



Ofcom consultation: Applying spectrum pricing to the aeronautical sector – a second consultation.

Response by ICAO

21 April 2010

ICAO is concerned that Administered Incentive Pricing (AIP), if applied to the use of aeronautical VHF communications frequencies in the band 117.975 to 137 MHz, may have negative impact on the overall safety of aviation. The business case provided in the Consultation for AIP in the VHF band appears unconvincing, and the argumentation that an aviation safety regulator can ensure that necessary requirements are met, appears flawed. When increasing the cost of essential safety services through AIP or any other means, pressures on cutting cost will always play a role.

1. Background

ICAO is the specialized agency of the United Nations for civil aviation matters. The main principles and objectives of ICAO are set forth in the Chicago Convention. In accordance with Article 37 of the Convention, ICAO develops Standards and Recommended Practices (SARPs) for the purpose of ensuring the safety and regularity of air navigation.

The UK is a signatory of the Chicago Convention and has an obligation to provide safe air traffic management in UK airspace for international air traffic, in accordance with Article 28 of the Convention.

2. Discussion - The Aeronautical VHF Spectrum Resource

Aviation spectrum for the *safety and regularity of flights* (AM(R)S, AMS(R)S and ARNS), including the frequency band 117.975 to 137 MHz, is allocated on an international basis by World Radiocommunication Conferences whose outcomes are signed by States, including the UK, and have treaty status. This is a crucial enabler for international standardisation of aeronautical equipment and services, and an essential facilitator for safety as well as global interoperability of the aeronautical communication services.

Aeronautical equipment and services are globally standardised through ICAO SARPs contained in the Annexes to the Convention on International Civil Aviation, and to which the UK has an obligation to comply with as a signatory body.

AIP, if applied as a cost steering mechanism to the access of aviation safety spectrum, is likely to have a negative safety impact through a reduced level of service being provided. This remains true even when taking into consideration the role of the UK CAA or any other safety organisation, economical pressures will always focus on cutting cost and maximising gains.

Civil Aviation is a highly safety conscious industry, any risk to safe operations could result in a necessary modification to operations to offset such risk. Therefore, one potential impact of reduced spectrum access due to AIP could be flight delays and less fuel efficient routes, as a result of decreased access to air traffic control and airlines operational control (engine maintenance data, flight plans) communications in a timely manner.

ICAO Policies on Charges for Airports and Air Navigation Services (Doc 9082) give the guidance that "...charges should not be imposed in such a way as to discourage the use of facilities and services necessary for safety or the introduction of new aids and techniques..."

In addition, international obligations governing the use of the aeronautical frequency spectrum both through the ITU WRC and ICAO processes would appear to make it impossible to allocate the spectrum on a national basis to non-aeronautical services as this would seriously jeopardize the safety of international civil aviation. This diminishes the opportunity cost of the spectrum in question, thereby rendering the whole notion of AIP applicability and efficiency in the aeronautical frequency spectrum invalid.

Also there is the danger that the AIP approach, when potentially used in relation with the ITU Radio Regulations, RR. 4.4, may in the medium to long term cause disharmonisation of spectrum allocations across national boundaries, thus creating inadvertent but serious safety concerns.

Consultation Questions

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

- ICAO response: ICAO is concerned that any use of AIP in any band allocated to *safety and regularity of flights* may have a negative safety impact on aviation.

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?

- ICAO response: ICAO is concerned that any use of AIP in any band allocated to *safety and regularity of flights* may have a negative safety impact on aviation.

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

- ICAO response: ICAO is of the view that AIP may have a negative impact on the safety of aviation, both if applied for air traffic safety services as well as for emergency services.

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

- ICAO response: No comment

Question 5: Do you agree with our proposal to set an annual fee of £19,800 per ACARS or VDL assignment, with no variation related to the number of transmitters?

- This question differs from Question 5 as stated in paragraph 7.18 of the consultation that reads: *Do you agree with our proposal to set an annual fees of £9,900 and £19,800 per channel respectively for ACARS or VDL assignments, with no variation related to the number of transmitters used in such channels?*
- ICAO response: ICAO is concerned that any use of AIP in any band allocated to *safety and regularity of flights* may have a negative safety impact on aviation. Costing ACARS lower than VDL appears inverse to the logic of AIP.

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?

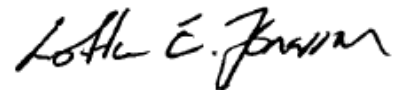
- ICAO response: ICAO is concerned that any use of AIP in any band allocated to *safety and regularity of flights* may have a negative safety impact on aviation.

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.

- ICAO response: No quantified response.

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.

- ICAO response: ICAO is concerned that if AIP is applied as a cost steering mechanism to aviation safety spectrum, it is likely to have a negative safety impact. Regardless of the safety role of a regulator, economical pressures will affect any safety related decision. Also there is danger that the AIP approach may in the medium to long term cause disharmonisation of spectrum allocations across national boundaries, thus creating inadvertent but serious safety concerns.



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