Ofcom consultation on applying spectrum pricing to the Aeronautical sector

RESPONSE BY THE MANCHESTER AIRPORTS GROUP

20 April 2010

The Manchester Airports Group plc

Olympic House, Manchester Airport

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1 INTRODUCTION

This is the submission of the Manchester Airports Group plc (MAG). It seeks to respond to Ofcom's consultation questions raised in the 'second consultation' document issued on 22 December 2009 and to comment on the proposals generally.

MAG is the UK's second largest airport operator and comprises the airports of Manchester, East Midlands, Humberside and Bournemouth. MAG handled over 27 million passengers in 2008-9, with Manchester alone accounting for over 19 million passengers travelling to over 200 destinations, more than any other UK airport. The Group is also engaged in property development and management; car parking; airport security; fire fighting; engineering; advertising and motor transport services.

MAG is directly responsible for the provision of local Air Traffic Control services at three of its four airports, whilst at the fourth (Manchester) it currently procures these services by way of contract awarded to NATS. At all four airports, it is necessary to utilise VHF frequencies to operate these functions, and as a result MAG has some experience of obtaining radio spectrum.

1.4 MAG is publicly owned by the ten local authorities of Greater Manchester. These shareholders require us to grow the business profitably, to enhance the value of the business; and to maximise the economic and social contribution to the regions it serves.

2 GENERAL COMMENTS

MAG's general position in relation to the AIP proposals remains as set out in our earlier responses dated 30 October 2008 and 6 November 2009. We are totally opposed to these proposals.

In our response of 6 November 2009, we agreed with the suggestion that Ofcom should not develop proposals for AIP licence fees for radar and aeronautical navigational aids in the maritime and aeronautical sectors. We also agreed that the strategic management of such spectrum should be undertaken by Government, and would support this role being devolved to the relevant sector regulators, i.e. the CAA and MCA jointly, or by the CAA with support from the MCA.

We remain of the view that such an approach equally applies to the use of AIP for aeronautical VHF communications, and that AIP or any other pricing mechanism should not be introduced.

Whilst introducing a form of pricing mechanism such as AIP may be very appropriate as an instrument to drive greater efficiency in many markets

and sectors, MAG's view is that it is not appropriate for aviation. Demand for spectrum in aviation is driven by the need to meet safety and operational requirements, generally in accordance with regulatory standards. Airports and other ground-based stakeholders such as en-route ATC suppliers do not ask for frequencies for the sake of it. Simply adding a price is therefore very unlikely to result in any behavioural change that would enhance efficiency. However, the overall view is that AIP simply will not deliver efficiency benefits as is being suggested except in very marginal cases. Our understanding is that any frequencies that are released will be returned to the overall European aviation pool and that the CAA could not agree to the release of any frequencies for non-aviation purposes in the UK as this would be contrary to the UK's international obligations and the need to protect its European neighbours from interference even if a frequency allocation wasn't used in the UK.

In the original work done by Professor Martin Cave on the subject, AIP was based on opportunity cost - i.e. the value of the spectrum to other users. In the south and east, the frequency use is heavily constrained by the need to honour and respect international obligations and processes. Therefore, even if AIP resulted in the release of a frequency, it does not remain in the UK necessarily but is released into the European pool for the benefit of aviation generally. The opportunity cost is therefore arguably zero and neither the price mechanism itself nor the higher price variation are relevant or appropriate.

The latest Ofcom document relies on 'congestion' in existing use as a rationale for introducing AIP. Whilst there is little spare capacity in the relevant frequencies, we understand that there are currently no outstanding frequency requests either. Frequency demands at airports is very stable and additional requirements are generally uncommon. This points to an already efficient management of the system.

Where there are demands for mote spectrum, this almost exclusively is from the en-route ATC operator (NERL) where increases in the capacity of airspace means adding new 'sectors' which in turn require new frequencies to operate them

The process for managing frequency requests is complex and it is difficult to see what the introduction of AIP will add to this process – indeed it will only complicate it. The process is that when a new frequency request is received, the CAA assesses the requirement to ensure it is valid. Then, using international planning criteria, the CAA seeks to find a suitable frequency which they then coordinate through an international process within Europe to ensure there are no objections. This effectively validates the solution and ensures that all are working to the same baseline of frequency data. If the CAA's proposed solution is accepted through the 28 day coordination process, the frequency is accordingly allocated. If however, it cannot be met, the requirement is then submitted, through an operational prioritisation process, to the European Block Planning process,

managed by Eurocontrol on behalf of ICAO Europe. This process seeks to find solutions by modelling requirements and potential changes until a viable solution can be identified. This usually results in a solution being made available through a series of frequency changes to create the space. MAG's understanding is that success rates are reasonably good and approximately 5% of frequency requests end up having to be solved this way. However, because the solution can require several frequency shifts, it requires international cooperation to effect the change and this can take time. In addition, the costs have to be carried by those that make the change (meaning that requiring additional frequencies is not a 'free good'). In terms of how easy it is to meet the requirement really depends on what the requirement is in terms of the size of the required Designated Operational Coverage, which is the spatial area that has to be coordinated to provide protection from interference. In addition, where the airport is located is a key factor. In the south and south-east the international effect and impact is greater as the frequencies have to be coordinated as stated above so that aviation usage across the region is effectively protected.

Aeronautical spectrum is certified and harmonized for the purposes of ensuring that there is adequate protection from interference to ensure safety and regularity of flight. Ofcom will already be aware of existing examples of interference with aeronautical frequencies, largely from pirate radio stations. The need to protect the aeronautical sector (to ensure it remains reliable enough to support the safety critical use) is precisely why it is internationally coordinated and why it is regulated very tightly in terms of power and range of transmission. Other users of spectrum do not require or have this level of integrity.

This is a cogent and overriding reason why aviation (and maritime) spectrum should be treated differently from other elements of the 'market' for spectrum.

The gradual conversion of aviation spectrum usage onto 8.33 kHz channels is a practical manifestation of how increased efficiency of aviation spectrum usage is already being achieved by coordinated action within the industry without the use of a price mechanism. Although the ICAO Future Communications System will hopefully enhance future communications availability through data links, it is unlikely to be in operation before 2020 and in any event, voice requirements will need to be met for the foreseeable future. The 8.33 kHz conversion, coupled with the continuing drive for best practice in spectrum and frequency management across Europe, demonstrate that aviation takes the issue of efficiency very seriously and is embarking on measures such as SESAR, and NextGen which are far more likely to deliver benefits than AIP.

On the efficiency argument put forward in favour of AIP, we do not believe that the case for this has been established in a clear and convincing way. Indeed the Impact Assessment admits that the efficiencies that could arise out of AIP cannot be predicted – a very strange statement when the

reason for using impact assessments is to establish beyond doubt the rationale for proceeding with the action proposed. Ofcom has not identified what is not efficient about the current system – beyond an academic economist's argument that absent some form of price mechanism it must be inefficient. Nor has any argument been put forward to demonstrate what benefits are being denied to the UK by the current international arrangements for use of UK aviation. The notion that using spectrum to the best value is entirely subjective and every user believes the services provided are of high value – an obvious corollary for safety of life services.

We would take this opportunity to reiterate previous comments made by ourselves and others in the industry about the possible effect of the proposals on the safety of certain aerodromes, particularly those catering only for general aviation and recreational flying. Although this is unlikely to apply to any airports operated by MAG, the concern of the industry is two-fold :

(a). As a consequence of the introduction of AIP, unlicensed airfields operating in Class G airspace might give up air-to-ground frequencies to save money for themselves and their aircraft operators. This would result in such airfields becoming less safe in their operation ; it would not necessarily result in them becoming unsafe to such a degree where regulatory intervention by the CAA was warranted. This is an important distinction, and one that has not been reflected in any of the Ofcom consultation documents on AIP.

(b). Even if the withdrawal of such radio coverage did give rise to regulatory intervention by the CAA at certain airfields, the question arises as to whether the introduction of AIP by one regulator is consistent with Government policy on Better Regulation in that it necessitates action by another regulator (the CAA) when none would otherwise have been required. If safety is undermined to the extent that it becomes necessary to enforce mandatory provision of VHF at these sites, the result will be additional regulatory costs and burdens where previously voluntary use based on common sense had maintained a safer environment. In making the case for further regulation, the rationale could be made that this is entirely due to a set of issues being caused by AIP rather than the need to simply address aviation regulatory requirements. This could lead to criticism for all involved that could have been avoided in the first place.

3 RESPONSES TO QUESTIONS

Question 1

Do you consider that our proposed fee rates for licences in the aeronautical VHF frequencies are appropriate ?

No, for the reasons set out above, we consider this proposal, even in its current form, to be misguided.

Question 2

In devising our revised proposals, have we identified all of the aeronautical uses of VHF communications frequencies which require a distinct approach to fee setting, as set out in tables 5 & 6 ?

This appears to be the case.

Question 3

Do you agree with our proposal not to charge any fees for Fire assignments ?

MAG agrees with this.

Question 4

Do you agree with our proposal to set a £75 fee for assignments in any of the sporting frequencies ?

MAG has no involvement in this type of use and so has no comment to make on this proposal.

Question 5

Do you agree with our proposal to set an annual fees of £9,900 and £18,800 per channel respectively for ACARS or VDL assignments, with no variation related to the number of transmitters used in such channels ?

As indicated above, we remain totally opposed to these proposals, but understand the logic being advanced in this question.

Question 6

Do you consider that our proposed general approach to phasing in fees for use of aeronautical VHF communications channels is appropriate ? If there are particular reasons why you consider that any user or group of users would need longer phasing-in periods, please provide any supporting evidence for us to consider. Specifically, do you have any evidence for us to consider that would support either of Options 1 & 2 for the highest proposed fee in this sector ?

The 5 year phasing period appears reasonable. We would support Option 2. However, please note our response to question 1 above in that we remain totally opposed to the introduction of AIP for the reasons set out earlier in this paper.

Question 7

Do you have any further quantified information to contribute to the analysis of financial impacts of the proposed fees on particular spectrum users as set out in Annex 7 ? We would like to publish all responses, but will respect the confidentiality of any material which is clearly marked as such.

No comment.

Question 8

Do you consider that our assessment of the impacts of our proposals has taken full account of the relevant factors ? If you consider that there is additional evidence that would indicate particular impacts we should take into account, we would be grateful if you could provide this.

We do not consider that the impact assessment has properly considered the subject on a very basic level. It needs to :

(i) Correctly quantify the benefits of the proposal for stakeholders and compare them against likely costs. If the latter outweigh the former, then the proposal should not be pursued.

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(ii) Correctly look at the safety and regulatory implications of the proposal, measured against the principles of Better Regulation.

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CONCLUSIONS

There is no need to use AIP as a means of managing 'excess demand'.

Many of these bands are internationally allocated and subject to international obligations, making early release for other uses unlikely.

Instead, increased spectrum efficiency in this area is more likely to continue as a result of central coordination and re-planning, given the technical complexity of spectrum use and the diffuse nature of users of such spectrum.

MAG urges that the current proposals should be abandoned and that Government, via the CAA, takes responsibility for the management of all aviation spectrum.