

Re: Applying Spectrum Pricing to the Maritime and Aeronautical Spectrum

United Airlines appreciates the opportunity to comment on Ofcom's consultation document. The United Kingdom is a vital part of United's global network. United operates twenty-four daily transatlantic flights to and from Heathrow, besides operating forty-six other flights through UK airspace daily. In 2007 United carried 1.3 million passengers to and from Heathrow. United and other commercial carriers provide an essential part of the infrastructure to communities in the UK and are an indispensable engine for the UK's economic growth.

In order to operate safely and efficiently, all airlines throughout the world depend upon radio frequencies which are free of interference and which are allocated by the WRC (World Radio Conference) through international treaties. The UK has failed in this consultation to consider its obligations under these treaties.

The UK Government's spectrum taxation initiative, which is thinly veiled as the Administrative Incentive Pricing (AIP), will do nothing to maintain or improve aviation safety and will not improve spectrum efficiency. It is a tax, nothing more or less, designed to provide additional resources to the Treasury of the UK at a time when airlines are struggling to survive.

Now is the time for the airline users of the already capacity constrained UK airspace to invest in technology required to meet already agreed airspace capacity objectives, and must be given every opportunity to reach the goals of the Single European Sky.

We are also concerned that, contrary to the requirements of the UK Code of Practice on Consultation and Ofcom's own policy, no Impact Assessment has been conducted on this taxation measure to determine its effect upon safety, airspace efficiency and the economic aspects.

We enclose our response to the questions in the Consultation paper, which should be considered as a separate response to others received from the aviation industry.

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?

United Airlines' Response to Question 1:

Ofcom has not followed the Code of Consultation, and has not conducted an Impact Assessment. The UK Government has also failed to even consider International Treaties governing radio spectrum.

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.

United Airlines' Response to Question 2:

The number one priority of aviation is Safety. This would be compromised if aeronautical spectrum is shared. A comprehensive Impact Assessment study would confirm this.

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

United Airlines' Response to Question 3:

Any AIP charges to Air Navigation Service Providers will be passed on to the airspace user, in this case the airlines. There is also a very likely possibility that other States will follow the UK's initiative on AIP, with the resulting charges being passed on once again to all airlines. These charges would be borne by the airlines, and cannot be passed on to passengers because of current economic conditions and the competitive nature of the business.

Question 4 : Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radio-communications 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 radio-communications, or for other uses.

United Airlines' Response to Question 4:

In Europe the VHF communications radio spectrum supports over 10,000 assignments, which is a very valid demonstration of maximising value. Analysis performed by EUROCONTROL suggests that a further 1500 assignments for longer range Area Control and Approach frequencies will be required by 2027. Many of the core areas of Europe do not have enough frequencies to assign today. Also, these assignments substantially exceed the number that were thought to be required when the spectrum was originally allocated.

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

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?

United Airlines' Response to Question 5:

Yes. The gain is unlikely to be great because there is no substantial evidence that the UK economy would benefit from charging AIP to the aviation sector. In fact the reverse scenario is more likely; UK airlines, airlines flying through UK airspace, and airports, would suffer an economic disadvantage from AIP.

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?

United Airlines' Response to Question 6:

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 radio-communications 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?

United Airlines' Response to Question 7:

The Ofcom AIP proposal assumes that the user, in this case aviation, has a choice. But AIP does not present a choice; it is simply a tax. Aviation functions through global interoperability, and is overseen by ICAO (International Civil Aviation Organisation). OfCom's unilateral proposal threatens this interoperability.

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?

United Airlines' Response to Question 8:

No, we do not agree. There should be no fee structure for aeronautical VHF channels, and certainly not before an Impact Assessment study is carried out. The business radio sector is significantly different from the aeronautical sector and its proposed application is inappropriate.

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

United Airlines' Response to Question 9:

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

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

United Airlines' Response to Question 10:

The answer to this question requires information that would be obtained from an Impact Assessment study.

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.

United Airlines' Response to Question 11:

No. For example RADARs have wide-bandwidths, the protection of which against unwanted interference resulting in an impact upon safety would be expensive for users. Again, an Impact Assessment study is required.

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?

United Airlines' Response to Question 12:

No. X-band radar is sensitive to unlicensed UWB transmissions. Therefore any fee would not guarantee protection from interference which could reduce the performance of the radar leading to a reduction in airspace 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?

United Airlines' Response to Question 13:

No. The majority of spectrum used for aeronautical radio-navigation is congested. This situation is not expected to change during the next few 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?

United Airlines' Response to Question 14:

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 which, as outlined in the Cave Audit, is justified by international constraints. The aviation industry has also made great strides in recent years to use spectrum efficiently.
