Introduction

Cathay Pacific Airways welcomes the opportunity to provide comment on the consultation document, *Applying Spectrum Pricing to the Aeronautical Sector – a Second Consultation*, published by Ofcom on 22 December 2009.

Cathay Pacific Airways wishes it to be known that it strongly opposes this proposal as it:

i) will have no effect on efficiency;
ii) may have a negative effect on safety;
iii) will add extra costs to the users.

The Proposal

It is noted that this Consultation Document is "*proposing to apply revised Wireless Telegraphy Act licence fees ("fees") to the use of aeronautical VHF communications frequencies in the band 117.975 to 137 MHz.",* which is a reduced scope to that which was proposed in the first consultation document.

Efficient Use of Spectrum

This proposal will not lead to a more efficient use of spectrum.

The justification offered for the implementation of revised fees is to create a more efficient use of spectrum. This would suggest that Ofcom considers that VHF spectrum is not currently efficiently used. Unfortunately, this second consultation still does not define the problem with the existing management and use of spectrum for which a pricing solution is required and how this would provide an efficiency benefit.

It is well appreciated that spectrum is a finite resource and the use of spectrum for one purpose denies its availability to other users. To propose that the application of pricing to the holding and use of spectrum rights will *"prompt users to consider their spectrum needs in light of the fees payable and that the use of market mechanisms to allocate scarce aeronautical spectrum will result in an efficient use of spectrum"* is not supported by the material provided. In fact, the Impact Assessment states that efficiencies that may arise out of revised fees cannot be predicted:

> *"It is not the purpose of this study to inform the level of AIP that is efficient, nor is it the purpose of this study to demonstrate that economic benefits of applying AIP outweigh the costs."*
>
> *…."the purpose of pricing is to promote efficiencies that cannot all be anticipated in advance. It is not therefore possible or meaningful to attempt to fully anticipate the efficiency responses to pricing."*

How then can it be said that market mechanisms (fees) will resolve a problem that is not defined and for which the outcomes cannot be predicted?

Contribution of Pricing

Pricing will not make a positive contribution to efficiency.

OfCom has stated that the application of fees *"can improve the value that is obtained for society from a given amount of spectrum, compared with free licences or flat-rate fees, even where the spectrum continues to be used for the same application, but can be used by a different user in the same sector"* and that in the absence of fees *"the price for using the spectrum does not equate to its value to society (its opportunity cost) and, therefore, (particularly over the longer term) users may well hold onto more spectrum than they need once that have an assignment, because the cost to them is unrelated to the amount of spectrum they hold"*.

Spectrum is a scarce essential resource that is allocated and managed on an international basis in order to ensure safe and efficient use. Specific VHF frequencies are formally allocated only where there is a proven operational need, by State authorities with oversight from the International Civil Aviation Organization (ICAO). A VHF frequency is not a commodity that is stored until needed. Apart from necessary technical hardware requirements, the implementation and use of these frequencies in most cases requires an associated human resource (i.e. an air traffic controller or flight service operator) to physically speak on the frequency to aircraft. Typically, a single frequency would be operated by a single air traffic controller. The suggestion that users would tend to hoard frequencies in the absence of a pricing mechanism is not supported by current practice. The actual use (and density of use) of a frequency is monitored by local authorities and ICAO and frequencies are reallocated and relocated based on operational requirements.

The aeronautical sector is already pursuing optimally efficient use of VHF spectrum. This is driven by operational need and the scarcity of spectrum available to aviation. An example is the ongoing implementation of a reduction in VHF air-ground radio frequency spacing (to 8.33kHz).

VHF radio communications are at the core of the aviation system worldwide and there is no alternative. Efficiency is already strongly driven by operational need and there is very much a "use it efficiently or lose it" culture, which successfully ensures the minimum use of the resource for the greatest benefit. Aviation does not need and would not benefit from a pricing mechanism. The application of fees would be of no benefit and have no positive effect.

There is, however, a real potential for pricing to have a serious impact on safety if users of VHF frequencies returned allocations to avoid fees with resultant overloading of remaining frequencies.

The certain effect of pricing is that it will increase costs for the users of the spectrum.

Will the Strategy Work?

The practical implication for the aeronautical sector is that pricing will not influence more efficient use of spectrum.

Conclusion

The proposal to apply VHF spectrum pricing to the aeronautical sector is inappropriate.

The nature of the allocation, management and use of this particular spectrum does not lend itself to an efficiency increase generated by pricing. Efficiency is already addressed by operational drivers. The proposal will merely add cost for no benefit while introducing possible safety concerns.

Cathay Pacific Airways respectfully requests Ofcom to withdraw this ill-conceived and ineffective proposal.