

## **RESPONSE TO OFCOM SPECTRUM PRICING PROPOSALS FROM THE AIRLINE GROUP LIMITED**

### **Preamble**

The Airline Group welcomes the opportunity to respond to Ofcom's consultation on applying AIP to the maritime and aeronautical sectors. As a consortium of seven major UK airlines, we are well aware of the implications of the proposals for airspace users, however our response is made from the perspective of a major shareholder in NATS and as its Strategic Partner; Ofcom might expect to receive further, individual responses from the carriers making up 'The Airline Group'.

### **Summary**

Airline Group shares the objective of ensuring efficient use of spectrum and notes that both service providers and airspace users have a commendable record of exploiting technology in the pursuit of that goal. In certain environments we accept that economic measures might be an effective tool that could be employed, however we do not believe that aviation can be seen as such an environment, since it is subject to International requirements and constraints inconsistent with the application of pure market mechanisms in this way.

The UK, the service providers and airspace users are bound by international treaty which establishes and mandates standards for communications navigation and surveillance equipment. Advances in technology have allowed capacity and performance improvements to be made without recourse to commensurate increases in the spectrum allocated, but the speed of international change is slow, and individual States and their national stakeholders cannot modify standards unilaterally.

In the short to medium term there are very few feasible technologies available which will contribute to reduced spectrum usage. Without realistic and practical opportunities to modify standards and/or operational procedures, the introduction of AIP to the UK aeronautical sector will serve only to increase costs and cannot incentivise more efficient use of spectrum to the point where it might be delivered. If implemented it will increase costs in the sector, if implemented unilaterally it will place the UK aviation sector at significant competitive disadvantage.

While Airline Group believes that the introduction of AIP cannot lead to more efficient use of spectrum in the aeronautical sector, it might however trigger undesirable "unintended consequences".

Radiocommunications transmissions within UK airspace constrain those in neighbouring countries and vice versa. Should AIP be 'successful' and lead to a release of frequencies, they may become available for allocation within other European States, potentially reducing pressure on efficient use of spectrum there, and denying any possible re-use within the UK which might conceivably lead to 'greater efficiency' here.

AIP may also unintentionally impact on safety and capacity. It is possible that greater efficiency (use) of the existing spectrum will bring with it a greater risk of interference; no evidence has been presented that this is not the case. Interference free spectrum is an absolute requirement for the safe provision of ANSP services and should the slightest risk to safety as a result of interference materialise, NATS would be required to eliminate that risk, potentially by reducing the capacity available.

Elsewhere on the operational spectrum, the application of AIP could incentivise some sectors of the General Aviation community to reduce costs by simply eliminating equipment which is not mandatory but is recognised as providing substantial safety benefits. For many years the industry has promoted the carriage and use of radios by all aircraft, although it is not a requirement when flying outside of controlled airspace. It would be perverse if the introduction of AIP led to unlicensed aerodromes and GA aircraft flying from them deciding to remove VHF radios, but that is an entirely realistic scenario, and one that would inevitably reduce safety margins.

**In conclusion, Airline Group is opposed to unilateral introduction of AIP into the aeronautical sector and our more detailed responses to specific questions in the consultation document should be considered in this context.** Until International agreements are reached and new technology is available, the industry cannot respond to the ‘incentive’ created. It follows that an early introduction will not further the efficient use of spectrum, but it will have a detrimental effect on the sector’s costs and competitiveness, and potentially on safety and capacity.

The introduction of AIP, should it eventually be adopted, must be through International agreement and should complement developments within Europe under Single European Sky. As a result of SESAR and associated initiatives we would anticipate a significant programme of equipment replacement starting in about 2016. Introduction of AIP should not be considered before that programme is well advanced and alternative technology is available. We recognise this represents a significant delay in implementation, however it is a delay determined by logic, and we note that a precedent has already been set for the Broadcasting sector where the introduction of AIP has been deferred until the physical digital switchover has been completed in 2014.

Lastly we believe that a full regulatory impact assessment of the proposals is essential and should be undertaken before any further discussion on the introduction of AIP takes place. The impact assessment must consider not only the costs of implementation but also the feasibility of the aviation industry responding to any ‘incentive’ in the short to medium term. We are confident that the findings would support our conclusions as described above.

David Bluett  
Company Secretary  
The Airline Group Limited

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## **APPLYING AIP TO THE MARITIME AND AERONAUTICAL SECTORS: AIRLINE GROUP RESPONSE TO OFCOM'S SPECIFIC QUESTIONS**

1. How should Ofcom manage the process of taking advice from users, regulators and government on efficient apportionment of AIP fees in the maritime and aeronautical sectors? Are there any new institutional arrangements needed?

Ofcom must continue to champion a consultation process which takes advice from stakeholders at all stages of the process. Stakeholders should be fully involved in a regulatory impact assessment of the proposals which must be undertaken before further discussion on the introduction of AIP takes place and decisions are taken.

While Airline Group is opposed to the introduction of AIP into the aeronautical sector at this time, should it be introduced at a later date, then relevant stakeholders and operators should be involved in determining the apportionment of those charges.

2. If you consider that our proposals for pricing ground station users for any spectrum would be likely to have a detrimental effect on safety, please let us know. In order to understand your assessment fully, it would be helpful if you could outline the mechanisms whereby this might happen.

Airline Group believes that the proposals are likely to have a potentially detrimental impact on safety margins. Since any reduction in safety is unacceptable, limits on capacity which restore safety margins may be necessary.

Interference free spectrum is absolutely essential for the safe separation and management of air traffic and even the smallest risk to safety from interference is unacceptable. We have a particular concern that any proposals for greater efficiency in the use of spectrum imply more intensive use, and that the risks of interference as a result of that intense use are not fully understood. Should there be interference, it is almost certain that NATS and its customers, as well as the regulator, would interpret that as a potential risk to safety and require NATS to take action to mitigate that risk. Their options are limited, and in the short and even medium term it is probable that action will require restrictions on capacity.

We are also persuaded by the arguments made by our General Aviation colleagues that the introduction of AIP might have the unintended consequence of reducing safety margins if the carriage of safety related equipment such as VHF radio is reduced in order to save costs.

Unlicensed airfields and general aviation aircraft are not mandated to use or carry VHF radios if operating outside controlled airspace. In recent years the industry has successfully championed the use of VHF radio and taken together with some significant investment by NATS in providing a lower airspace radar service around London, the safety risk from infringements has been reduced.

AIP could lead to unlicensed airfields withdrawing any non-mandatory radio services, and as a result some general aviation aircraft choosing to remove their own equipment so increasing the risks when infringements occur, and negating much of the benefit gained from NATS' investment in improved lower airspace radar services.

3. Do you have any evidence which indicates that AIP charged to ground stations could have a material detrimental effect on UK competitiveness?

The UK already has one of the highest ATC rates in Europe. While NATS justifies this rate by the additional costs incurred as a result of the complexity of UK airspace, NATS customers are not entirely convinced and in the main regard NATS as a high cost supplier.

If AIP is introduced unilaterally, and if we accept that NATS ability to respond to the 'incentive' is extremely limited, it will serve only to increase NATS costs; if they are passed onto the users as the regulatory regime implies they will be, then the perception of NATS as a high cost supplier and UK airspace as an area best avoided, will be re-enforced.

In support of this argument there is already evidence of some carriers re-routing to avoid UK airspace or minimising their time within it and accepting additional en-route flying where net savings can be made. This reduces NATS income but has the equally relevant environmental impact of increasing both fuel consumption and emissions.

Furthermore, if airport operators are also unable to absorb the additional costs, and their ability to do so is limited by the same international agreements and standards that constrain others in the industry, then landing charges may increase and the attractiveness of the UK per se as a destination of choice, or a European hub of choice for foreign carriers, will be affected.

Lastly, if applied unilaterally within the UK, the proposals would have a disproportionate and discriminatory impact on UK based carriers, increasing their total cost base and reducing their competitiveness at a network level.

4. Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radiocommunications licence fees and on the reference rates for bands in other uses, and any information you have about the organisations to whom we are proposing to charge fees, please provide any evidence that you think is relevant to us in considering the financial impact of the fees we intend to propose for VHF radiocommunications, for other uses.

Airline Group is not qualified to comment in detail on the reference rates, or the methodology used to calculate them; however we believe the proposals demonstrate a fundamental inconsistency with the recommendations contained within the Cave report, and that Ofcom should provide further justification for their departure from Cave.

In his recommendations Sir Nicholas Cave proposed the use of opportunity costs as a basis for assessing prospective fees, however he also recommended that if there was no prospect of re-using the spectrum released, then the opportunity cost should be regarded as zero. That is precisely the position for much of the aeronautical spectrum under debate; its use is mandated by international agreements and standards, users have no ability to implement unilateral change and there is no opportunity for re-allocation to alternative uses.

We are unclear why Ofcom has chosen to ignore that recommendation, which we believe to be very relevant to the application of AIP to much of the aeronautical sector.

5. Do you agree that there is little to be gained, in terms of economic efficiency, from charging AIP to WT Act licences for aircraft?

Airline Group agrees that it would be unreasonable to charge AIP to WT Act licences for aircraft. Non UK registered aircraft would not pay a charge but would use the service while UK registered aircraft would incur increased costs relative to their foreign registered counterparts generating a detrimental impact on UK airlines' competitiveness.

We must be clear that we would not wish to see a change to this aspect of AIP policy, but we believe that the argument is less strong if made on the basis of pure economic efficiency, since it discounts one economic lever/incentive to support the fit of more spectrum efficient equipment on all aircraft.

Conversely we believe that the 'fairness' argument is very strong and is equally applicable to any unilateral application of AIP, which must inevitably have a disproportionate impact on the costs of UK based airlines; in the absence of demonstrable benefit the proposals might be challenged on that basis alone.

6. Do you consider that we should discount fees for any particular user or particular type of user? Specifically, do you consider that there should be a discount for charities whose object is the safety of human life in an emergency?

The emotional arguments for discounting fees for certain users or types of user are strong and will almost certainly be carried, but are difficult to justify if measured only against the economic theory and the objectives to improve utilisation of spectrum, as discounting can only reduce the pressure on those organisations to do so.

We are also interested in Ofcom's distinction between the use of spectrum by organisations "...whose object is the safety of human life in an emergency..." and an organisation whose use of spectrum is intended to avoid any risk to the safety of human life occurring in the first place.

In contrast to spectrum use in other sectors where it is often a direct generator of value and revenue, aviation stakeholders generally use spectrum as a tool of safety and many of the international standards applied to its use are driven by the objective to ensure safety (of human life). Within that definition should the majority of aviation stakeholders receive discounts?

7. Do you agree that Ofcom should apply AIP to ground stations' use of maritime and aeronautical VHF radiocommunications channels, to help manage the growing congestion in current use and to ensure that the cost of denying access to this spectrum by potential alternative applications faced by current users?

From our earlier responses it will be clear that Airline Group does not support the use of AIP to incentivise efficient use of VHF spectrum in the aeronautical sector. International agreements and standards prevent the efficient re-allocation of frequencies saved, service providers and users have very limited ability to effect changes, ANSP and airport costs

would increase and be passed through to users and their final customers, and the competitiveness of UK companies and would be reduced.

8. Do you agree with our initial view that it would be appropriate to apply a pricing system similar to that already existing for Business Radio Licences to maritime and aeronautical VHF radiocommunications? If not, what are your reasons for proposing that we should develop a fee structure for maritime and aeronautical VHF channels which is distinct from that already established for Business radio?

The extent to which Business radio is used within a business is largely discretionary, which implies that the pricing regime can legitimately be designed to reduce the attractiveness of its use and ultimately to champion alternative communication mechanisms. Aeronautical spectrum is allocated globally, its use is often legally mandated and is not discretionary, and as suggested in an earlier response, has a primary objective of ensuring safety.

Although Airline Group is not qualified to comment on the details of the pricing of Business Radio Licences, in those circumstances we believe it is unlikely that it can provide a suitable model for any future application of AIP to VHF radiocommunications. An alternative fee structure would be required and further consultation will be needed to draw on the experience and ideas of relevant stakeholders.

9. Are there any short term reasons specific to the sector(s) why it would be inappropriate to apply fees from April 2009?

It is difficult to conceive of a less appropriate time to implement a proposal which will increase costs incurred by the aviation sector.

The world economy is close to or in recession, governments are taking extreme measures to control the impact on business, and commercial airlines face their bleakest business scenario for many years with up to 30 carriers forecast to become insolvent. More parochially, NATS' revenue is reducing as demand falls, and the company is mid way through a Regulatory Control Period which will cap prices through 2010. There is no place for the proposal to implement AIP which will serve to further increase industry costs without any immediate and practical prospect of improving efficiency.

It is tempting to counter the immediate challenge and live to fight another day by simply arguing to defer the implementation of AIP until there is an improvement in the economic outlook and the constraints imposed by the regulatory control period are removed. However, if we do only that, then we ignore some basic issues - that aeronautical use of spectrum is internationally controlled, that until and unless international agreement can be agreed and new technology can be introduced the industry cannot make more efficient use of spectrum, and that the pace of international change is, and will continue to be, slow.

As a principle, Airline Group supports the objective of efficient use of spectrum in all sectors, but plans must reflect realistic capability. In our view any proposals to apply AIP into the aeronautical sector should be considered only as complementary to developments within Europe.

By 2016, as a result of SESAR, we would expect to see a programme of new equipment installation both on the ground and in the air. Always provided the necessary technology is available for the industry to take advantage of the new functionality it provides, and provided the necessary international agreements have been reached, AIP might then be considered as an appropriate tool to incentivise more rapid adoption of that new functionality and more efficient use of spectrum than might otherwise be the case; until the programme of re-equipping is well advanced, any consideration of applying AIP to the aeronautical sector should be deferred.

Airline Group proposes that the implementation of AIP should be considered only in the context of developments within Europe and proposals deferred until a date beyond 2016.

10. Ofcom would welcome stakeholders' views on the factors which should be taken into account when apportioning fees between individual users of radars and racons.

Airline Group is not qualified to comment on this consultation item.

11. Do you agree with our initial view that a reference rate of £126k per 1 MHz of national spectrum for L band and S band radar spectrum would achieve an appropriate balance between providing incentives to ensure efficient use of spectrum while guarding against the risks of regulatory failure in setting the reference rate too high? If you consider a different rate would be more appropriate, please provide any evidence that you think we should take into account.

Airline Group is not qualified to comment on this consultation item.

12. Do you agree with our initial view that a reference rate of £25k per single MHz of national spectrum would be appropriate for deriving fees for licences to use X band radar?

Airline Group is not qualified to comment on this consultation item.

13. Do you agree that generally, spectrum used by aeronautical radionavigation aids is currently uncongested? Do you believe that this may change during the next few years and, if so, approximately when?

Our experience as airline operators, and our discussions with NATS suggest that the statement is not valid and that a degree of congestion already exists in spectrum used by radionavigation aids.

14. Do you agree with the basis on which Ofcom has arrived at its initial view on reference rates for aeronautical radionavigation aids?

Airline Group is not qualified to comment on this consultation item.

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