

*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?*

**bmi response**

Firstly, as per many of the questions posed by this consultation, this question presupposes that AIP fees will be applied to Aeronautical users without an effective consultation process, or irrespective of such process.

Therefore, we must stress from the outset that the United Kingdom Government has an established Code of Consultation. Ofcom should respect this Code of Consultation and adhere to its requirements. Among other things an Impact Assessment should be undertaken and should include safety, airspace efficiency and economic issues. Additionally, Ofcom should confirm that any proposals will be within the scope of the UK Government's commitments to aviation as formulated in the recent 2007 Forward Look.

In the process of taking advice, Ofcom should ensure that users, regulators and government are fully aware of the recommendations of the Cave Audit and confirm that it intends to respect these recommendations.

International regulation, that is essential for global aviation, must be respected and the UK is likely to be in breach of its international obligations if these proposals were implemented.

*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.*

**bmi response**

Sharing of aeronautical radio spectrum that is used for safety of life could have a negative impact on safety. bmi cannot accept any action which has the potential to lead to a degradation of safety. Further, bmi is concerned that mitigation of potential degradation of safety may lead to airspace capacity reductions, resulting in an increase in delays, a reduction in flight efficiency, and a negative impact on the environment, at a time when the UK government is actively engaged in improving all these key areas through the SESAR program. All factors must be considered within the bounds of a full impact assessment.

Any proposed sharing must be considered on a case by case basis and any costs involved in compatibility analyses and evaluation testing should not be borne by the airlines .

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

**bmi response**

bmi believes that any AIP charges would inevitably take the form of pass-through costs – either directly or indirectly – to be borne by airspace users, and in particular the UK airline community. If this were applied unilaterally by the UK in a global market, British operators, airspace, and airports would suffer from a lack of competitiveness, and subsequently a loss to UK PLC as traffic bypasses the UK due to the higher cost base.

Further operator behaviour in terms of current ANSP charging differentials suggests that traffic may avoid the UK, leading to increased track mileage, greater fuel usage, and a negative impact on the environment. All these points indicate a step backwards in terms of trying to improve the overall efficiency of the European ATM system, as per the Government's commitment to SESAR.

bmi also has serious concerns about NATS' ability to provide cost effective airspace capacity growth when operating within such a regime..

*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.*

**bmi response**

Ofcom's objective is to promote efficient use of radio spectrum but, with respect to VHF communications, the consultation paper may be considered to oppose this objective.

The VHF radio spectrum in Europe supports over 10,000 assignments and is an excellent example of maximising value within the international constraints imposed on aviation and to which the UK government is a signatory. Also, these assignments substantially exceed the envisaged number when the spectrum, that has not been increased, was originally allocated.

Nevertheless, the consultation paper argues that because the spectrum is efficiently used it is denying non-aviation users. International obligations of the United Kingdom would not allow non-aviation users so, by definition, no other users can be denied. Therefore the economic opportunity cost is zero. Indeed the Cave Audit, referred to in the consultation paper, supports a zero opportunity cost.

The consultation paper also suggests that if spectrum is underused then there is no opportunity cost. Indeed this could imply that under-utilisation of spectrum is financially advantageous.

However, the paper does not consider the fact that ground transmissions are subject to different protection levels and that en-route transmissions require a large protected volume while some services have no protection. If AIP were imposed then all license holders could reasonably demand protection which would make frequency planning in Europe impossible.

Instead of introducing AIP, the UK Government should support the European Commission's Single European Sky Second Package (SES II) proposals. The European Commission's legislative proposal package (COM(2008)388, COM(2008)389/2, COM(2008)390) in article 6 of Regulation (EC) 551/2004 (network management and design) proposes to give the EU the competence for the coordination and allocation of scarce resources such as VHF frequencies. The UK government should support this proposal as the way forward to ensure a more efficient use of VHF frequencies rather than introducing AIP.

*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?*

**bmi response**

There is no substantial evidence that the UK economy would benefit from charging AIP to the aviation sector, and as per our earlier comments, bmi believes that the contrary would be the case – UK airlines, airports and UK PLC would suffer as a result.

*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?*

**bmi response**

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. It is noted that the maritime industry also relies on safety of life communications.

*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?*

**bmi response**

bmi does not believe that the AIP mechanism is appropriate for incentivising the use of VHF spectrum in the aeronautical sector as the economic theory related to opportunity cost assumes that the user has a choice. Imposing a charge where there is no choice is simply a form of taxation.

Further, as acknowledged by the Cave Review there are no opportunity costs from alternative applications as aviation is a global industry that can only function if there is

global interoperability. This is ensured through international standards agreed through the International Civil Aviation Organization (ICAO).

bmi would also strongly challenge OFCOM's view that such international agreements can be changed over time due to unilateral pressure from one state. It will take a more concerted effort, perhaps beginning at European level. Unilateral action is certainly not the answer.

With regards to VHF communications there is a choice between 25 kHz and 8.33 kHz systems. However, the propagation characteristics of VHF mean that transmissions from the UK can impact neighbouring States. For this reason frequency management is co-ordinated at international level. A UK provider may wish to convert to 8.33 kHz but the international ramifications may not permit it. AIP charging could not force the provider to change and so 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?*

**bmi response**

bmi considers that there should not be any fee structure for aeronautical VHF channels. The business radio sector is significantly different to the aeronautical sector and its proposed application is inappropriate. Spectrum use for business radio is commercial and is not allocated globally as it is for the Aeronautical industry. Further it is important to restate that aeronautical use of spectrum is to support safety of life. A fee structure should not be developed without first assessing the 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?*

**bmi response**

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

It is important to look at the broadcasting industry's conversion from analogue to digital television, where the industry has been given an extended timescale to allow users to re-equip. Digital televisions are available today - unlike new aviation equipment that is constrained by international agreements.

*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.*

**bmi response**

The question presumes the application of fees. A key question is the degree to which the United Kingdom requires radar coverage for security purposes. Any radar providing information to the military and/or security services should not be considered. Any fees should be levied on new users who must also be entirely responsible for the costs of demonstrating compatibility.

*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.*

**bmi response**

No. The consultation paper is silent on whether pricing would be a function of transmitter bandwidth or receiver (front-end) bandwidth. Some radar front-ends have wide bandwidths that would need protecting which would be expensive for users. Failure to do so could result in unwanted interference reducing the sensitivity of the radar thereby impairing performance and having associated safety implications.

*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?*

**bmi response**

No. X-band radar is sensitive to unlicensed UWB transmissions. Hence any fees levied would not guarantee protection from interference. Such interference could reduce the performance of the radar leading to a reducing in air traffic capacity.

*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?*

**bmi response**

bmi is aware of the difficulties ANSPs experience in securing frequencies for service provision, and, therefore, the majority of spectrum used for aeronautical radionavigation is congested. For example, DME and military use of L-band and we do not expect this to change during the next few years. Therefore, bmi does not agree that spectrum used by aeronautical navigation aids is currently uncongested.

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

**bmi response**

No. Ofcom seems to be arguing that no congestion means zero opportunity cost. This suggests that underutilisation 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 which Ofcom has not taken into account.

Therefore, bmi restates its position that the global co-ordination of aeronautical spectrum, on a safety of life basis, and in an efficient manner, means that the AIP proposal is wholly inappropriate, is effectively a unilateral UK tax on the aeronautical industry, and has a long list of negative consequences for UK PLC.

This whole consultation is fundamentally flawed from the outset because of the lack of an Impact Assessment as required under the Communications Act 2003 and the UK Code of Practice on Consultation. In addition, there is no recognition of the UK's international obligations as members of the International Civil Aviation Organisation (ICAO), nor of the safety implications of the proposals.