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Dear Ms Esslemont,

**CONSULTATION – SRSP: THE REVISED FRAMEWORK FOR SPECTRUM PRICING**

The **United Kingdom Major Ports Group (UKMPG)** and the **British Ports Association (BPA)** together represent the views of the vast majority of ports in the UK and we are grateful for the opportunity to comment on the consultation document issued on 29 March 2010 entitled “SSRP: The Revised Framework For Spectrum Pricing”.

As highlighted in our response to the previous consultations on the subject of AIP, the UK ports industry plays a vital role in the country’s economy. 95% of the UK’s international trade – imports and exports – is carried through UK ports. Our ports also handle 25million international passenger journeys each year. Furthermore ports are investing large sums – at no cost to the Exchequer – to expand facilities to cope with increasing demand particularly in the container and ro/ro sectors. Investment of this nature is crucial if the UK economy is to remain competitive internationally, particularly in times of a critical downturn in global economies. We would hope, therefore, that due weight will be given to the response expressed in this letter.

You will be aware that, following a meeting with Dr H Nwana and a subsequent visit to the Port of London Authority’s VTS Centre, a number of key undertakings were given. The most significant of which were recognition of the need for Ofcom to work with other Regulators to address the critical shortage of port working frequencies on safety grounds and recognition that Ofcom should tackle the management of spectrum before taking forward any fee review.

This consultation covers ground already covered in previous consultations relating to AIP. You will, therefore, not be surprised to find that many responses reflect comments already provided. Specifically, we still do not agree the methodology behind the assessment of congestion and believe this concept to be flawed insofar as it relates to the CSR(I) channels. We note, however, that Ofcom considers it unnecessary to revisit these issues on the basis that the overall increase in charges is relatively modest. Whilst we have no option but to accept this, we would wish Ofcom to note that these concerns remain and that we feel vulnerable to future fee reviews unless these concerns are taken fully into account.

**BRITISH PORTS ASSOCIATION**

**THE UNITED KINGDOM  
MAJOR PORTS GROUP LIMITED**

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To this end, we welcome Ofcom's firm acceptance that any fee review would only follow further work on addressing the problem of management of the spectrum.

Detailed comments on the specific questions posed within the consultation document are annexed.

Yours sincerely



**RICHARD BIRD**  
**Executive Director UKMPG**  
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**DAVID WHITEHEAD**  
**Director BPA**

## ANNEX

### General principles

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

Some are erroneous, not applicable to Maritime or misleading. These issues are addressed against each “principle” heading below.

**Proposed principle 1: role of AIP.** AIP should continue to be used in combination with other spectrum management tools, in both the commercial and the public sectors, with the objective of securing optimal use of the radio spectrum in the long term. AIP’s role in securing optimal use is in providing long-term signals of the value of spectrum which can be indicated by its opportunity cost.

Fully agreed. However, the other spectrum management tools identified are all charging or trading based with the exception of “regulatory intervention” and “command and control” both of which are dismissed as least preferred tools. **Following recent discussions between Ofcom and the ports, Ofcom have indicated that they now recognise that some form of management of the spectrum is required in the case of the Maritime CSR(I) channels and that regulators need to work more closely together to achieve this.**

**Proposed principle 2: users can only respond in the long term.** The purpose of AIP is to secure 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. Even where users have constraints imposed on their use of spectrum, in general, some if not all users have some ability to respond to AIP.

The first statement is agreed. The second statement is disingenuous in that it suggests the possibility that all users have the ability to respond to AIP. We would accept the statement if the word “most” replaced the words “some if not all”.

**Proposed principle 3: when AIP should be applied.** AIP should apply to spectrum that is expected to be in excess demand from existing and/or feasible alternative use, in future, if cost-based fees were applied. In determining *feasible* alternative uses, we will consider the relevant timeframe, any national or international regulatory constraints, the existence of equipment standards, and the availability and cost of equipment.

There are a number of issues that are addressed in the section that ends with principle that makes it simplistic and unsatisfactorily prescriptive in its current form. Firstly it broaches the concept of congestion which we believe to be inherently flawed in its application to Maritime. Secondly, it fails to recognise that spectrum in the maritime international VHF band does not only need to be protected for use “neighbouring countries” but also in contiguous waters where international shipping may be operating. Finally, it ignores the

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impact of geography – unlike continental European nations, the UK is an island nation where no one part of the country is far from the sea and the potential to reassign maritime VHF to alternative use is very limited.

It is claimed that the issue of zero opportunity cost where international constraints exist is addressed in the document, but there is no compelling case made except through the identification of scenarios that are not appropriate to the UK, as identified above.

These are complex issues. We accept that it “may be appropriate to consider the application” of AIP as a tool in the management of spectrum where it is projected that demand may increase. It is, however, far too prescriptive to state that it “should apply” in all such cases.

If AIP is to apply, then we would suggest that the CSR(I) channels would very definitely fall into the category of “cases where there are no feasible alternative uses” and support the contention that any charge levied should be on the basis of the assessed value of the spectrum in its existing use only.

**Proposed principle 4: the ‘relevant timeframe’ for AIP.** In general, we seek to assess excess demand, congestion and feasible alternative use over a timeframe that reflects the length of existing users’ investment cycles.

We support this concept. The lethargy of the Maritime sector, driven as it is by international agreements, makes this issue particularly relevant. The high level of non-conformance, illustrated in a recent trial, some 13 years after the change of Channels 87 & 88 to simplex circuits to allow the introduction of Channels AIS 1 & 2, surprised even Ofcom.

**Proposed principle 5: AIP and spectrum trading.** Many secondary markets are unlikely to be sufficiently effective to promote the optimal use of the spectrum without the additional signal from AIP. Therefore AIP will likely continue to be needed to play a role complementary to spectrum trading for most licence sectors.

This principle assumes trading between commercial organisations and has omitted the concept of “liberalisation” that appears in the title but is not developed further in this section. Recent discussions between Ofcom and the ports have highlighted that an opportunity does exist for the regulator to liberalise maritime VHF spectrum by negotiating internationally for the more efficient use of CSR(I) channels and from taking advantage of the potential release of unused spectrum. For reasons which are not fully understood, the regulator does not seem to recognise this initiative, which would both increase the efficient use of spectrum and offer an income generation opportunity for government, as being an Ofcom role.

**Proposed principle 6: AIP and wider policy objectives.** Socially beneficial uses of spectrum do not, as a general rule, justify AIP fee concessions, because direct subsidies and/or regulatory tools other than AIP are normally more likely to be efficient and effective. For cost-based fees there might be some circumstances in which it could be appropriate to provide a concession.

The principle is accepted but we note with interest the justification that regulatory tools, other than AIP are normally more likely to be efficient and effective and would submit that

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this is precisely why we have maintained that the application of AIP to CSR(I) is inappropriate.

**Proposed principle 7: AIP and the promotion of innovation.** It will generally not be appropriate to provide AIP concessions in order to promote innovation. We may consider whether cost-based fees should be set at a lower level in order to promote innovation.

Accepted.

**Proposed principle 8: use of market valuations.** We will take account of observed market valuations from auctions and trading alongside other evidence where available. However, such market valuations will be interpreted with care and not applied mechanically to set AIP fees.

We would not see this principle as being relevant to CSR(I) channels

**Proposed principle 9: setting AIP fees to take account of uncertainty.** Where there is uncertainty in our valuations and the likelihood of demand for feasible uses appearing we will consider the risks from setting fees too high, or too low, in light of the specific circumstances. When spectrum is tradable we will consider the extent to which trading is expected to promote optimal use, and will also have particular regard to the risk of undermining the development of secondary markets.

This principle obscures the discussion in the document that AIP fees have generally been set below estimates because over-estimating the market price poses greater risk. The inference is clear that fees are more likely to be increased than reduced at any subsequent fee review. In discussion between Ofcom and the ports industry, Ofcom has undertaken to tackle the management of spectrum before taking forward any review. Additionally, Ofcom have dismissed the contention by ports that there are inconsistencies in the justifications given by Ofcom for the application of AIP to CSR(I) channels on the basis that the increase is relatively modest. It is important that these two issues are not forgotten not only in the timing of any review of maritime VHF, but also in the setting of new rates subsequent to any further review.

## Fee-setting methodology

*Question 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?*

2a – We have no objection to the concept of cost-based charging which is no different to the policy pre-the introduction of the AIP concept, particularly as a new zero graded charge band is to be introduced for specific categories.

2b/c – If the principle of cost-based fees are to continue, then the income generation potential is nil and the structure behind it should be as simple as possible.

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*Question 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?*

These issues are addressed against each “methodology” heading below.

**Proposed methodology 1: AIP and congestion.** In setting AIP fees, we will assess current and future congestion in existing use and demand for feasible alternative uses in the frequency band in question and at different geographic locations over the relevant timeframe, given technological, regulatory and international constraints and using readily available evidence.

No. As we have previously identified, we believe that the whole concept of congestion as applied to CSR(I) port working channels and based on “assignments” is flawed and that the whole UK should be treated the same. Greater efficiency in this part of the band can only be achieved by international negotiation and better management – a regulator’s role. In theory, the remaining metrics of power output and antenna height may be relevant although operational incentives to avoid interference one to another, would have caused ports to have considered this already.

**Proposed methodology 2: reference rates.** Reference rates will be based on the estimated value of the spectrum in the current use and any feasible alternative uses. These estimates will be informed, where appropriate, by the available market information (if any), and economic studies of spectrum value.

The methodology whereby Ofcom has arrived at a reference rate for CSR(I) channels we regard as very arbitrary and lacking in any mathematical justification. There can be no marketable alternative for these internationally assigned channels.

**Proposed methodology 3: calculating individual licence fees.** In converting reference rates to fees, we will take account of the value of the amount of spectrum denied to others. This will generally be based on frequency, geographical location, bandwidth, geographical coverage or other measure that reflects the geographical extent of co-ordination requirements, and in some cases the exclusivity of an assignment.

The response to methodologies 1 & 2 refer.

**Proposed methodology 4: impact assessments.** We will undertake Impact Assessments on our fee proposals to identify any potential detrimental impacts to spectrum users, consumers and citizens. We will need to consider carefully the balance of benefits and risks of the implementation of all changes in fees.

Ofcom have dismissed the contention by ports that there are inconsistencies in the justifications given by Ofcom for the application of AIP to CSR(I) channels on the basis that the increase is relatively modest and this is borne out by the supporting Impact Assessment. Ofcom has also undertaken to tackle the management of spectrum before taking forward any review. It is important that these factors are not forgotten both in the setting of new rates subsequent to any further review of maritime VHF and also in the timing of any such review

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## Plans and priorities for spectrum fee reviews

*Question 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?*

We agree that regular reviews and maximum term reviews are inappropriate.

*Question 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?*

We would accept the process for assessing the need for fee reviews. We have expressed concern regarding some of the criteria and, for CSR(I), the most significant consideration should be the establishment of additional simplex circuits and a process for the management of such channels.

*Question 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?*

As previously identified, Ofcom have accepted that a further fee review, before the underlying supply shortage of international simplex channels has been tackled, would be a poor use of stakeholder and Ofcom resources

*Question 7: Do you agree with our proposed approach to post-review evaluations?*

We fully accept that a post-review evaluation is appropriate. However, we note a curious defensiveness regarding the possible outcome that factors other than AIP might be an identifiable reason for behavioural change.