



## **British Business and General Aviation Association**

29<sup>th</sup> October 2008

Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Dear Sirs

### **CONSULTATION ON APPLYING SPECTRUM PRICING TO THE MARITIME AND AERONAUTICAL SECTORS**

The British Business & General Aviation Association is pleased to have been included in Ofcom's consultation exercise on the above topic. We represent over 170 companies engaged in the business of Business & General Aviation (B&GA). As such, our membership comprises a diverse range of interests from commercial and private aircraft operators, to aerodromes, flying schools, radio manufacturers etc. The aircraft in our sector comprise about 8% of all Instrument Flight Rules (IFR) air traffic, and typically make a disproportionately large contribution to the national economy both directly in the form of maintenance, employment, services and indirectly through the inward investment resulting from owners and users of such aircraft choosing to base themselves in or operate through UK.

Radio utilisation varies across our membership, with most operating members using modern VHF, pulse and radar equipment while some of our ground-based membership maintains radio communication equipment of varying power and complexity. The one aspect that all our members, and in fact all aviation entities, have in common is that they are constrained to use traditional analogue communication and navigation systems in order to maintain interoperability with systems around the world. Thus even the most – modern Business Aircraft with a state-of-the-art cockpit system will use radios based on distinctly old-fashioned RF principles – not through choice but because that is all that they are allowed to fit. Because the centre of gravity of civil aviation no longer resides in the UK, it is hubristic in the extreme to think that a unilateral application of AIP would improve efficient use of aviation radio spectrum.

This consultation was disappointing, firstly because the subject matter was unexpected in light of the Cave audit and the 2007 Forward look, but mainly because of the manner it was conducted: Our primary concern is the lack of the necessary Regulatory Impact Assessment (RIA), which is required under the Communications Act 2003 and by the UK Code of Practice on Consultation. On 29 September, half-way into the consultation period, we learned that Ofcom was adding-on an Impact Assessment which will, apparently, be available the same day as the consultation period ends. Thus the right of stakeholders to analyse, critique and improve such an Assessment during the consultation period has simply been ignored by Ofcom.

The fact that an Impact Assessment was not issued with the consultation document casts doubt on the validity of Ofcom's findings, and denies stakeholders essential information they need to respond.

About one week before the end of the consultation period, BBGA learned from a third party that Ofcom has altered critical aspects of the consultation without relaunching or extending the consultation period. This again is in breach of the Consultation Code, and a repeat of the consultation phase once the RIA and the new details have been properly promulgated and are understood properly by stakeholders. In light of the informal and late release of these extra aspects of the 'plan,' BBGA has limited its response to the original content of the consultation. We strongly advise that if Ofcom intends to continue their AIP proposals for aviation frequencies, the entire consultation phase is re-run.

A summary of our key findings on the original proposals is as follows:

- The consultation does not state anywhere what the problem is with how aeronautical spectrum is being used.
- BBGA supports the need to use radio spectrum efficiently to ensure that both commercial and public users have the spectrum they need to conduct their businesses; but we strongly oppose the use of Administered Incentive Pricing (AIP) on aeronautical spectrum and do not see any way AIP would improve efficient use of such spectrum.
- Any attempt to charge for radio spectrum access will degrade aviation safety, especially at the light end of the General Aviation (GA) sector.
- International law and conventions mean that no alternative systems or technologies are available to users.
- The proposals are outside the recommendations of the Cave audit and the 2007 Forward Look.
- The logic used to justify the application of AIP to aviation is flawed and contradictory, and ultimately irrelevant since the opportunity of the spectrum in question is recognised in Cave and in the consultation itself as nil.
- A waiver, similar to that issued to terrestrial broadcasters pending their digital transition, may be appropriate for aviation, pending some future worldwide international accord on modernisation of RF technologies which allow tangible savings for users.

Overall BBGA considers that these proposals are simply an attempt to secure additional tax revenue to the UK treasury, without any offsetting benefit to aeronautical users. This comes on top of a raft of other tax-raising proposals on aviation, both from UK Government and Europe. There is a real question-mark over the future of Private and Commercial Business Aviation in this country as a result of a combination of these new taxes and charges and a downturn in demand, and this is therefore not an appropriate time to introduce another hidden tax.

In conclusion we ask that Ofcom acknowledges that this consultation is flawed in conception and execution and preferably annul the entire process, or at least re-start it from the beginning.

Yours sincerely

**Guy Lachlan**  
**Chief Executive**

## **Answers to Specific 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?*

A1 BBGA does not agree with the assumption in the question that AIP should be apportioned to the aeronautical sector. Having said that, in any proposed legislative change Ofcom should fully adopt the UK Government's Code of Consultation and adhere to its requirements. A key requirement from the Code is the requirement to conduct an Impact Assessment should be undertaken which must include quantitative assessment of the impacts to safety, airspace efficiency and economics.

Any domestic changes proposed must be within the scope of the UK Government's commitments to aviation, as formulated in the recent 2007 Forward Look. In addition to these requirements, aviation is subject to a series of International agreements and treaties which mandate interoperability of communication and navigation systems. These obligations would make it essential to conduct any proposed rulemaking in conjunction with International Aviation bodies such as ICAO.

*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.*

**A2.** Any pricing action taken which either encourages the sharing of aeronautical radio spectrum, or that discourages the use of airborne radio communications, will have a negative impact on safety.

BBGA has a number of flying schools, flying clubs and small airfields which have their own VHF frequency for local communication with light aviation traffic. These are often SME's which operate on minimal margins and support to the best of their ability the desire of their customers to fly safely. Without exception, all have told us that they would switch off their transceivers if faced with a charge to use their assigned frequencies. This is because in their view it is impossible or uneconomic to pass through the costs to the users of the frequency. Any loss of radio contact with aircraft, especially in an aerodrome environment, would have a clear and immediate effect on safety.

At the very light end of the GA sector, some users do not carry radios on their aircraft. The CAA is engaged in a campaign to increase radio carriage for voice, surveillance and navigation. AIP would set this safety-driven programme back by several years, with a resulting cost in increased accident rates.

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

**A3.** As with other existing and proposed charges made through ANSP's, any AIP charges would be passed through to airspace users, thus further increasing the cost burdens on users in UK airspace. These users already pay among the highest charges for airspace use, which might reasonably be expected to include the use of radio spectrum.

As we have seen with previous, unrelated, taxation increases these increased costs definitely drive the location and relocation decisions of Business and General Aviation operators. A number of our corporate flying members were driven offshore in recent years by changes in the way that tangible assets can be depreciated in the UK compared to neighbouring EU States, and virtually all Flying School activity has relocated overseas in direct reaction to UK's application of VAT to flying training.

Taken as a whole with fuel price increases and other forthcoming additional governmental charges to be forced onto UK aviation such as Fuel tax (Nov 2008), Aviation Duty (Oct 2009), EU Emissions Trading (2012), and CAA and EASA charges which are increasing on the B&GA sector at up to 100% per year it is difficult to assess whether relocation or closure decisions of our members' businesses will be entirely attributable to AIP, but it is certain that the combination of these additional charges will have a life-threatening impact on the UK B&GA sector.

*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.*

**A4.** The task of planning and assigning VHF frequencies falls to the different ANSP's around Europe. Due to the way that VHF signals propagate at altitude, the number of times a frequency can be re-used throughout Europe depends on the altitude of the traffic it is being used to communicate with. As shown by EuroControl at the stakeholder meeting, this can result in a VHF en route frequency only being reusable 2 or 3 times throughout Europe. The fact that a frequency may be impossible to assign in UK airspace is thus likely to be that its reuse is impossible due to an assignment in another EU Member State. Equally, frequencies for low-level traffic can be, and are, reused many times throughout UK and European airspace. None of this has been considered in the consultation document. The reality in Europe is that the VHF communications radio spectrum is an excellent example of maximising value within the international constraints imposed on aviation. According to NATS, about 25% of the aeronautical VHF band is not assignable in the UK due to interference from non-UK allocations. This does not reflect inefficient use of spectrum; rather a sign that the international aviation community is working effectively together to coordinate safe and reliable communication.

Furthermore, the UK's International obligations forbid non-aviation use of the spectrum, so by definition the economic opportunity cost is zero. Indeed the Cave Audit, referred to in the consultation paper, supports a zero opportunity cost for aviation spectrum and recommends that AIP not be applied in the way proposed in the consultation.

If AIP were imposed on aviation frequencies, then it follows that all UK license holders could reasonably demand protection, which in turn would make frequency planning in Europe impossible.

*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?*

**A5.** The impact of AIP on UK Aviation would be highly negative, and would distort the competitive landscape within Europe. As illustrated above, no increased efficiencies would result and the only change would be an increased flow of licensing revenue from ANSP's (and thus airspace users) to the Treasury.

*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?*

**A6.** The consultation paper seeks to distinguish between “safety of human life” and “safety of human life in an emergency”. Aviation uses its radio spectrum for safety of life purposes, regardless of situation, and should not be charged AIP.

*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?*

**A7.** The economic theory related to opportunity cost assumes that the user has a choice. This does not apply in aviation, which is controlled by international standards agreed through the International Civil Aviation Organization (ICAO). Imposing a charge where there is no choice is simply a form of taxation.

It follows therefore that the opportunity costing model in the consultation is inappropriate.

*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?*

**A8.** No, BBGA considers that there should not be any fee structure for aeronautical VHF spectrum. The business radio model is primarily involved with providing spectrum using AIP principles to businesses which resell the spectrum as their core business. This is not the case in Aviation, where carriage of radio is a key safety feature and the type of radio being carried is dictated by international conventions.

There is a similarity between aviation spectrum useage and that of analogue terrestrial broadcasters, which have been excluded from AIP until its adoption of digital technology. A similar waiver could be granted to aviation spectrum users pending international (ie global) agreement of alternative digital transmission standards, which might allow for efficiency gains to be made in spectrum useage and a consequent payback for users adopting the technology.

It is also worth noting that the Business Radio model seems entirely unsuitable for application to pulse systems such as NDB. VOR and radar because of the way these systems use bandwidth.

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

**A9.** The imposition of fees where users have no choice is not in accord with the economic theory behind incentive pricing.

The terrestrial broadcasting industry’s conversion from analogue to digital television has been given an extended timescale to allow users to re-equip, even though digital televisions are available today. The availability of next-generation aviation radio equipment is constrained by international agreements, and in any case the evidence of consequent savings to the end-user is very much unproven. Unilateral legislation to try to speed international change leads directly to unforeseen consequences and is always a mistake.

*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.*

**A10.** This is not a question. BBGA requires the opportunity to carefully review a valid Impact Assessment before serious consideration can be given to these issues. No Impact Assessment has been performed concurrently with the writing of this consultation, which breaches the UK Government's Code of Consultation practice. Users of UK airspace already pay the highest en route fees in Europe, which might reasonably be assumed to include access to the necessary infrastructure to operate such as radio spectrum.

*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.*

**A11.** No opinion. BBGA requires the opportunity to carefully review a valid Impact Assessment before serious consideration can be given to these issues. No Impact Assessment has been performed concurrently with the writing of this consultation, which breaches the UK Government's Code of Consultation practice.

*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?*

**A12.** No opinion. BBGA requires the opportunity to carefully review a valid Impact Assessment before serious consideration can be given to these issues. No Impact Assessment has been performed concurrently with the writing of this consultation, which breaches the UK Government's Code of Consultation practice.

*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?*

**A13.** No. The majority of spectrum used for aeronautical radionavigation is congested. This situation is not expected to change during the next several years.

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

**A14.** No. Ofcom appears to support the argument that no congestion means zero opportunity cost. This suggests that under-utilisation of aeronautical spectrum should be rewarded by zero opportunity cost ratings.

The zero opportunity cost is justified, as the Cave Audit recognises, because of international constraints on aviation spectrum.