RESPONSE TO THE OFCOM COMSULTATION ENTITLED "APPLYING SPECTRUM PRICING TO THE AERONAUTICAL SECTOR" SUBMITTED ON BEHALF OF THE AERONAUTICAL SPECTRUM FREQUENCY CONSULTATION GROUP

BACKGROUND

Aeronautical Spectrum Frequency Consultation Group

The independent Aeronautical Spectrum Frequency Consultation Group (ASFCG) was established by Eurocontrol and ICAO(EUR) and includes Member States, European Commission, ICAO, Eurocontrol Agency, IATA, NATO, Air Navigation Service Providers, and other stakeholders. The ASFCG develops the European Common Aeronautical Position for WRC and is currently engaged in updating the European Spectrum Strategy. In addition, the ASFCG contributes to the SESAR Spectrum work stream.

International Civil Aviation Organisation (ICAO)

ICAO is a Specialised Agency of the United Nations (UN) and is the global forum for civil aviation. The constitution of ICAO is the Convention on International Civil Aviation, drawn up by a conference in Chicago in November and December 1944, and to which each ICAO Contracting State is a party. The Chicago Convention has international treaty status. There are currently 190 Contracting States, including the UK.

ICAO's mandate is to ensure the safe, efficient and orderly evolution of international civil aviation. One of the key responsibilities of ICAO is the development and maintenance of standards, known as Standards and Recommended Practices (SARPS). SARPS cover all technical and operational aspects of international civil aviation, such as safety, personnel licensing, operation of aircraft, aerodromes, air traffic services, accident investigation and the environment. Once adopted by the Council of ICAO, SARPS are incorporated as Annexes to the Convention

Eurocontrol

EUROCONTROL is the European Organisation for the Safety of Air Navigation. Created in 1963 by six founding members, this civil and military intergovernmental organisation now counts 38 Member States from across Europe.

It ensures that airspace users and passengers benefit from a safe, expeditious and efficient air transport system in Europe. This is done together with its Member States, air navigation service providers, civil and military airspace users, airports, the aerospace industry, international organisations and the European institutions.

Activities span the entire range of air navigation service operations - from strategic and tactical flow management to controller training; from regional control of airspace to development of leading edge, safety-proofed technologies and procedures, and the collection of air navigation charges

INTRODUCTION

This response has been developed by the ASFCG and takes into account inputs received from the Eurocontrol Stakeholders Consultation Group (SCG) and the Military ATM Board (MAB).

General comments on principles are included below followed by answers to the specific Ofcom questions. Any lack of comment on other issues raised by Ofcom within the document should not be construed as agreement.

GENERAL COMMENTS

In the ASFCG response to the 2008 consultation concerning the proposals for AIP to be applied to aeronautical spectrum generally, information was provided on how aeronautical spectrum was managed and used. These comments remain pertinent to this second consultation and the proposals concerning the aeronautical VHF bands.

First of all it is appropriate to reiterate that nowhere is the need for efficiency in spectrum use to meet current and future demand more keenly understood than in aviation. For the last ten years, the international aviation community has been addressing issues concerning future communications requirements and the supporting spectrum availability. This is evidenced by the significant work being undertaken to:

- Audit spectrum use,
- Identify future requirements so that the demand for communications can be appropriately planned,
- Introduce improved tools to help plan, coordinate and manage frequencies,
- Progress the research, development and regulatory instruments associated with introducing new technologies which bring improvements in spectrum efficiency.

To add detail to this, audit work has been carried out across the core European States to ensure a full understanding of VHF frequency usage and to identify data errors and inconsistencies. This work has proved useful in validating the data sets, which are essential to the efficient use of frequency management tools. Although the audit did not identify major discrepancies or savings, it has provided credibility and integrity to how aeronautical spectrum is managed. In addition, aviation recognises the need for best practise in how frequency management is exercised, not only to be efficient, but far more critically, to ensure that safety and operational requirements are met consistent with regulatory standards. To this end, appropriate tools and processes have been introduced within the European region to deliver this. However, further work is also in development to introduce additional enhancements to the processes, which are supported by EC legislation.

This work, coupled with future demand studies to validate requirements, supports major programmes to introduce new technologies, including the expansion of 8.33kHz channel spacing and the Future Communications System, which are aimed at meeting increased demand whilst avoiding the need for additional spectrum.

Although States exercise their national authority to an extent in relation to spectrum and frequency management, they do so within an international context. This is necessary to ensure international regulatory compliance, but also to discharge international obligations in respect of providing the essential protection to prevent harmful interference. In addition, the States fully participate in international programmes, such as SESII and SESAR, which are aimed at presenting a collaborative, cooperative and cohesive approach to operations and meeting the requirements of aviation in Europe.

It is against this background that the credibility of the Ofcom proposals to apply AIP to aeronautical VHF spectrum must be considered. The consultation document appears to be based on a perception that excessive demand, and thus the resulting scarcity, for VHF frequencies, can be more effectively managed by using pricing as the means of controlling the demand. This approach does not recognise that the demand for frequencies originates from the need to provide the necessary aeronautical communications services to meet safe and efficient operational requirements. These requirements are subject to scrutiny at both national and international level within a coordinated and harmonised infrastructure. As a result, there is no opportunity for the users to change their behaviours in frequency use in response to price.

Furthermore, given the international nature of aeronautical spectrum management and the considerable activity described above which is aimed at enhancing spectrum efficiency whilst meeting new Air Traffic Management (ATM) concepts, the proposal to take such action at purely a national level lacks credibility. The imposition of such an approach in the UK will not influence how aviation manages spectrum neither within the UK nor across the region. It ultimately serves to be divisive and undermines the ability to deliver a coordinated and harmonised response to Europe's future aviation strategy.

From this perspective, the ASFCG notes with some concern that Ofcom appears to be proposing different arrangements for the management of VHF in comparison to proposals contained in the Maritime Consultation published in August 2009. That document appeared to indicate that there was benefit in the UK Government exercising greater involvement in Transport Sector Spectrum Management through the transfer of responsibility to the Department for Transport (DfT). This seems entirely logical and consistent as it is the UK Government that leads on the national commitment to the European SES programme and other international agreements and obligations. However, this proposal to treat VHF differently by applying AIP as the management tool does not appear to be a valid proposal. Specifically, it will not deliver the benefits on which the case is made as it is not the price of the frequency that will drive the priorities, but the undisputable need for mobile communication for Air Traffic Services.

A further concern is that the use of economic mechanisms to influence the use of a scarce resource, which is a fundamental component of the aviation infrastructure, may have a consequential impact on safety. Whilst this may be unintended, it could result in additional regulatory burdens and does not reflect well on establishing a cohesive and cross-sector regulatory approach.

As these proposals will also impact on military organisations, which are also represented within the ASFCG, it is appropriate to address the concerns expressed by the MAB. The MAB is an advisory committee to the Director-General of Eurocontrol and is composed of the Military ATM Directors from Member States. Modern military communications utilise the VHF spectrum to ensure civil-military

interoperability, mission effectiveness, safety and adherence to both military and international requirements. Military budgets are constantly under pressure and even more so at the current time; putting aside the prospect of a State “taxing” a State organisation (in effect a budget reduction), AIP for aeronautical spectrum risks a reduction in military frequencies, and in turn, operational readiness and capability, if instituted without appropriate controls. Whilst it is a nation’s decision to charge its own State entities for spectrum use, MAB believes this to be undesirable. If AIP is instituted unilaterally, provision should be made for guest national forces (training, exercises and operations) to have access to the radio spectrum, free-of-charge, taking en-route charging as a precedent i.e. costs should be dealt with by host nations. If military authorities voice their intent to profit from one another by charging for access to the radio spectrum, decisions may have to be taken, with respect to operations and training, which would be detrimental to the practice of Common Defence and could be detrimental to sovereign defence.

In summary, having given careful consideration to the Ofcom proposals the ASFCG finds the proposals are flawed and will not deliver the benefits claimed. In addition, the proposals are considered to be inappropriate for an international environment where cooperative programmes and regulatory approaches are far more likely to achieve spectrum efficiency benefits across the whole region rather than an isolated approach within a single member State.

22 April 2010

ANNEX

RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

Q1. Do you consider that our proposed fee rates for licenses in the aeronautical VHF frequencies are appropriate?

A. No. The ASFCG believes that the AIP proposals will not deliver the benefits claimed. As considerable activity is being pursued within Europe that will address the issues related to the scarcity of spectrum, supported by a coordinated and harmonised programme with a legislative and regulatory framework, these AIP proposals at a purely national level are inappropriate.

Q2. In devising our revised proposals, have we identified all of the aeronautical uses of VHF communications frequencies which require a distinct approach to fee setting, as set out in tables 5 and 6?

A. Yes.

Q3. Do you agree with our proposal not to charge any fees for Fire assignments?

A. Yes

Q4 Do you agree with our proposal to set a £75 fee for assignments in any of the sporting frequencies?

A. As the proposal in its entirety is considered inappropriate, no.

Q5. Do you agree with our proposal to set an annual fee of £9900 and £19800 per channel respectively for ACARS or VDL assignments, with no relation to the number of transmitters used in such channels?

A. No as this appears to penalise the use of a more efficient communications medium.

Q6. Do you consider that our proposed general approach to phasing in fees for use of the aeronautical VHF communications channels are appropriate? If there are

particular reasons why you consider that any user or group of users would need longer phasing-in periods, please provide any supporting evidence for us to consider. Specifically, do you have any evidence for us to consider that would support either of Options 1 or 2 for the highest proposed fee in this sector?

A. The phasing proposals are reasonable but this does not detract from the view that the entire proposal is not considered appropriate.

Q7. Do you have any further quantified information to contribute to the analysis of financial impacts of the proposed fees on particular spectrum users, as set out in Annex 5?

A. Individual stakeholders are best placed to provide comment, as they will be able to assess how the proposals will directly impact on their business.

Q8. Do you consider our assessment of the impacts of our proposals have taken full account of relevant factors? If you consider that there is additional evidence that would indicate particular impacts we should take into account, we would be grateful if you could provide this.

A. No – they fail to recognise that the application of AIP in a single state cannot influence a change in aeronautical spectrum management across Europe. The efficient management of this scarce resource is already being comprehensively addressed through a range of coordinated and harmonised programmes and measures.