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Industry view on Ofcom's second consultation on AIP

Introduction

1. The CBI welcomes the opportunity to respond to Ofcom's second consultation on the approach to spectrum pricing for maritime and aeronautical sectors. This paper is a joint response to Ofcom's consultations on 'Applying spectrum pricing to the maritime sector, and new arrangements for the management of spectrum used for radar and aeronautical navigation aids' and the subsequent 'Applying spectrum pricing to the Aeronautical sector: a second consultation'. Our comments on these consultations address spectrum efficiency issues that are common to both the maritime and aviation industries.
2. Aviation and maritime sectors are crucial to the UK's growth and employment, which makes regulation affecting these issues particularly relevant for the future UK competitiveness. In 2009 the aviation industry employed 141,000 people directly and up to 234,000 when indirect employment through supply chains is also considered (equivalent to 0.85% of UK employment). The industry also contributes almost £5bn of revenue to the Exchequer and it generates £8.8bn, or 0.7% of GVA, for the UK economy.¹
3. Both maritime and aviation industries are also crucial for international trade. 95% of the UK's international trade imports and exports are carried out through UK ports. Aviation facilitates connectivity and enhances trade with the fast-growing Asian markets, and it is a key element to attract and retain foreign investment. In a survey carried out by Oxford Economics in 2006, one in four UK businesses reported that access to air services was important in determining where they located their operations in the UK.
4. Specifically, in this paper we argue that:
 - We reiterate that for internationally allocated spectrum pricing will not lead to efficiency gains.
 - Where Ofcom is proposing charges to address efficiency issues, we are still unclear about what specific 'congestion' issues Ofcom is trying to address with these proposals. Ofcom has not yet defined clearly how congestion is measured or how pricing will increase efficiencies in the use of spectrum.
 - We note that industry has suggested an alternative approach to address congestion issues based on more direct management by the DfT. We urge Ofcom to maintain a constructive dialogue with industry to find suitable ways to meet the regulator's objectives.

¹ Oxera (2009) *What is the contribution of aviation to the UK economy?*

<http://www.oxera.com/cmsDocuments/Oxera%20final%20report%20for%20AOA.pdf>

Charging for internationally allocated spectrum will not lead to behavioural changes in the use of spectrum

5. In 2009 Ofcom consulted on new proposals to apply administered incentive pricing (AIP) to spectrum used in maritime and aeronautical sectors. In this consultation, the regulator proposed to apply incentive pricing for both domestic and internationally allocated spectrum.
6. In response to this consultation the CBI and key stakeholders that argued that introducing spectrum pricing would not lead to efficiency gains where spectrum is allocated via international agreements as industry's ability to alter its use is constrained. Our conclusions were supported by findings of the 2005 Cave Audit of spectrum, which noted that pricing would not be effective where the opportunity cost for alternative use of spectrum is judged to be zero.
7. Ofcom has subsequently recognised that for internationally allocated spectrum bands a price mechanism will not influence on users' behaviour. Spectrum pricing will be introduced for domestically allocated spectrum and rejected in all internationally allocated spectrum bands with the exception of the aeronautical and maritime VHF bands still under consideration.
8. We welcome Ofcom's recognition of the constraints on behavioural change for internationally allocated spectrum and accept that for domestically allocated spectrum pricing may result in efficiency gains. However, the CBI believes that some of the proposals made by industry during the first consultation have not been given due consideration.
9. Specifically, Ofcom still proposes that AIP should be introduced in eight bands of internationally allocated VHF spectrum where it considers that demand exceeds supply (i.e. where there is 'congestion' in the use of existing spectrum) even when international agreements limit the capacity to use any released spectrum to mitigate an excess of demand elsewhere in the short or medium term.
10. The regulator notes that where users are faced with choice, AIP would incentivise them to migrate from congested to less congested channels (p. 28). Some users may choose "fewer or different channels or less powerful or alternatively located transmitters which have a more localised impact" (pg51). However, Ofcom also points at the fact that regulation of the spectrum used by the maritime sector limits choice in the use of spectrum, and that only marginal changes are likely to take place.
11. Finally, Ofcom has argued that congestion is a prime driver for the introduction of AIP in these channels –but it has not yet clarified how is congestion defined or measured, and what changes in behaviour will be achieved by these proposals. In response to the two consultations carried out by Ofcom, industry has reported that spectrum charging will not resolve this issue. We would welcome further clarification from the regulator on how is congestion measured and what purpose the newly released spectrum will be put to.

A 'manage, not charge' approach could yield greater efficiencies in the use of spectrum

12. The complexities of international agreements make a pure charging model problematic. In our previous submission we urged Ofcom to follow the example of countries like the Netherlands, which has explicitly rejected charging aviation and maritime users for spectrum on the basis of the international nature of agreements. The DGTP (Directorate General Telecommunications and Post) in the Netherlands formulates telecommunications policy, reaches national and international agreements and designates frequency rights. The regulator is also in charge of guaranteeing the reliability and safety of telecommunication systems. The CBI notes industry claims for a strategic management of spectrum as an alternative that could lead to greater efficiency gains.
13. The CBI believes that not enough consideration has been given to alternative mechanisms to improve efficiency in spectrum management. Industry has argued that there would be value in developing an integrated approach to the management of spectrum allocation, carried out by the DfT and appropriately resourced. Ongoing dialogue with Ofcom has indicated a reluctance to actively manage the VHF spectrum. The second consultation on spectrum pricing for the aeronautical sector explicitly reflects this approach, judging that 'in the context of aeronautical VHF communications, fees applied directly to end users are likely to be more effective in driving spectrum efficiency changes' (pg 6). No further assessment or explanation is given on the reasons to choose one approach over another.
14. Dialogue with industry is essential to identify and address any potential spectrum inefficiencies in the maritime and aeronautical sectors. The CBI believes that this dialogue has been insufficient during the assessment and consultation of the new proposals for spectrum pricing, as evidenced when irregularities in the consultation process were not communicated to stakeholders. In line with better regulation principles, we urge Ofcom to maintain a constructive dialogue with industry to determine how best to achieve the aim of greater efficiency in spectrum use for maritime and aeronautical sectors.