

# Applying Spectrum Pricing to the Maritime and Aeronautical Sectors

## A Consultation by Ofcom

### Introduction

BATA is the trade association for UK-registered airlines. Our members cover the scheduled, charter and freight sectors and represent over 85% of UK airline output.

We welcome this opportunity to respond to the Ofcom consultation on the possible application of Administrative Incentive Pricing (AIP) to the Maritime and Aeronautical Sectors.

### Summary

Air Transport is a significant contributor to the UK economy in its own right and provides an essential part of the country's economic and social infrastructure. The industry directly and indirectly supports 700,000 jobs and makes a direct contribution of over £11 billion to the UK economy.

Aviation is a global activity which is highly regulated internationally. Nine out of ten air journeys from UK airports are to or from other countries.

The safe operation of the aviation industry depends on radio and radio navigation aids. The use of radio is mandated in UK law through the Air Navigation Order and internationally under the Chicago Convention. Aeronautical radio services normally operate in dedicated frequency bands which are globally harmonised. International and national aviation safety requirements stipulate that allocations of spectrum must ensure communication free of interference. Spectrum is allocated and governed internationally through the International Telecommunications Union and *no individual state can make unilateral changes to these spectrum allocations*.

The consultation paper does not recognise the importance of these international obligations and global standards.

Contrary to the view expressed in the consultation paper, aviation spectrum is used efficiently. For example, the VHF spectrum supports some 2,000 allocations in the UK and 11,000 allocations across the EU. However, we accept that aviation spectrum use will need to become even more efficient in future to meet increased growth within a limited allocation. These improvements will come from operational and technical developments that are agreed and implemented internationally.

This unilateral UK proposal attempts to place an opportunity cost on the use of spectrum. As aviation spectrum cannot be reallocated unilaterally, there can be no market value placed on it and the opportunity cost should be judged to be zero (See Cave Audit 2005, page 56 and the Government response to Cave). The imposition of an additional cost on the industry through AIP will not improve the use of spectrum but it will have several unintended and negative consequences on the industry.

The consultation paper neither acknowledges the safety requirements inherent in the aviation industry's use of spectrum nor recognises the negative economic and environmental effects of a unilateral implementation of AIP. This is contrary to the Government's and Ofcom's own recommended practice on Better Regulation.

This proposal cannot improve spectrum use and is seen by the aviation industry as a thinly-disguised attempt to generate additional revenue for the Treasury. We strongly believe that it should be withdrawn until the fundamental issues described above have been addressed and a full impact assessment has been undertaken.

The following responses to the individual questions in the consultation paper should only be read as initial information to assist Ofcom in the preparation of a more objective consultation process which does not presume the application of AIP to the aeronautical spectrum and does include a thorough assessment of such an application's impact on spectrum use, the aviation industry, the broader economy and the environment.

## Consultation Questions

*Question 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 any new institutional arrangements needed?*

This question assumes that AIP fees will be charged. We do not accept this assumption.

Ofcom should first assess the international regulation of aviation spectrum and, in doing so, respect the UK's international obligations. It should then recognise and respect the recommendations of the Cave Review. The impact on spectrum use, the industry, the broader economy, safety and the environment should then be assessed in conjunction with the UK aviation industry and following the UK Code of Consultation. If, following this process, Ofcom still feels that the application of AIP to aeronautical spectrum can be justified it should demonstrate the case through a comprehensive assessment of impacts and benefits.

The proposal for application of AIP has not been developed in this way and seems more like a solution seeking a problem rather than a fully justified way forward.

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

The vast majority of aeronautical spectrum use is to ensure the safety of life. The sharing of spectrum and any incentive that could lead to radio interference, would have a negative influence on levels of safety.

These factors have not been recognised by Ofcom and should be part of a thorough impact assessment.

*Question 3: Do you have any evidence which indicates that AIP charged to ground stations could have a material detrimental impact on UK competitiveness?*

This unilateral UK proposal to impose additional costs on the aviation industry without any business benefits is bound to reduce UK competitiveness. The additional cost of AIP would have a very significant impact on the profitability and, in some cases the financial viability of UK aviation infrastructure providers, in both airports and air traffic control. The UK already has one of the highest ATC prices in Europe. Many UK regions depend on their local airport for access to markets and their competitiveness would be undermined by these unique additional costs.

In cases where price regulation applies, the pass-through of costs to airline customers will be allowed. However, the airlines operate within a highly competitive international market and an additional UK-only cost will undermine the competitiveness of airlines based in this country as 100% of their operations will have to carry this UK cost compared with the low percentage of exposure felt by their non-UK competitors.

*Question 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, or for other uses.*

BATA is not qualified to comment on the approach taken by Ofcom in deciding what AIP rates should apply. However, we do note that the Business Radio comparator suggested has little or no similarity to aeronautical use. Before suggesting an AIP rate, Ofcom must explain why its proposal diverges from the recommendations of Sir Nicholas Cave. The Cave Audit recommended that if there was no prospect of releasing spectrum for re-use, the opportunity cost should be regarded as zero.

*Question 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?*

We agree that it would be unfair and unreasonable to charge AIP to WT Act licences for aircraft. The competitiveness of UK airlines would be directly affected as they compete with non-UK airlines who would not suffer the charge.

Any unilateral application of AIP, without business benefits, would have a disproportionate effect on the costs and hence the competitiveness of UK airlines and this argument alone supports our challenge to the overall proposal.

*Question 6: Do you consider that we should discount fees for any particular user or 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?*

We do not accept the premise of the question – that AIP should apply to aeronautical spectrum. Aeronautical use of radio spectrum is to ensure the safety of the passengers and crew on our aircraft. It is unfair and discriminatory to differentiate between uses that share the safety of human life as their prime objective.

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

No. We do not accept that AIP should be applied to aeronautical spectrum. The users of this spectrum have no alternative available due to the international and national regulations described above. Hence the application of “opportunity cost” is not appropriate.

The aviation industry has invested in 8.33kHz systems without the “incentive” of AIP and will continue to develop this approach to capacity management in line with international requirements. The application of AIP in the UK will do nothing to accelerate these developments and, in extracting revenue from the industry, it is more likely to delay future investments.

*Question 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 communications? 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?*

No. BATA airlines feel strongly that there should be no AIP for aeronautical spectrum. Business Radio is a very different sector and its choice in this consultation is wholly inappropriate. Any proposed fee structure should be fully assessed for its economic impact on all users.

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

This question makes an assumption about the application of AIP that we do not accept. It is inappropriate to apply national fees when users are unable to change their use of spectrum due to international regulation on both the allocation of spectrum and application of new technology.

*Question 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.*

This question presumes the application of AIP to aeronautical spectrum. We believe that this is inappropriate.

The consultation paper does not include an Impact Assessment on which UK airlines could assess this issue and make comments.

*Question 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.*

*Question 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?*

No. We believe that no case has been made for the application of AIP to aeronautical spectrum. As international agreements preclude the reallocation of aeronautical spectrum, the opportunity cost of that spectrum should be zero.

*Question 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?*

No. Our members experience suggests that a degree of congestion already exists in spectrum used by radionavigation aids.

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

No. The opportunity cost of aeronautical spectrum should be considered zero because of international constraints on its use and as recognised by the Cave Audit.

29 October 2008

Roger Wiltshire  
Secretary General  
British Air Transport Association  
Artillery House  
11-19 Artillery Row  
London  
SW1P 1RT