

CONSULTATION – SPECTRUM FRAMEWORK REVIEW: THE PUBLIC SECTOR

We are grateful for the opportunity to comment on the Spectrum Framework Review: The Public Sector document. Comments on the specific questions posed within the consultation document are annexed.

The United Kingdom Major Ports Group (UKMPG) and the British Ports Association (BPA) together represent the views of the vast majority of ports in the UK. Our prime concern is that the proposals in the Spectrum Framework Review could impact directly on maritime safety and conflict with the recently introduced code of practice enshrined in the Department for Transport's "Port Marine safety Code" which identifies a risk based strategy for the safety and management of port operations. We understand that the Maritime and Coastguard Agency and the Chamber of Shipping will also be registering safety concerns.

Whilst the consultation indicates that it relates to the public sector, the issues raised will have a more far-reaching impact.

The lack of detail on possible financial mechanisms and charging criteria remain a cause for concern. Specifically, the proposal to link a charging regime to population density could have serious consequences for port and maritime operations in more highly populated areas of the country and lead to a distortion of competition in the sector.

Spectrum Framework Review: the Public Sector Responses to Questions Posed

Question 1: Do you agree with Ofcom's proposed overall approach to improving the management of public sector spectrum holdings and, in particular, with Ofcom's conclusion that it will generally be preferable for public sector bodies to interact directly with the market?

In response to earlier consultation and in discussions with Ofcom, we have made it very clear that there is one significant recommendation within the Cave Report that does not appear to have been carried forward into subsequent work namely, that only administrative costs should be considered where safety and international agreements preclude the use of incentive charging to improve efficiency. Whilst we are fully in support of the drive for more efficient use of the available spectrum, the simplistic application of a market-based framework, applied across the board, does not recognise that:

- a. The spectrum under consideration and used by the maritime sector is governed by international agreements. Any changes should be based on the need for international negotiation and not market forces.
- b. The maritime use of the spectrum under consideration is clearly safety related
- c. A policy based on greatest benefit derived market forces does not recognise the fact that safety and security is not a marketable commodity

that can be traded in the same manner as commercial activities such as the mobile phone/fixed link sector. Valuing spectrum in simple financial terms does not allow for a realistic assessment of the “value” of safety

- d. Ofcom have publicly stated that, where incentives do not result, then the imposition of opportunity costs through AIP is not appropriate.

These issues must be reviewed before proposals for the overall management of the spectrum can be agreed and, thus we do not support this view until such a review has been conducted.

Question 2: What factors do you consider Ofcom should take into account in determining the programme of reform in the framework for managing public sector spectrum holdings?

All factors should be considered through a risk-based process involving appropriate stakeholders. Factors should include:

- a. Safety
- b. International agreements
- c. An assessment on qualification for an “administrative only” charging regime.
- d. Security
- e. National Trade
- f. Existing and developing maritime policy.
- g. Provision for future maritime developments i.e. e-Navigation
- h. Environment
- i. Unintended consequences

Question 3: Do you consider that the proposals should be phased in?

The introduction of any such policy whether market based or not should be realistically assessed for each sector independently. It should not be driven by financial targets, recognising that the declared aim of AIP is that its introduction is solely to influence the more efficient use of the available spectrum. Where international agreements are involved, full benefit will only result through recognition of the fact that the lead-time to implementation may take many years not only to allow for international negotiation but in recognition of the resulting equipment changes. This demands a phased approach and a long term schedule. Short-term opportunism will negate the very real opportunity for the UK to take an international lead in influencing a long term and much needed improvement in the management of the maritime spectrum.

Question 4: Do you agree with Ofcom’s proposals about the frequency bands that offer the greatest potential benefits from band sharing? Are there other frequency bands where the facility to trade or lease spectrum from public sector bodies would be particularly attractive?

We understand that band sharing in this context includes the broader concepts of separation by frequency management and separation by geographical location as well as frequency sharing through emerging technologies.

We accept that it is for the regulators to assess the frequencies that may offer commercial benefit. However, before spectrum is reassigned or considered for sharing, full risk-based consideration must be given to the protection of safety related frequencies that are driven by international agreements. Allowance must also be made for potential future developments to avoid difficulties such as those experienced in the USA through the national reallocation of marine frequencies to other commercial users that were subsequently established internationally as the two designated frequencies for AIS.

Question 5: Do you agree with Ofcom's proposed approach to awarding public sector licences and RSA?

We have reservations on this proposal in view of the limited detail offered. In the maritime context, the diagram suggests that the MCA or maritime administrator would, de facto, become a trader in maritime spectrum whilst, at the same time, holding responsibility for upholding maritime standards; this would represent a potential conflict of interests. We would wish to see greater protection of our interests than that indicated in the consultation document, particularly where safety may be involved.

Question 6: Should public sector spectrum trading be introduced at this stage in the Channel Islands and Isle of Man?

This question clearly illustrates an inconsistency in approach. Whilst the inclusion of spectrum trading for the Channel Islands and the Isle of Man might not result in significant commercial advantage over mainland UK ports, the same is not true when the broader pan-European view is considered.

Question 7: Should there be additional grounds, e.g. safety-related, for Ofcom to refuse consent to a proposed trade in certain frequency bands or for certain applications?

All previous studies have highlighted the primacy of safety in the management of spectrum. It is considered paramount that regulators should have the appropriate powers to manage the spectrum effectively taking into account all of the factors identified in Question 2 above.