

Question	Your response
<p>Question 1: Do you agree we have identified the most relevant cost drivers to take account of in our charging approach?</p>	<p>Confidential? – N</p> <p>No. Effective Space takes the view that the important driver which can be characterised broadly as filing ‘size/scope’ has been overlooked by Ofcom.</p> <p>Please see answers to Questions 3 and 4, and detailed comments and proposals at Annex 1.</p>
<p>Question 2: Are there any other factors you consider we should take account of in our charging approach? Please explain why in your response.</p>	<p>Confidential? – N</p> <p>Yes. As indicated at Question 1, Effective Space takes the view that the important factor which can be characterised broadly as filing size/scope’ has been overlooked by Ofcom.</p> <p>Moreover, Effective Space considers that Ofcom’s approach to reconciling fees charged – whereby any over or under-recovery is used to modify the next year’s fees rather than being charged or refunded to the relevant operators – goes against the principle adopted by most government departments that reconcile on a per-company basis.</p> <p>Please see answers to Questions 3 and 4, and detailed comments and proposals at Annex 1.</p>
<p>Question 3: What comments, if any, do you have on our charging options 1-4?</p>	<p>Confidential? – N</p> <p>Noting our response to Questions 1 and 2, Effective Space has the following comments on the various charging options proposed by Ofcom:</p> <ol style="list-style-type: none"> 1. <u>One-off charge per filing</u>: Effective Space strongly disagrees with cost recovery based on a fixed, one-off charge per filing. It puts a heavy loading at the start of the filing process and does not allow for the fact some filings generate a lot more work for Ofcom than others, nor that not all filings proceed to completion. It forces some operators to cross-subsidise the filings of others. 2. <u>Application fee plus flat annual fee per filing</u>: Although marginally better than option 1, Effective Space also disagrees with this approach. By treating all

filings equally, it does not reflect the fact that different filings will result in significantly more work for Ofcom than others. Again, it forces some operators to cross-subsidise the filings of others.

3. Application fee plus annual fee per filing type: Although better than options 1 and 2, Effective Space still has major issues with this approach. It goes some way to addressing the concern that different filing types result in more work for Ofcom, by weighting different classes of ITU filing (API, GSO CR and NGSO CR), but it still fails to capture the fact that within these filing classes there are still likely to be major differences in Ofcom workload depending on the 'size/scope' of each filing within a single class. Again, it forces some operators to cross-subsidise the filings of others and for this reason it is difficult to accept.
4. Hourly Rate: In principle, the use of a fixed hourly rate based on average, fully loaded FTE costs, for actual work done by Ofcom, is the only way to ensure that each operator pays only for work on its own filings, and that there is no cross-subsidy between operators. It is, therefore, the preferred approach of Effective Space. It is acknowledged that it might be somewhat more challenging for Ofcom to implement than the other options, and may generate some increase in costs for all operators due to the additional overhead for Ofcom staff in tracking and recording their time against each operator. However, it is preferred purely from the principle of equitable treatment of all operators, and to avoid any possibility of cross-subsidy between operators (in which small operators are much more likely to cross-subsidise the larger operators than vice versa).

On the basis of the above, Effective Space strongly supports charging approach 4 proposed by Ofcom, i.e. the adoption of Hourly Rate charging, since it is the only one that is fair to all operators and ensures that there is no

	<p>cross-subsidy of one operator by another. If this approach cannot be adopted, then a sub-optimal approach would be an enhanced version of Ofcom's option 3 (see answer to Question 4).</p> <p>Please see detailed comments and proposals at Annex 1.</p>
<p>Question 4: What other charging options, if any, do you believe we should consider?</p>	<p>Confidential? – N</p> <p>As indicated above, Effective Space <u>strongly</u> prefers Ofcom's Option 4 (Hourly Rate) as being the only approach that is fair and equitable to all operators.</p> <p>However, if such an approach cannot be accepted by Ofcom, then Effective Space is of the view that Ofcom should not adopt its preferred approach, Option 3 (Application fee plus annual fee per filing type) without also incorporating the additional driver of filing 'size/scope'. Although there could be various approaches to incorporating filing 'size/scope' in Ofcom's charging methodology, Effective Space is of the view that the 'Total Number of Units' metric as used by ITU in its own cost recovery methodology is the best way to 'scale' fees according to filing 'size/scope' at least for GSO/NGSO systems subject to coordination.</p> <p>Please see detailed comments and proposals at Annex 1.</p>
<p>Question 5: Do you agree that our preferred charging option, option 3, is the best way to meet our objectives? If no, please state your preferred charging option and explain why.</p>	<p>Confidential? – N</p> <p>No, Effective Space does not agree that option 3 is the best way to meet Ofcom's objectives, for reasons explained in the response to Question 3 above, and with the main objection that it fails to address the concern that Ofcom's workload is likely to be substantially different within ITU filing classes, depending on the filing 'size/scope', and therefore inevitably results in the payments from some operators cross-subsidising the work on filings of other operators.</p> <p>Effective Space favours Hourly Charging, Ofcom's Option 4, or sub-optimally its alternative modified version of Option 3, as explained in the response to Question 4.</p>

	<p>Please see detailed comments and proposals at Annex 1.</p>
<p>Question 6: Do you have any comments on our proposed charging approach (as set out above)?</p>	<p>Confidential? – N</p> <p>Please see responses to Questions 1 – 5 as well as detailed comments and proposals at Annex 1.</p>
<p>Question 7: Do you have any comments on our proposals for implementing our charging approach?</p>	<p>Confidential? – N</p> <p>Effective Space broadly supports Ofcom’s proposals for implementing the new charging regime.</p> <p>Effective Space however proposes that Ofcom consider:</p> <ul style="list-style-type: none"> • Publishing on its website a list of all filings under Ofcom management and the applicable Ofcom cost recovery charge associated with each filing. This transparent and open approach (which mirrors a similar open approach adopted by ITU for its cost recovery charges) will ensure that all stakeholders have a high degree of confidence and understanding in Ofcom’s charging regime. • When determining the annual reconciliation and adjustments, publishing its detailed reconciliation and the basis for the proposed adjustment in advance of formal adoption, and allowing stakeholders a short period to review and comment. This will further enhance transparency of, and stakeholder confidence in, the charging regime. • When annual reconciliation and adjustments have been determined, these should be applied to the companies which have been over or under-charged and should not be used to modify the following year’s scale of charges, otherwise companies will receive the benefits of reductions, or will be forced to pay higher fees, based on payments made by others, i.e. there will be a direct cross-subsidy of one company by another, which should be avoided.

	Please see detailed comments and proposals at Annex 1.
Question 8: Do you have any other comments on matters arising from this consultation?	Confidential? – N None.

Annex 1

Effective Space Solutions Ltd. Response to Ofcom Consultation on Satellite Filing Cost Recovery

Additional Information

Charging Drivers

Ofcom’s preferred cost recovery approach, Option 3, allocates different ‘effort weightings’, and hence different annual management fees, for different ITU classes of filings (i.e. non-geostationary API not subject to coordination, geostationary CR/C subject to coordination and non-geostationary CR/C subject to coordination). These weightings, and the resulting proposed charges for 2018/19 are set out by Ofcom in Table 6 of the Ofcom consultation document:

Filing activity/type	Liability incurred	Payment due	Proposed charge (2018/19)
New submission/modification request	On date of request	On date of request	£1800
API filing annual management	1 April annually	Q1 annually (May)	£1800pa
CR/C GSO filing annual management	1 April annually	Q1 annually (May)	£5200pa
CR/C non-GSO filing annual management	1 April annually	Q1 annually (May)	£7800pa
Notification request	On date of request	On date of request	£2300

Effective Space notes that Ofcom does not propose to vary the charges for “new submission/modification request” nor “notification request” based on the ITU filing class.

In section 5.9 of the Ofcom consultation document, Ofcom sets out “the most significant drivers” impacting the Ofcom effort costs:

5.9 We consider that the three most significant drivers of our costs per filing, which account for most of our effort, are:

- Type of filing activity – e.g. filing submission, modification, notification. The activity type directly affects the level of work we are required to perform.
- Filing coordination requirements – e.g. whether the filing requiring coordination (i.e. is following a CRC/C route) is for a GSO non-GSO network /system¹⁹, or requires no coordination at all (i.e. is following an API route). The type of filing and degree of coordination it requires directly affects the level of work we are required to perform.
- Filing period – e.g. the length of filing process, which can take seven (or eight) years (the ITU regulatory period). How long we work on a filing directly affects our workload.

Ofcom further concludes in section 5.10 that “...the complexity of accounting for ... more granular differences in [the] charging approach would be disproportionate.”

Effective Space does not agree with this conclusion. Our view is that Ofcom, in taking this position, has not properly accounted for the fact that there can be huge differences in the ‘size/scope’ of filings falling within a single ITU filing class. Whilst Effective Space, of course, understand that Ofcom seeks to minimise the complexity of any cost recovery regime implemented, we nonetheless believe that it is essential to incorporate this additional driver into the charging mechanism that will eventually be adopted by Ofcom.

The three drivers identified by Ofcom only account for part of the expected variation in Ofcom costs when processing satellite network filings. Although Effective Space does not have access to the detailed breakdown of Ofcom work activities with respect to the processing of filings, the activities undertaken by Ofcom can be understood from Ofcom’s Satellite Filing Procedures document¹ and from a broad understanding of the ITU regulatory processes:

- Initial application or submission of a modification to an existing filing
- Ongoing coordination and ‘protection’ work (IFIC) prior to notification
- Support for and participation in coordination meetings
- Submission of notification
- Ongoing coordination and ‘protection’ work (IFIC) after notification

In general, all these activities will take more time for larger filings and less time for smaller filings. Larger filings will need more technical review (at initial submission and at notification) than smaller filings, will generate more regulatory correspondence (both incoming and outgoing), and will take up significantly larger proportions of coordination meeting time.

Since some satellite filings can be very large indeed, and others falling within the same charging ‘class’ (as per Table 6 above) can be very small, Effective Space is of the view that this filing ‘size/scope’ factor must be a significant driver in defining Ofcom’s approach to determining its charging regime. Failure by Ofcom to include this driver in its methodology will inevitably result in companies making small satellite filings providing cross-subsidy to companies making large filings.

Effective Space is of the view that such cross-subsidies inevitably will mean that small and start-up companies, with modest filing requirements, will be subsidising the filing activities of larger established operators, which cannot be right.

¹ Procedures for the Management of Satellite Filings, Ofcom, 30 March 2016.

Hypothetical Example:

Consider that there are five UK operators, each with two filings. One operator makes large and complex filings that take 50% of Ofcom’s time to process and the other four operators make very simple filings all of which together utilise the remaining 50% of Ofcom’s time. Under all of Ofcom’s approaches except Option 4 (Hourly Rate) the five operators would all pay identical Cost Recovery fees to Ofcom, paying 20% of Ofcom’s total costs each. However, such an approach does not seem reasonable; the one operator with large filings should pay 50% of Ofcom’s costs – since they generate 50% of Ofcom’s work – and the remaining operators should pay the rest, 12.5% each. This would be an equitable approach to Cost Recovery.

Filing ‘Size/Scope’ Driver

As already indicated in this submission, Effective Space believes that the filing ‘size/scope’ should be a critical driver for Ofcom in defining the charging methodology.

The ‘Total Number of Units’ assessed by ITU in its own cost recovery methodology is a broad indicator of the ‘size/scope’ of a coordination request filing. For example, Effective Space’s ESS-HS-SEA filing is compared here to some other (anonymised) coordination request filings of other UK operators published in the past:

CR/C Filing	ITU ‘Number of Units’
ESS-HS-SEA	5
‘Example UK 1’	285
‘Example UK 2’	7332

Under Ofcom’s preferred charging approach, these three filings would all attract the same fee from Ofcom. Nonetheless, it must be the case that the filing with the larger number of ‘Units’ (ITU ‘Units’ correspond broadly to number of beam/frequency/emission/earth-station combinations) will generate significantly more regulatory work for Ofcom than Effective Space’s very small filing.

Ignoring this ‘size/scope’ driver appears to Effective Space to be a major weakness in the preferred charging approach of Ofcom. However, it can be completely overcome by the implementation of a charging regime based on the use of an Hourly Rate, since the relative workload generated by each filing would be automatically scaled into the fee charged.

Additional Aspects Regarding Charging Methodology

It is noted that Ofcom has indicated that it does not plan to charge for ongoing work after notification (to avoid inequity of treatment amongst systems notified prior to and after the

implementation of the new charging regime). Ofcom has also indicated that it does not intend to charge directly/proportionally for costs associated with IFIC work nor for supporting and participating in coordination meetings, but rather to 'allow' for these costs in setting 'per filing' fees (as per Table 6 referenced above).

Effective Space takes the view that Ofcom should not apportion any of its chargeable work to a 'pool' to be shared equally amongst all filings. Such work will inevitably be undertaken with more benefit for some operators than others, and sharing these costs equally once again results in operators having small filings subsidising operators having large filings.

These issues can be overcome by the implementation of a charging regime based on the use of an Hourly Rate.

Preferred Charging Approach

As already indicated, Effective Space concludes that Ofcom's proposed charging methodologies 1, 2 and 3 all have some significant weaknesses, and none take into account the critical driver of filing 'size/scope'.

On this basis Effective Space has concluded that the only supportable charging approach is Ofcom's Approach 4, Hourly Rate.

Whilst it is acknowledged that the use of Hourly Rate charging is not the most straightforward of the options for Ofcom to implement, nonetheless, the benefits of this approach clearly outweigh the disadvantages, since this approach is the only one that ensures that each operator pays only for work done by Ofcom in support of that operator's satellite filings.

All other approaches proposed by Ofcom inevitably result in unacceptable cross-subsidy from companies making smaller filings to companies making larger filings. Since the smaller filings are, in the main, made by smaller (often start-up) companies, whereas the larger more complex filings are, in the main, made by larger, established companies, approaches other than Hourly Rate can also lead to smaller companies cross-subsidising the larger ones, which again is unreasonable and unacceptable.

Alternative (Although Sub-Optimal) Charging Approach

Whilst Effective Space strongly encourages Ofcom to adopt charging based on Hourly Rate, in the event that Ofcom is unable to accept this approach, Effective Space urges Ofcom not to adopt its preferred approach #3 (Application fee plus annual fee per filing type) unless that approach is modified to scale fees according to the important driver of filing 'size/scope' as indicated above.

Effective Space proposes that the most straightforward way of implementing such a scaling would be, for filings subject to coordination at least, to utilise the 'Total Number of Units' metric assessed by ITU in its own cost recovery methodology.

Whilst 'number of units' is not a perfect metric, it does at least represent a broad numerical indicator of the 'size/scope' of a filing.

Ofcom could, for example, modify its cost recovery Approach #3 for a filing subject to coordination by taking a flat fee part (e.g. to represent the absolute 'fixed' element of processing any filing – to ensure compliance with the UK domestic 'due diligence' requirements under Ofcom's satellite filing procedures for example) and a 'per unit' fee on top of that (using the number of units published by ITU in the relevant Special Section). The flat fee and 'per unit' fee would be established to ensure that the total amount collected would cover Ofcom's actual costs.

A similar approach could be adopted for filings not subject to coordination where Ofcom could generate a metric similar to ITU's formal 'number of units' by counting equivalent 'units' in the relevant API submission (noting that ITU does not publish a 'unit' count for APIs not subject to coordination).

Effective Space considers such an approach sub-optimal as compared to an approach based on an Hourly Rate, it nonetheless ensures that the broad filing 'size/scope' is taken into account in setting fees and goes some way to avoiding cross-subsidy between operators.

Reconciliation and Adjustments

Ofcom has indicated that it is prohibited by legislation from doing anything more than covering its actual costs within its charging regime (i.e. it is not permitted to make a 'profit' nor a 'loss'). Therefore, Ofcom is obliged to make an annual reconciliation of its fees and to make an adjustment where too much, or too little, has been collected.

Effective Space is concerned that Ofcom is not proposing to make the necessary adjustment in the financial year for which the adjustment is determined (i.e. Ofcom will not make refunds on invoices already paid in excess, nor request a 'top-up' payment on invoices which did not fully cover costs). Instead Ofcom is proposing to use the determined adjustment figure from one year to increase or reduce the fees paid by all operators in the following year.

This means that the benefit or cost of an adjustment will not be felt by the operators that made the under or over-payment, but will be used to affect the charging rates of all operators.

This could lead to a situation where, by way of an example, if there were significant overcharging in one year, resulting in a commensurately significant reduction in fees in the next year, then operators would be encouraged to make many additional filings in the next year, since they are effectively being subsidised by the overpayments made by others in the previous year.

Such an approach does not seem to Effective Space to be fair and reasonable. Effective Space understands that many UK government departments that charge for administrative expenses do so on a per company basis will then reconcile an overpayment to the particular company having made the overpayment.

Effective Space strongly encourages Ofcom to adopt a similar approach and, for reasons of equity and fairness, ensure that over or under payments are reconciled to the companies directly responsible, and not 'pooled' amongst all operators through an adjustment of the following year's fees, so as to avoid yet another cross-subsidy.