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**What do you want Ofcom to keep confidential?:**

Keep part of the response confidential

**If you want part of your response kept confidential, which parts?:**

[CONFIDENTIAL]

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

You may publish my response on receipt

**Additional comments:**

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

Thank you for opportunity to respond to the 'SRSP: The Revised Framework for Spectrum Pricing' consultation published 29th March 2010. We believe our comments below are best addressed under consultation question 1. We have therefore confined ourselves to this one question of the 7 questions posed.

A key theme of the consultation appears to be OFCOM asking industry at large its views as to the correlation between AIP (Administered Incentive Pricing), as applied by OFCOM when setting certain licence fees, and the efficient use of spectrum.

LBSL (London Bus Service Ltd) and LU (London Underground) are aware that other parties, in responding to this consultation, will express the view that efficient use of spectrum has in reality been driven by technology evolution. This is also the view of LBSL and LU. Noting this we will focus on matters peculiar to the public sector as raised by the consultation.

The efficient use of spectrum

In considering efficiency OFCOM defines 'efficient use of spectrum' as:

- Spectrum is used by those who will provide greatest benefits in total to society.
- Individual users economise on their use of spectrum so as to not 'waste' spectrum.
- Spectrum becomes available over time for new and innovative uses.

The public sector and efficient use of spectrum

In considering the public sector in relation to the private sector OFCOM states:

...in the commercial sector users that can generate the greatest benefit to society are normally those that value spectrum the highest.... In the public sector similar principles apply, the public sector buys resources (energy, property and labour) in competition with the private sector. How much they [public sector] are prepared to spend [on energy property and labour] can be taken to indicate the value they [public sector] expect to generate for society.

LU and LBSL response

It is first appropriate to consider how public sector investment differs from private / commercial sector investment. Whilst a generalisation, the public sector justifies its investment decisions not just in terms of return on investment but:

- in non monetary terms e.g. broader social benefits including environmental matters.
- in notional monetary terms e.g. for transport the notional value on time in waiting for transport beyond normal waiting time.
- by fulfilling its obligations to various statutory / mandated responsibilities.

It can be seen that there is typically no direct correlation between the investment decision and the revenue generated from the service i.e. 'ticket' sales, where such services are provided under a regulated environment such as bus and tube services in London.

Focusing on the practicalities of transport services, radio communication (and hence spectrum) is fundamental to providing the services. This is not just the day to day use for co-ordination of transport but very much matters of safety e.g. as a matter of policy buses and the tube in London are not permitted to operate without a functioning voice and, in the case of the tube, voice and emergency alarms via radio. The key point here is that the spectrum is only an enabler to permit the service, It is not the service itself.

OFCOM states that commercial organisations that value spectrum the highest are likely to be those who will generate the greatest benefit to society from that spectrum. 'Value' in this context of the commercial sector clearly suggests that such commercial parties will be willing to pay a premium for such spectrum through mechanisms that can include AIP, and 'benefit to society' will, over time, be derived from the market dynamics optimising spectrum use as commercial organisations seek to address markets in pursuit of income.

If, for the purpose of this discussion this market driven approach is accepted (the opening comments on efficient spectrum use being driven by technology is relevant here) it follows that there must exist a level of causal correlation, driven by market forces, between the value (price) placed on such spectrum and the income generated for commercial organisations.

The consultation then extends this logic to the public sector i.e. ...the public sector buys resources (energy, property and labour) in competition with the private sector. How much they are prepared to spend can be taken to indicate the value they expect to generate for society... We are unable to agree with this statement and identify why below.

We assume that in discussing 'value' in the above statement on the public sector, it must also be 'value' in the prior statement on commercial organisations i.e. OFCOM means the price the public sector will be willing to pay for such spectrum. That is OFCOM appear to be asserting that there is a causal correlation between the investment decision i.e. the consumption of resource to provide the service and a relevant spectrum price. As we have noted here in we do not agree that any such meaningful correlation between the cost of spectrum and the cost of resources which LBSL and LU procure in providing these transport services exists, given the costs of procuring these transport services. e.g. LBSL alone places bus service contracts in the order of £1.6 billion per year. [CONFIDENTIAL]

Looking more at the practical aspects, much is discussed in the consultation around market forces as a mechanism for rationalising the use of spectrum through efficient market principles. However in practice the dimensions of flexibility in terms of spectrum and relevant technology that can operate in that spectrum is limited. This is especially true in relation to spectrum in London. Expressed crudely if suitable spectrum and technology is available the transport service can be provided. If not available then the transport services cannot be provided. In reality of course transport services are a 'given'. That is, if considering London, the services provided by the Underground, Overground, buses and Docklands Railway exist and will continue to do so.

So what does this mean in practice to LBSL and LU? Current spectrum costs whilst having risen are, in relative terms, small compared to the very large capital and operational investments for providing bus and underground transport in London. But in accepting that transport services 'must have spectrum' LBSL and LU are obliged to pay the prescribed OFCOM rate now and future. So what is the implication of AIP, or any other OFCOM charge on spectrum, for us? These costs are either passed on to the 'ticket' price and / or incrementally reduce the funds available for providing transport services.

Stepping back to the broader view and the concept of a market for spectrum. As the consultation states, there is no single contiguous market for spectrum but groupings of spectrum with more or less demand associated with them. Given the public sector will have to pay the 'going rate' the public sector has the potential to significantly distort such a 'market'. This is of course unintentional but by the public sector paying the 'going rate' we promote an upward pressure on spectrum pricing in any such range of spectrum. This is especially true where a spectrum range has a significant occupancy by the public sector. In conclusion we recognise that developing policies for the effective use of spectrum to encompass public and private sectors equitably remains a significant challenge to OFCOM. We remain available to further contribute to this discussion.

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**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? :**

**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?:**

**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?:**

**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?:**

**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? :**

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