aimed at securing the optimal use of spectrum in the long term so as to allow users to be able to respond to AIP as part of their normal investment cycle. However, if AIP is to form part of the investment cycle Ofcom must ensure that fees are proportionate to the commercial possibilities of particular spectrum uses. This needs to take into account constraints on efficiency improvements and the impact of equipment life cycles as these will have a bearing on the users' ability to respond to AIP within a given timescale.

It is clear that setting prices based on AIP that estimates of market value are key – however market value cannot be assessed in the short term. This is evident from the 3G auctions where the Mobile Network Operators in the UK paid very high prices for spectrum based on the concept that it was a “must have” technology. Later when 3G auctions were held in other countries prices paid for spectrum were considerably less than those paid in the UK. This could indicate that prices paid in the UK were too high or that some countries valued the spectrum differently. However it is clear that the assessment of the true value of the spectrum needs to be assessed over time and not via a snap shot view of the market. Failure to do so could result in a distorted market valuation.

Similarly in assessing spectrum value based on opportunity cost there is a risk that the outcome of any assessment can be altered depending on against who or what the assessment of opportunity cost is being made. We are concerned that there is considerable scope for error in making such assessments, accordingly spectrum valuation must be made in the round taking into account a full range of issues without placing too much reliance on one particular assessment criteria. Failure to do so will mean that

spectrum value will be assessed on the basis of those who are most able or willing to pay rather than by reference to the commercial value of the services that can be provided via the particular spectrum.

ASSESSMENT OF USER DEMAND IN APPLYING AIP

Ofcom state that AIP should be applied where spectrum is expected to be in excess demand from existing and/or feasible alternative use in the future if cost based fees were applied. C&W Worldwide believes that there needs to be a transparent means of assessing demand with consideration given to alternative bands for the deployment of services by both incumbent and new market entrants to ensure that congestion is properly evaluated. Similarly technical means of dealing with congestion should be utilised where possible. In assessing demand Ofcom should also take into account situations where operators have purchased spectrum and have failed to use it to deploy services. In these circumstances Ofcom should first consider whether action may be appropriate to ensure the release of spectrum where this is artificially creating excess demand rather than mechanically applying AIP pricing.

In setting AIP Ofcom propose to assess demand for spectrum over a time frame of existing user's investment cycles. In doing so Ofcom must ensure that it takes into account the fact that different users will have different investment cycles depending on the service they provide. It is unclear how Ofcom will determine demand and congestion based on these differences and Ofcom will need to provide clarity around this issue.

There is a risk that a failure to properly assess demand/congestion could result in fees being set too high resulting in some players being driven out of the market where the services they supply have been built on business cases that do not reflect AIP charges. Similarly potential market entrants could be deterred from entering the market if charges do not correspond to the commercial value of the services that can be offered.

ASSESSMENTS OF MARKET VALUE

C&W Worldwide supports Ofcom's proposal that it will take account of observed market valuations from auctions and trading along side other evidence when setting AIPs. We agree with Ofcom that such valuations should be interpreted with care. In particular spectrum value can be influenced by factors which can distort the value at the time of an auction and which in the long term can show that the estimates of value have been over or under estimated.

However, there is potential that if AIP Spectrum costs are substantially out of line with similar auction spectrum costs then AIP could operate as a tax rather than as a tool to promote efficient spectrum use. If AIP charges are too high it will provide a disincentive towards efficiency and could result in competitive distortions on the market. Accordingly we believe that there needs to be a connection between market values and AIP charges.

REFERENCE RATES

Ofcom sets out that reference rates will be based on the estimated value of spectrum in the current use and any feasible uses, informed where possible by available market information and economic studies of spectrum value. We agree that economic studies can provide a useful input into this process provided that they are used with a combination of other tools to assess market value. To ensure that a balanced view is provided of market value there needs to be transparency over the commissioning, scope and use of any economic valuations. It is essential that stakeholders are provided with an opportunity to comment on the content of the reports and to agree or to present a counter factual to their conclusions if necessary.

CALCULATION OF INDIVIDUAL FEES

C&W Worldwide is generally supportive of the approach proposed by Ofcom in converting reference rates to fees, however we believe that there also needs to be a means of ensuring that the fees that are set are not excessive compared to the commercial and business potential to improve spectrum efficiency viewed over a reasonable timescale. In particular the valuation of spectrum denied to others is key and this has potential to be over valued – it is essential that as part of this evaluation alternative bandwidths are considered as a means of enabling service provision along with other technical means of dealing with congestion.

We agree that Ofcom should recover its cost of managing spectrum. Where AIP is not an appropriate charge for spectrum use fees should be based on Ofcom's cost of managing that spectrum. However, where AIP is deemed appropriate it is clear that its underlying objective is to influence market behaviour rather than to operate as a cost recovery tool. It is essential however that AIP fees are not set so high so as to operate as a revenue generating tool for the treasury rather than as a means of ensuring optimal use of a finite resource. To this extent greater transparency should be provided regarding what happens to AIP funds and whether a proportion of those funds are redeployed into the industry for example for research into the sector etc.

REVIEW OF FIXED LINK FEES

C&W Worldwide welcomes the proposal to review the fixed links detailed fees algorithm as a priority and would encourage Ofcom to initiate that review as soon as possible. We believe that the present fixed link annual fees are higher than appropriate given the fixed link spectrum values indicated by the 2008 fixed links spectrum auction.

CONCLUSION

C&W Worldwide supports Ofcom's aim to ensure efficient use of spectrum. However we are cautious about the ability of AIP to achieve Ofcom's goal in all situations and particularly with respect to satellite services. In particular we are concerned that assessments of demand and market value can be wrongly made resulting in the imposition of fees which bear little relation to the value of the services being provided via the spectrum in question. In our view proper checks and balances need to be in place to ensure that market valuations and assessments of demand are properly made so as not to drive out current users or deter future investment for services by potential market entrants.