

CARTHUSIAN COURT, 12 CARTHUSIAN STREET, LONDON, EC1M 6EZ

21 January 2009

Mr Michael Richardson
Ofcom
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Dear Mr Richardson,

**CONSULTATION - APPLYING SPECTRUM PRICING TO THE MARITIME SECTOR, AND
NEW ARRANGEMENTS FOR THE MANAGEMENT OF SPECTRUM USED FOR RADAR
AND AERONAUTICAL NAVIGATION AIDS**

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 13 August 2009 entitled “Applying spectrum pricing to the maritime sector, and new arrangements for the management of spectrum used for radar and aeronautical navigation aids”.

As highlighted in our response to the first consultation on this subject, the UK ports industry plays an important 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. 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 wish to reemphasise this fact as, despite verbal assurances that have been given to the contrary, we see little evidence in the written responses contained within this second consultation that proper note has been taken of the true representational nature of our earlier response, some of which seem to have been granted little more weight than those comments from minority pressure groups. A number of proposals in the previous consultation have now been relegated in the “administrative charge only” category and the bulk of the AIP charges in the current proposals are now targeted solely at the ports sector. We would hope, therefore, that due weight will be given to the response expressed in this letter representing, as it does, the collective views of those who now potentially form the vast majority of stakeholders who will be significantly affected by these proposals.

Comments on the specific questions posed within the consultation document are annexed. However, these questions focus mainly on the details of implementation with an assumption that the strategic proposals contained within the document are a given. It is these strategic issues that are addressed in this letter and it is important that due consideration is given to these matters above the responses to the more detailed issues posed by the specific consultation questions which are addressed in the annex. Indeed, many of these may no longer be relevant if these points are accepted.

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Ofcom have been at pains to represent their view that the application of AIP to the Maritime radio and radar spectrum is to encourage the more efficient use of the spectrum and not for revenue generation on behalf of Government. An Ofcom view stated by your predecessor and minuted from a meeting of the Maritime Radio Spectrum Users Group (MRSUG) meeting in 2007 was that if no incentive could be identified then AIP should not apply; in subsequent discussions you indicated that you did not dissent from this view and this has been reinforced in the Aeronautical consultation document¹. However, even the title of this consultation indicates an assumption that the only method for achieving greater efficiency in the maritime VHF spectrum is through the application of spectrum pricing. This consultation divides the maritime VHF spectrum into two broad categories: the nationally allocated spectrum; and that covered by international allocations and agreements.

National allocations

Firstly, we have reviewed the proposals for the national allocations of VHF spectrum and assess that, whilst there may be some benefit in considering the entire Maritime VHF spectrum as one, the practicalities of achieving international agreement to further rationalisation for national allocations are unrealistic. We, thus, broadly accept that a charging regime may provide an effective incentive to behavioural change, although, we do not accept the methodology of the assessment of “congestion” and consider that this aspect requires further refinement.

International Allocations

The proposals contained in the consultation document for the internationally allocated maritime VHF spectrum is, however, not agreed. There is no evidence that consideration has been given to alternative mechanisms for the more efficient use of this part of the spectrum, something that we have consistently represented throughout the consultation process, including the review of the initial Indepen Report. It is our view that this consultation fails to deliver improvements in the more efficient use of the internationally allocated Maritime VHF spectrum when assessed from just about every aspect:

- There is negligible incentive to change behaviours.
- The impact of international agreements have largely been ignored yet charges are still being proposed in the internationally allocated part of the maritime spectrum
- There is little prospect that these proposals will deliver increased efficiency in the internationally allocated part of the maritime spectrum; something that the ports sector has been pressing for over several years. At intervening workshops/discussions, Ofcom have agreed that the impact of AIP will only be “in the margins” but have indicated an assumption that this is justification enough.
- There are no proposals for the effective management of the internationally allocated part of the maritime VHF spectrum. Apart from authorising applications, Ofcom have indicated that they consider that market forces are all that are needed and have stated that they do not subscribe to a “Command and Control” policy of spectrum management.
- These proposals are inconsistent with Government policy regarding e-navigation
- The charges are significantly reduced from previous proposals. Whilst they are now relatively modest, they will have no impact on the urgent operational need for spectrum efficiency and effectively encourage the status quo. This, in turn, will deny

¹ Para 1.23 “...Indeed, if fees did not cause spectrum users eventually to review current arrangements, there would be little point to applying AIP fees.”

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any prospect of longer term income generation by Government through release of spectrum and alternative use.

The specific areas of concern are expanded in the paragraphs below.

Incentive to Change Behaviours. AIP charges are being proposed to apply to those VHF channels in the internationally allocated Maritime VHF spectrum that are used by ports to inform and organise vessel traffic. The proposed rates are set at a level slightly below that being proposed for the UK allocated channels. The charge level continues to draw on a methodology to establish an assessment of “congestion” which we consider to be flawed resulting in inconsistent charging and heightened charging to ports that are already contributing to the provision of safety of navigation in areas that are covered by the state in other European nations; this will create an uneven playing field. The current increase, whilst high in percentage terms, is relatively modest in actual terms. Ofcom have already accepted that it may only have an impact “in the margins” but even this expectation indicates a lack of understanding of the environment. The ports industry urgently requires the allocation of additional frequencies but a charging regime will have no impact as ports are only using these channels because they are allocated internationally. The proposed charging regime, thus, provides no significant incentive to a change in behaviour or increased spectrum efficiency.

International agreements and Increased Efficiency. The case set out in Chapter 7 of the Cave report with regard to the maritime spectrum is quite unambiguous and clearly articulates that there is no merit in introducing AIP for licence classes where there are international agreements and the UK has no scope to act unilaterally. We remain of the opinion that the explanation in the consultation document for not accepting this conclusion of the Cave Report is totally unconvincing and still do not consider that adequate justification has been provided for this reversal of policy. The internationally allocated VHF spectrum comprises one hundred and one assignments at 25 KHz spacing in the bands 156.025 – 157.425 MHz, 160.625 – 160.950 MHz and 151.500 – 162.025 MHz. Some of these are duplex channels (where two 25 KHz slots are linked) and others are simplex (where just one 25 KHz slot is allocated). Some of these frequencies are reserved for ship to ship use, some for ship/shore use and others are shared. Ofcom have clearly indicated that there is no intention to apply direct charging on shipping for the use of VHF spectrum. Thus, in this consultation Ofcom have effectively identified just eight simplex channels allocated for use by ports for ship/shore use which they assess as “congested”, to which they propose to apply spectrum charging. It is proposed that for other ship/shore channels in the internationally allocated Maritime VHF spectrum, there will either be no charge at all or an administrative charge will be levied to cover just the cost of managing the licence. There can be no logical argument to support the use of a charging mechanism which is essentially levied on just eight simplex channel allocations to influence the more efficient use of all one hundred and one 25 KHz spacings. There is absolutely no incentive within this to encourage the adoption of enhanced technology to reduced channel spacings and the adoption of advanced processes such as trunked networks, notwithstanding the claimed objective for AIP to achieve precisely this in the recently issued Aeronautical consultation document.²

² Applying spectrum pricing to the Aeronautical sector – paragraph 1.32

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Effective Spectrum Management. We have challenged Ofcom regarding the absence of any form of effective management of the spectrum. The response given at the last workshop was that this was a separate issue from AIP and that Ofcom should take this forward as a separate matter as an Ofcom shortcoming that they should address through normal review processes. We fundamentally disagree with this assessment. Ofcom have indicated within the context of MRSUG that they consider that market forces are all that are needed to manage spectrum and that they only need to approve applications. They have clearly stated that they do not subscribe to a "Command and Control" policy of spectrum management. This approach is completely flawed. The existing move within Ofcom from communications technical experts towards an accountancy focus even today has clearly shown how unsatisfactory this approach is for the management of just the eight channels in the internationally allocated Marine VHF spectrum available for port use. There is a demonstrable lack of operational awareness within Ofcom in the use of the international Maritime VHF band and a total lack of strategic direction. Ofcom take the lead in representing the UK at the World Radio Conference (WRC) and were recently challenged as to where they took their strategic direction from. The response was to look to the MCA for such guidance but the MCA were unable to provide such documentary evidence. The end result is that a national strategic policy has not been developed; other documentation seems to indicate that Ofcom are pursuing an initiative within the WRC that simply proposes the further division of duplex channels for simplex use with no agenda as to how these should be reallocated based on operational need. This disconnect would seem to suggest that this lack of operational strategic guidance must inevitably result in a lack of conviction in the presentation of even a proposal to improve the short term operational shortcomings, let alone the total lack of coherency with regard to a long term strategic vision to address long term needs or to take advantage of new technical opportunities. We have recently sighted a report by the UK delegation for Working Party 5B's November meeting in preparation for the next WRC; the weak position being taken on this important operational shortcoming only serves to reinforce the total inadequacy with regard to the current operational representation of national requirements by technical representatives who appear to be inadequately briefed on operational imperatives. It is abundantly clear that the management of the international Maritime VHF spectrum should lie with the government department responsible for operational use and not with an agency that has little operational accountability for their action, or inaction. We already have evidence of a failure to resolve an instance of international interference on a conflicting VHF frequency that has a serious impact on safety and has continued over four years with little prospect of resolution. Logic dictates that the management of the international Maritime VHF spectrum should be conducted by the Department for Transport who will need to be appropriately resourced to manage it.

Incoherency with Government policy. The progress of the UK initiative for e-navigation has confounded many cynics and has already gained full international recognition within the IMO with a number of international committees contributing to this important development. Whilst there is much work to be done in further developing the concept, it is evident that one key building block in the whole process of the delivery of the concept by electronic means is the provision of appropriate spectrum for the transfer of data. Existing international Maritime allocations are obvious contenders and this includes, inter alia, the internationally allocated Maritime VHF frequencies. The e-navigation initiative provides the ideal catalyst to promote a fundamental review of the international allocations. This should include not just the reattribution of existing 25 kHz allocations but a fundamental review with a full transition plan. No better window of opportunity has existed to take such a review forward

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and yet the total lack of a joined up inter-governmental departmental approach and ignorance of the significance of the concept within Ofcom is in danger of leaving this as a lost opportunity. This is a yet another reason for the lead and management of the internationally allocated VHF spectrum to be managed by government policy makers and not by a remote agency whose interest lies only in spectrum issues for their own sake.

Opportunities for Income Generation. As identified above, the revised charges are now relatively modest. We have already identified that cost is not in itself an incentive for any change in behaviour in the use of the internationally allocated Maritime VHF spectrum. The benefits to government, in the form of income generation, are relatively insignificant based as they are on targeting just eight channels for AIP charges. The proposal that the management of the internationally allocated Maritime VHF spectrum be transferred to the Department for Transport is not based on the assumption that all charges should be waived. It is, however, assumed that management by the responsible government department will ensure that proper consideration is given to the economic impact of any charging regime. The opportunity that is currently being entirely lost is the potential release of spectrum resulting from a comprehensive review of the entire international spectrum allocations when all efficiencies have been achieved. This could result in the generation of revenues from released spectrum at rates that were representative of its market value as spectrum without restrictions on its use. Any such alternative use must, by nature, be a long term vision but there could hardly be a better moment to start such an initiative.

In short, the proposals in this consultation represent no more than a short term modesty blanket to give the impression of action to manage an important and long term problem. In our response to the last consultation, we advocated benchmarking against other European nations. As far as we are aware, this has not been done despite the fact that we identified Portugal and the Netherlands to Ofcom as two nations who have followed a similar review and have exempted the internationally allocated Maritime VHF spectrum from charging for similar reasons to those that we have previously represented. The rationale that Ofcom have applied to radar and aeronautical navigation exempting these parts of the spectrum from the current round and proposing that the management of them be passed to the Department for Transport (DfT), applies equally to the internationally allocated Maritime VHF spectrum. It follows, therefore that the responsibility for managing the internationally allocated Maritime VHF spectrum should also be passed to the DfT. Whilst we recognise that it is for DfT to decide how the responsibility for Maritime VHF might be delegated and administered, we understand that the CAA have a specific responsibility regarding the management of Aeronautical VHF allocations and, thus, we believe that there is potential for a greater alignment between MCA and CAA regarding the responsibility for frequency management. Conversely, should Ofcom determine that they should continue to hold responsibility for spectrum allocation and the representation of the UK's spectrum policy at an international level, the illogicality of applying AIP charges to ports who have no role in such efficiencies is clear: if AIP is to be charged for internationally allocated maritime VHF spectrum, then it should be levied on the authority that holds responsibility for managing, and negotiating changes to, that part of the spectrum, namely Ofcom itself.

BRITISH PORTS ASSOCIATION

**THE UNITED KINGDOM
MAJOR PORTS GROUP LIMITED**

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We invite Ofcom to take note of these proposals made on behalf of the majority of port stakeholders.

A copy of this letter also goes to the Department for Transport and the Maritime and Coastguard Agency in recognition of the emphasis that we are placing in our response to the importance of a transfer of management responsibility and our willingness to contribute to the further development of all parts of the Maritime spectrum.

Yours sincerely



RICHARD BIRD
Executive Director UKMPG
enc



DAVID WHITEHEAD
Director BPA

ANNEX***Question 1: Do you consider that the fee rates set out in Table 8 for assignments in the eight core international maritime simplex channels are appropriate?***

No. We fundamentally disagree with the application of AIP to these channels as an effective means of increasing efficiency in the use of this part of the spectrum (see covering letter). The concept of “congestion” is flawed. Indeed, the representation by ports of problems with interference is primarily driven by concerns over continental interference and not a conflict between national allocations which ports have largely rationalised between themselves; Ofcom is charged with deconflicting international interference problems but have proven to be largely ineffective in this regard. There is still a lack of detailed evidence to identify just how the “zones” have been assessed. Little confidence results from the post publication release of a revised congestions diagram that fundamentally changes the parameters. Ofcom have indicated that, should congestion be significantly reduced through the release of duplex allocations, then AIP would not apply and administrative charges would then apply. There is, thus, no plan for increased efficiency beyond just the release of some duplex channels and, even then, Ofcom have no plan to manage effectively the resulting release of duplex channels. The application of charges to just 8 of the 101 25 KHz slots as a means of increasing efficiency across the international Maritime VHF band is incoherent and ineffective. This proposal clearly demonstrates a lack of understanding and competence within Ofcom of the dynamics of the internationally allocated Maritime VHF spectrum.

Question 2 Do our revised proposals reflect appropriately the distinctions between the different uses of particular internationally allocated maritime channels, as set out in Table 9?

No. There is no resulting improvement in spectrum efficiency and the proposal merely allows a continuum of the status quo. As set out in the covering letter, Ofcom does not have the competence or understanding for operational management of this part of the spectrum and management responsibility should be passed to the DfT who are more appropriately placed to take forward a fundamental review in the international arena. The specific proposals just add complexity and it is not clear why it is necessary to separate out a free system from an administrative charging mechanism, neither of which will have any impact on spectrum efficiency. Nevertheless, if Ofcom are determined to press forward with the overall concept, we would not oppose this specific measure which may result in reduced charges to some users. The referenced section on AIS only serves to highlight a lack of understanding of the dynamics of the AIS system – AIP charges are inappropriate, not for the reasons given, but because AIS already makes highly efficient use of a very small part of the spectrum and it is difficult to envisage how AIP in any form could influence further efficiencies.

Question 3: Do you agree with our proposals not to set any fees for use of the calling and distress channels, the search and rescue channels, the AIS channels, or for exceptional shore-based use of the intership channels?

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We would not object to this detailed proposal in principle but it has no relevance to increased efficiency in the use of the internationally allocated Maritime VHF spectrum, in regard to which the response to Q2 also refers.

Question 4: Do you agree with our proposals to set administrative cost-based fees for licences to use the package of 3 marina channels?

We would not object to this detailed proposal in principle but it has no relevance to increased efficiency in the use of the internationally allocated Maritime VHF spectrum, in regard to which the responses to Q2 and Q3 also refer.

Question 5: Do you agree with our proposal to set administrative cost-based fees for licences to use the internationally-allocated duplex channels?

We would not object to this detailed proposal in principle but it is of only limited and very short-term relevance to increased efficiency in the use of the internationally allocated Maritime VHF spectrum, in regard to which the responses to Q2 and Q3 also refer.

The duplex channel grouping is ripe for review but to simply negotiate for these to be split into a number of simplex channels and then not manage the outcome is a short-term action that lacks strategic direction. This proposal will have, at best, only a limited impact on spectrum efficiency but is more likely to simply encourage maintenance of the status quo. This is yet another clear example of why the DfT should manage the internationally allocated Maritime VHF spectrum.

Question 6: Do you consider that the fee rates set out in Tables 10 and 11 for assignments in the UK-allocated working channels (that is, not including the search and rescue or marina channels) are appropriate?

Whilst there is a case for the UK simplex and duplex Maritime channels to be reviewed in conjunction with the international allocations, we would accept that realistically there is only a very slight possibility that consensus on reallocation could be reached in the international arena and, thus, we accept that the UK allocations should follow the same principles as for business radio. We accept that the application of AIP to these channels may influence behaviour and result in the more efficient use of the UK nationally allocated spectrum. However, we consider that the charging model is flawed. In particular, we remain concerned at the lack of specific detail regarding the derivation of “congestion” in the model and the parameter based on “head of population” which has little relevance to maritime use which is primarily offshore and not onshore. Little confidence results from the post publication release of a revised congestions diagram that fundamentally changes the parameters. In the case of these allocations this has resulted in flawed calculations since the costings in the initial proposal which, based on the original diagram, only captured a few, would now capture the majority of potential port users.

Question 7 Do our revised proposals correctly identify all of the UK allocated maritime channels which are assigned to specific applications which require a specific approach to fee setting, as set out in table 12?

Our responses to Q2 and Q3 refer.

Question 8: Do you agree with our proposal to set no fees to licensees for use of the

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two UK-allocated search and rescue channels?

Our responses to Q2 and Q3 refer.

Question 9: If you are a maritime organisation with the safety of human life in an emergency as your sole or main objective, would you be interested in accessing spectrum for working purposes (i.e. other than SAR or other emergency response uses) under a private commons basis, shared with other users with the same objectives and co-ordinated by the MCA, and free of any spectrum fee?

Yes, but our overarching strategic view in our covering letter refers.

Question 10: Do you consider that our proposed fee rates for area-defined licences(where feasible) in the eight core internationally-allocated maritime simplex channels are appropriate?

Our strategic view on the eight core internationally-allocated maritime simplex Channels is set out in our response to Q1. If Ofcom are intent on implementing such incoherent proposals, then we would support any mechanism that reduces the financial liability to users who require licences for multiple transmitter sites on the same frequency. However, enquiries into the application of this proposal highlighted a lack of detail and it has, thus, not been possible to establish exactly how ports may benefit, with every indication that it will be irrelevant to ports acting on an individual basis.

Question 11: Do you agree that area-defined licences in the international duplex channels should be based on a minimum cost of £75 for 4 squares, with larger areas priced on a case by case basis?

This proposal has no impact on the more efficient use of spectrum and the lack of specific detail on how this is to be applied makes it difficult to assess the impact on charges on an individual port basis. We note that the very theoretical approach assessed on the basis of a fixed 50km grid squares is likely to result in a degree of interference between neighbours. Our responses to Q5 and Q10 also refer.

Question 12: Do you consider that our proposed fee rates for area-defined licences in the UK allocated working channels (that is, not including the search and rescue channels or the marina channel) are appropriate?

We would cautiously agree. However, enquiries into the application of this proposal highlighted a lack of detail and it has, thus, not been possible to establish exactly how ports may benefit, if at all.

Question 13: Do you agree with our proposal to set an administrative fee of £75 for maritime radio (suppliers and demonstration) licences?

We would have no objection in principle. However, this proposal will have no impact on spectrum efficiency and our broader strategic view on allocations set out in our covering letter refers.

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Question 14: Do you agree with our proposal to bring the arrangements for temporary maritime licences into line with those in other sectors?

We would have no objection in principle. However, this proposal will have no impact on spectrum efficiency and our broader strategic view on allocations set out in our covering letter refers.

Question 15: Do our proposals for phasing in some of the proposed fee increases provide sufficient time for you to accommodate the additional costs, without undue disruption to your operations which could reasonably be avoided by a phasing arrangement?

In principle fee increases should acknowledge normal budgetary processes and allow at least 12 months from final publication. However, should these measures go forward as proposed, we accept that the phasing proposals are probably acceptable.

Question 16: Do you consider that our phasing proposals for the maritime licences for which we propose to set AIP-based fees are 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.

Our response to Q 15 refers.

Question 17: 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 do not consider it appropriate to present detailed information on specific ports until the wider strategic issues, as raised in our covering letter, have been addressed.

Question 18: If the Government were to assume the strategic management role for the radar and aeronautical navigation aids spectrum that we propose, do you agree that we should not develop proposals for AIP licence fees?

We could not support this proposal more strongly. To pass on the management of spectrum to Government which is fettered with restrictions imposed by another body would be quite illogical and would remove the ability of Government to "manage". This will give Government the opportunity to review the provisions of chapter 7 of the Cave report relating to maritime radar and communications frequencies which concludes:

"Where there are international requirements which mean that the UK has no scope to act unilaterally, the opportunity cost of use is zero and there is no merit in introducing AIP for these licence classes. In these cases, spectrum efficiency measures should instead be pursued through international negotiations to update frequency allocations or adopt new standards or through the prescription of carriage requirements for more efficient technology (but again these would need to be implemented for equipment satisfying internationally recognised standards)."

As previously stated, however, we believe that the internationally allocated Maritime VHF spectrum must also be transferred to the DfT (or delegated to the MCA as appropriate) who should have a much better understanding of the operational implications and the dynamics

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of any spectrum changes required, should be better placed to promote the issues in the international arena, and should be in a better position to recognise the economic impact of any charging regime on the industry.

If management is to be passed to the DfT or the MCA, it is a sine qua non that the department/agency should be adequately resourced to take on the additional responsibility.