

SRSP: A revised framework for Spectrum Pricing

Arqiva response

1) Do you agree with our proposed core principles of setting AIP? Are there additional matters that it would be helpful to clarify?

Proposed principle 1

Arqiva agrees both that AIP acts generally to incentivise more optimal use of spectrum and that it isn't a panacea but must be used alongside other spectrum management tools.

However Arqiva has a concern that the effectiveness of AIP could easily be undermined if insufficient resources were available within Ofcom to ensure sufficient granularity of analysis.

Proposed principle 2

Arqiva agrees that, while some spectrum users may be able to respond to changes in AIP in the short term, AIP should not generally seek sudden changes in use or investment decisions but should aim to contribute towards optimal use of spectrum over the long term.

Proposed principle 3

Arqiva agrees that AIP should only be applied to spectrum expected to be in excess demand from existing or feasible alternative uses (and those alternative uses must be truly feasible), taking account of equipment availability and standards and any regulatory constraints, including protecting neighbouring countries' use of the spectrum.

Given that AIP is assigned UK-wide to a spectrum band, and that in the UK a considerable proportion of the land area with commercial appeal for many services – wireless or otherwise – is on or near coastal areas with little or no terrain shielding, then neighbouring countries' use of that spectrum could easily be a major factor in the feasibility of any alternative use. This must certainly be a factor, alongside equipment availability and standards, when determining any alternative use of the spectrum currently used by the DVB-T (Freeview) multiplexes (where it should be noted that the historic over-regulation of the Freeview platform restricts multiplex operators' freedom to respond to changes in AIP fee levels).

Arqiva also agrees that, when determining the future availability of alternative equipment to operate in a band, account needs to be made of the uncertainty around the availability of such equipment within the timeframe. Further, even if such equipment became available within that timeframe, its actual performance may differ markedly from what was assumed when the forward-looking assessment of spectrum availability and demand was undertaken.

A further factor may be where an alternative use would require the clearing of the band (in whole or part) of its current use, then if that current use is made by a considerable number of users the application (and future increases in the level of) AIP may not induce a market-led clearing of that spectrum if only a small number of

the existing users were willing and able to react within the timeframe under consideration. What that instead may induce is isolated parts of that band being cleared, but insufficient for the alternative use expected to be deployed. It is worth mentioning here that existing DVB-T users share their spectrum across the UK i.e. any reaction by only one of those users to the introduction of AIP would be unlikely to lead to any commercially useful spectrum being released for re-use.

Given the uncertainties, Arqiva suggests that there should be clarity about the methodology used by Ofcom to determine future excess demand.

Proposed principle 5: AIP and spectrum trading

Arqiva agrees that true (rather than intra group) trading of spectrum is still in its infancy in the UK, not helped by the continued absence of spectrum brokers and commercial band managers, and that AIP probably still provides a useful signal to holders of tradable spectrum.

It is to be expected that, over time, existing public sector spectrum owners will release into the market considerable quantities of spectrum, which should provide a useful boost to trading volumes and bring forward the point at which Ofcom could dispense with the application of AIP to tradable spectrum.

In addition to the transfer of complete spectrum licences, trading is likely to increasingly involve the splitting of spectrum licences by geographic area. Where such spectrum licences are subject to AIP, such trades would be aided if Ofcom made available non-binding guidance as to how UK-wide AIP might then be split between the successor licences e.g. pro rata by population, or contribution to GDP.

Proposed principle 6: AIP & wider policy objectives

Arqiva agrees in principle that direct subsidy by government would be preferable to Ofcom subsidising AIP for spectrum used to fulfil public policy objectives, however this assumes that such direct subsidies are to be forthcoming or that a political decision has been made to introduce them.

Proposed principle 7: AIP & the promotion of innovation

Arqiva agrees in principle that Ofcom should not grant concessions in AIP when it awards spectrum in bands for which there is already excess demand for purposes which purport to be innovative.

Proposes principle 8: use of market valuations

Prices achieved in auctions and any other indicators of market values for spectrum may well have a role to play in determining the appropriate level of AIP but, as Ofcom proposes, this would need to be done with care.

Arqiva agrees that prices achieved at any auction reflect specific circumstances. Those circumstances include prevailing competitive and general economic situations in addition to characteristics of the spectrum awarded and, as Ofcom recognises, the auction design adopted itself influences bidding.

Setting aside exchange rate variations, prices paid in international auctions may reflect local conditions (e.g. licence obligations, recent competition authority

judgements, political pressures) which have little or no equivalent in the UK at that time.

Arqiva also agrees that linking auction outcomes too deterministically may distort bidding incentives, assuming that like-for-like spectrum comparisons could even be made.

Companies which complain that auction outcomes which they perceive to be cheap have not fed into lower AIP for spectrum which they hold may be only too happy to claim that any apparent auction over-payments simply reflect unique circumstances or the irrational bidding which auctions can easily engender.

Proposed principle 9: setting AIP fees to take account of uncertainty

Arqiva agrees that Ofcom should consider, on a case-by-case basis, the risks of setting prices too high or too low. The safe approach would be to continue to err on the side of caution. If not, there would need to be a means of appeal for affected spectrum users and rebates of AIP available where key assumptions made were not borne out within the timeframe under consideration.

2) Do you agree that we should charge cost-based fees where AIP is not appropriate or AIP would not cover our costs? How do you think we should set cost-based fees in future fee reviews? Are there particular factors you think we should take into account, for specific licences fees or cost-based fees in general?

While we can see why recovering the avoidable costs of awarding spectrum from those to whom it was awarded would be attractive, Arqiva would be concerned if companies awarded spectrum always contributed at least the avoidable costs involved in the licensing of their spectrum, and yet Ofcom did not seek to recover the equivalent costs of other forms of authorisations.

Where costs are to be recovered, Arqiva agrees that averaging those costs over a 3-5 year period would be preferable to wide fluctuations over time.

3) Do you agree with our proposed fee-setting methodology principles (set out below)? Are there additional matters that it would be helpful to clarify?

Proposed methodology 1: AIP and congestion

As per Arqiva's comments above on Proposed principle 3, there are a range of factors involved in determining current and anticipated future congestion, so Ofcom's methodology must be transparent and the conclusions reached appealable.

Proposed methodology 2: reference rates

Arqiva agrees in principle, while recognising that estimating the value of spectrum and determining feasible alternative uses will be inexact sciences, so the conclusions reached should be appealable.

Proposed methodology 3: calculating individual licence fees

Arqiva agrees in principle that fees should take account of the value of the amount of spectrum denied to others

Proposed methodology 4: impact assessments

Arqiva agrees with the proposed methodology.

4) Do you agree with our proposal to move away from regular full-scale reviews to reviewing in response to evidence, as set out in Option 5?

Yes, technology does not develop in a linear manner, nor does regulatory restrictions, so reviewing spectrum pricing would seem to make more sense when evidence requires it rather than at regular intervals. But existing users must have a reasonable degree of notice before changes are implemented, especially where a review had not been signalled in advance in the Annual Plan.

5) Do you agree with our process for assessing the priority of future fee reviews? Are there other sources of evidence of misalignment between fees and spectrum value or spectrum management costs that you can think of, and what weight should we give them?

Arqiva agrees with the proposed process for assessing the priority of future fee reviews.

6) Based on our proposed criteria, or other criteria you would propose we use, what do you think our priorities for future fee reviews should be? Please tell us your reasons for thinking these should be prioritised. Do you agree that we should prioritise a fixed link fee, as some stakeholders have suggested to us?

Current congestion would seem the most appropriate indicator of a need for a fee review.

While Arqiva has some sympathy with the observation that there is no geographical factor in the fixed link fees algorithm, we have less sympathy with the assertion in some quarters that auctions indicate a misalignment which must be addressed as a priority.

Arqiva understands that this belief is based on the outcome of a single auction several years ago and, as noted above, there are risks in attempting to read across from auction outcomes to setting AIP fee levels.

Whereas there are a range of spectrum bands suitable for fixed links, and to an extent a fixed line could substitute for a wireless link, there is existing congestion in some locations for business radio (where fixed is not a substitute) which would suggest that Ofcom should instead review business radio bands as a priority.

Alternatively, Ofcom could prioritise its withdrawal from market making in spectrum for both fixed links and business radio and allow commercial band managers to move use onto a more efficient footing.

7) Do you agree with our proposed approach to post-review evaluations?

Yes.