

26 April 2010

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3:05  
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**bmi**

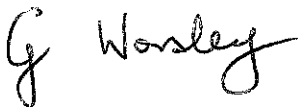
Dear Sir

**Applying spectrum pricing to the Aeronautical sector - A second consultation**

Please find attached the bmi response to the second consultation for Applying spectrum pricing to the Aeronautical sector.

Should you have any further questions, or issues you wish to raise please contact me.

Yours faithfully



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## bmi response to the Second Ofcom Consultation on Applying spectrum pricing to the Aeronautical Sector

bmi welcome the opportunity to respond to the second Ofcom consultation on Applying spectrum pricing to the Aeronautical sector.

bmi believe that that the latest consultation does not provide sufficient evidence, or take due account, that:-

- a. Spectrum pricing will lead to a change in behaviour,
- b. Implementation on a national level will have any impact on efficiency due to the international regulatory nature of the current assignment processes, co-ordination, and harmonisation of aviation VHF Spectrum.
- c. There is an unsatisfied demand for frequencies in the UK, and as such that the current processes are inefficient.
- d. A considerable amount of work is being put in at a co-ordinated international level to address many of the issues raised by the Cave Report to define future requirements, and develop strategies for meeting demand. This includes factors such as the 8.33Khz implementing rule under the SES Regulations to extend 8.33Khz spacing below FL195.
- e. In terms of 8.33Khz spacing bmi have invested in ensuring all aircraft meet international requirements for the carriage of 8.33Khz spaced equipment in the appropriate airspace, and as such would ultimately be asked to pay for spectrum pricing over which they have no control.

As such bmi believe the proposal is inappropriate, will not have the desired effect, and is merely a further tax which will ultimately fall on the airline community, which is already the subject of numerous calls for tax revenues.

The bmi view is based in more detail on the following:-

Aviation VHF Spectrum is allocated, co-ordinated, harmonised, and managed within a national and international framework to which the UK is a signatory. In the UK such frequencies are managed and assigned by the CAA.

The VHF spectrum is managed to provide safety, improve efficiency, and co-ordinate airspace operations across international boundaries. As such spectrum allocation is subject to an agreed regulatory process, and it therefore follows that:-

- 1) The airline community, who would ultimately be asked to pay for spectrum pricing, have little or no control over this process. bmi have invested in ensuring that aircraft are equipped to meet the regulatory requirements.
- 2) The regulatory nature of the approach leads to little or no room for spectrum pricing to change behaviours in that service providers such as NATS are under a regulatory requirement to provide facilities to ensure safe operation, and as such spectrum pricing gives no additional benefits or efficiencies.

The Ofcom consultation document suggests that spectrum pricing will be used to drive efficiencies in the use of VHF Spectrum, however, it is our belief that:-

- 1) Within the UK there are no unused or unallocated frequencies, but neither are there any unsatisfied requirements.
- 2) Further, that demand for VHF frequencies is unlikely to grow at the same rate as over the last ten years. Although current plans under SESAR do not include any technological developments to reduce bandwidth, alternative methods of communication such as datalink are expected to bring reductions in VHF Spectrum use.
- 3) If the proposed fees are aimed at incentivising the use of 8.33Khz spacing, it should be noted that European states are currently in the process of preparing a revision

to the 8.33Khz Implementing Rule under the SES regulations to extend such spacing below FL195. As bmi has already invested in 8.33Khz equipment on board aircraft we believe:-

- a. AIP will have provide no benefit in this area due to the current proposals, and
- b. we will effectively be penalised for no gain through a flawed process.

Further, based on the evidence above, and point 5.19 of the Ofcom consultation which states "if there is not [excess demand from other aviation users] then the opportunity cost to alternative aviation users is effectively zero...in any bands where this was the case. AIP could only be imposed on the basis of an opportunity cost to alternative users. If there is judged to be no prospect of alternative use to due to international restrictions...then the opportunity cost of the spectrum for alternative use should be judged to be zero."

bmi also have some concerns that safety may be adversely affected by the implementation of VHF spectrum pricing. Outside controlled airspace General Aviation, military and some commercial operations make use of VHF on a voluntary basis - this heightens safety awareness. Should this voluntary use cease then safety awareness may be adversely affected. Should some operators cease using VHF this may have no benefit as other users would continue with its use. Even, if the frequency were relinquished it would be subject to international allocation, and again there would be no benefit from AIP.

bmi also have some concerns that the Ofcom proposal for the maritime sector sought to involve the Government - the DfT - in a strategic management role for radar and radio navigation spectrum has not been extended to the Aeronautical VHF Spectrum. The basis for this included its obligations under international requirements; its specific expertise and ability to coordinate with all parties, and it seems illogical that Aviation VHF Spectrum should be treated differently. Therefore, we believe all Communications, Navigation and Surveillance spectrum should be brought into this area, and as such there is no requirement for AIP.

All the evidence suggests that due to the international nature of spectrum management, and with no unsatisfied requirements that there is not a proven benefit case for the introduction of AIP, and that it would not drive any change in behaviours due to the international nature of the issue and the regulatory requirements.

Further we find it quite extraordinary that the original arguments for AIP were based on the opportunity cost to other users, and that the arguments have shown that there is no opportunity cost as there are no benefits (refer back to point 5.19 quoted above.), and that these have now shifted to an argument based on the fact that airlines pay for other infrastructure, and that spectrum should not be different. The key point is that in our daily operation we have some control over what infrastructure we use, with Spectrum we do not.

In conclusion bmi believe there is no benefit or opportunity cost at all from applying spectrum pricing within the UK, and as such it is just a further tax on the community.

Our answers to the specific questions are as follows:-

*Question 1: Do you consider that our proposed fee rates for licences in the Aeronautical VHF frequencies are appropriate?*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate irrespective of the level of fees.

*Question 2: 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?*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate irrespective of the level of fees.

*Question 3: Do you agree with our proposal not to charge any fees for fire assignments?*

We do not believe AIP should apply to any user as per our previous responses.

*Question 4: Do you agree with our proposal to set a £75 fee for licences in any of the sporting frequencies?*

No comment

*Question 5: Do you agree with our proposal to set an annual fee of £19800 per ACARS or VDL, with no variation to the number of transmitters?*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate on aeronautical VHF channels including those used by ACARS or VDL irrespective of the level of fees. Further, in view of the greater moves to ACARS or VDL to reduce the reliance on voice communications this is counter to current thinking.

*Question 6: 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 and 2 for the highest proposed fee in this sector?*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate irrespective of the level of fees.

*Question 7: 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? We would like to publish all responses, but will respect the confidentiality of any material which is clearly marked as such.*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate. Therefore, we believe the proposed imposition of fees are costs with no benefit.

*Question 8: Do you consider that our assessment of the impacts of our proposals has 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.*

bmi believe that the case for spectrum pricing has no evidence and no significant basis in fact, and as such that the implementation is not appropriate as there are no benefits. We believe it would essentially be an extra tax. Strategic management of VHF spectrum should be given to the DfT for a consistent approach in line with radio and aeronautical radio navigation aids.