

Introduction

Cathay Pacific Airways welcomes the opportunity to provide comment on the consultation document, *Applying Spectrum Pricing to the Maritime & Aeronautical Sectors*, published by Ofcom on 30 July 2008.

Cathay Pacific Airways wishes it to be known that it strongly opposes this proposal.

Impact Assessment

Ofcom has advised:

A5.8 We are publishing this initial consultation without a full Impact Assessment, for two main reasons:

- *We have not yet decided on the fee structures we plan to implement; and*
- *Both the aeronautical and maritime sectors are complex, and we wish to gather evidence and analysis from as many stakeholders as we can in order to understand these sectors fully.*

It is understood that the *UK Code of Practice on Consultation* requires a Regulatory Impact Assessment and the *Communications Act 2003* places a similar requirement on Ofcom. The reasons Ofcom has offered for not publishing a full Impact Assessment are noted; however, by publishing this initial consultation without the required full Impact Assessment a considerable resource burden has been placed on all stakeholders who will now be required to make two replies where one would have sufficed.

The Proposal

The following key points are identified in the consultation document:

- ❖ Spectrum is a vital resource for the UK economy
- ❖ Strong incentives are needed to ensure that spectrum is used efficiently
- ❖ The contribution that price signals can make (to efficiency) has long been recognised

It is certainly agreed that “*spectrum is a vital resource for the UK economy*” and indeed the world economy “*including the aeronautical and maritime sectors*”. That combined with the critical safety of life aspects is why the allocation and use of this spectrum is strictly governed by international treaties and local State regulations.

However, care must be taken to ensure that the economic argument regarding the relationship between pricing and efficiency is valid in this particular case and that the

realities and complexities of the spectrum reserved for aeronautical use are examined and understood.

Efficient Use of Spectrum

Cathay Pacific Airways does not agree that Ofcom needs to “*create strong incentives to ensure that spectrum is used efficiently*”.

The aeronautical sector already has strong incentives to use spectrum efficiently. These incentives are provided every three years by the World Radio Conferences (WRC) where the aeronautical sector is required to fully justify the use of the spectrum that has been allocated to it. Failure to justify this use can result in removal of parts, or all, of various spectrum bands for reallocation to other users.

The spectrum allocated to the aeronautical sector has a safety of life enabling purpose and is not a business service in itself. The only mechanism to increase the efficiency of the use of this spectrum is by revising international treaty agreements and local State regulation. Indeed the aeronautical sector has made considerable strides in this area, with the recent implementation of a reduction in VHF air-ground radio frequency spacing (to 8.33kHz) being but one example.

It is difficult, if not impossible, to see what additional incentives Ofcom could bring to U.K. users of aeronautical spectrum which could create any more efficient use of spectrum or indeed actually have any impact whatsoever.

Contribution of Pricing

Ofcom has also said “*the contribution that price signals can make has long been recognised*”. As a broad statement this seems logical but when examined in the context of aeronautical spectrum it is not so logical.

Applying pricing to aeronautical spectrum will not alter the usage of that spectrum, either in total volume or periodicity, in any way. The regulatory and international treaty aspects that underpin aviation spectrum are the determinants of its use. There is no element of customer choice or provider competition.

By way of example, pricing will not increase or decrease the number of voice communication exchanges between air traffic controllers and pilots, nor will it precipitate a change in the frequency of the spectrum used. Similarly, pricing will not affect the usage of a radar facility, either in the frequency of the spectrum used or the length of transmissions.

Pricing cannot and more importantly, will not, play any part in the manner in which aeronautical spectrum is used – be that price large or small. Applying a pricing regime will, however, increase costs for the users of the spectrum.

Zero Opportunity Cost

As a justification for this proposal Ofcom proffers, “*We are taking forward a spectrum management strategy developed since 1998*”. However, Ofcom has also said in the consultation document:

3.17 The Cave Review of March 2002 stated that “for some spectrum uses, though, the opportunity cost will be zero. This will occur where use of a particular band in the UK has been exclusively defined through international agreements and incumbents have no scope to change their spectrum use”.

3.18 Ofcom agrees that there are cases where the specific provisions of an international agreement might mean that there is no efficiency gain to be generated by applying fees, at full or partial opportunity cost level, to licences. In such cases we would not propose to set AIP based licence fees. However, we do not consider that the existence of an international agreement exclusively defining the use of a band necessarily means that there is no opportunity cost associated with that use, nor that there is no efficiency case for pricing to reflect that opportunity cost.

It is clear that Ofcom accepts the principle that opportunity cost could be zero for some sectors. The question therefore is whether the aeronautical sector is one of these. If the consensus is affirmative, that should be the end of this matter. Cathay Pacific Airways is of the opinion that the opportunity cost is zero and the argument supporting this is a practical and simple one.

It is true that an international agreement exclusively defining the use of a band of spectrum does not automatically infer a zero opportunity cost and consequently there could be a potential efficiency case for pricing. However, a close inspection of the aviation spectrum in the manner of allocation, management and operational use, all of which are primarily based on safety of life considerations, clearly shows that in this case there is no such potential.

Aeronautical spectrum is allocated and its use mandated by international treaty (World Radio Conferences) for exclusive use. The internationally standardized operational use of this spectrum is also governed by international treaty (International Civil Aviation Organization). The actual operational use of this spectrum is regulated at a State level by the respective civil aviation authority and telecommunication authority in full compliance with the over-arching international treaty agreements which have been entered into by, in this case, the U.K. Government in the first place.

So, in simple terms, The U.K. Government has agreed at international treaty level and regulated at a State level that no other party may use the spectrum allocated for aeronautical purposes, i.e. there is no opportunity cost.

It must be noted that the U.K. Government has no authority to change the use of any band of aeronautical protected spectrum until the World Radio Conference co-ordinates and approves this on a worldwide basis. From a technical perspective, aircraft frequency tuning capability cannot simply change when flown into U.K. airspace. The same frequency bands are therefore reserved for worldwide use.

Will the Strategy Work?

Ofcom has said: *“We now need to consider the practical implications of this strategy for the aeronautical and maritime sectors”*

The answer is clear from the above discussion: the practical implication for the aeronautical sector is that pricing is not appropriate as there is a zero opportunity cost and no ability to influence more efficient use of spectrum.

Additionally, Ofcom has said: *“The purpose of this consultation is to assist stakeholders in expressing views on how the policy of extending pricing to these sectors should be implemented”*

Again the answer is logical and clear, this policy should not be implemented.

Conclusion

The proposal to apply spectrum pricing to the aeronautical sector is inappropriate. The nature of the allocation and use of this particular spectrum does not lend itself to an efficiency increase generated by pricing nor is there any opportunity cost.

The allocation, management and use of this spectrum is governed by international treaties and local regulations all of which have been entered into by the U.K. Government in order to protect this spectrum for the aeronautical sector due to its prime safety of life functions.

Cathay Pacific Airways respectfully requests Ofcom to withdraw this ill-conceived and incomplete proposal.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 30 October 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/aip/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email aeromar1stconsult@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Michael Richardson
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.5 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Michael on 020 7981 3000.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.