

LICENSING FRAMEWORK IN A FULLY OPEN MARKET.

ROYAL MAIL'S RESPONSE TO

POSTCOMM'S NOVEMBER 2004 CONSULTATION DOCUMENT.

Executive Summary

Royal Mail welcomes the opportunity to comment on Postcomm's proposals for the licensing framework in a fully open postal services market.

Royal Mail believes that the nature of the licensing framework will be critical to the success of the open market: without adequate safeguards a few incompetent or fraudulent licensees could seriously inconvenience customers and bring damaging publicity to the whole open market, including efficient and honest competitors. If allowed to continue in business these few disreputable operators could have a disproportionate effect on customers' confidence in, and perceptions of, the market. Eventually this would lead to a steady loss of postal services business to alternative distribution methods which, ultimately, would threaten the financial viability of the Universal Service, and the development of a healthy and sustainable postal services market overall.

Royal Mail is in broad agreement with Postcomm's proposals, but considers that in some areas there are insufficient checks on licensees and potential licensees. We appreciate, and share, Postcomm's enthusiasm for "light touch" licensing, and accept that additional checks inevitably involve some additional work for both licensees and Postcomm. However, we believe the extra safeguards we are suggesting will only have a minimal impact on workload and that this impact is more than offset by the extra protection given to the integrity of the mail, to customers' confidence in postal operators and, indirectly, to the success of the open postal market and the protection of the Universal Service.

Royal Mail believes that the application stage is the most crucial part of the licensing framework. Ideally, inappropriate operators will be identified by the application process before they receive a licence and are able to offer a postal service. Once they have been granted a seven year licence and start operating they will be easier to identify but harder to remove. The process for revoking licences will inevitably be lengthy and difficult, especially if the licensees appeal or are non-cooperative and continue to operate during the appeal process, causing further disruption to customers and the open postal market.

Royal Mail therefore believes Postcomm's proposals for the application process should be boosted in a number of ways. To effectively test applicants' ability to comply with the Code of Practice on Mail Integrity we believe every applicant should have a site visit. Licences for start-up operators should be conditional on a satisfactory site visit shortly after their postal operations commence. We also believe Postcomm should continue with the requirement for applicants to provide a list of customer contacts. Postcomm may not need to request references from these contacts but in a few cases, especially those where there are other causes for concern, they may prove invaluable.

Postcomm is proposing that the financial guarantee required before a licence is issued should be sufficient to clear one week's mail. At present, a financial guarantee sufficient to clear two weeks' mail is required. Royal Mail believes this reduction increases the risk of both granting seven year licences to inappropriate operators, and of having insufficient funds to clear the backlog of mail held by licensees in financial difficulties. This is because, as Postcomm itself notes in paragraph 4.23 of the consultation paper, "*where an operator gets into difficulty it is possible that its activities will be disturbed for some time before it becomes insolvent*". This period of time could be several weeks, especially as operators in financial difficulty are likely to try to hide the fact from their customers to maintain their revenue stream. They may therefore make every effort to maintain collections, giving deliveries a lower priority. This would lead to an ongoing build-up of undelivered mail, possibly for several weeks.

Royal Mail believes that the financial guarantees required from new licensees should be sufficient to clear at least four weeks' mail. This would have two clear benefits over one or two weeks. Firstly, in the event of an operator experiencing financial difficulties, the risk of having insufficient funds to clear their mail would be acceptably low. Secondly, the extra cost and checks likely to be required for the higher guarantee will reduce the risk of inappropriate operators obtaining a licence, while not imposing a prohibitive burden on financially sound applicants. Conversely, if the two week guarantee is retained or, even worse, reduced to one week, not only will it be easier for inappropriate operators to secure the required guarantee but, if they do subsequently experience financial difficulties, the risk of having undelivered mail in excess of the guarantee would be unacceptably high.

In view of this risk, Royal Mail believes that the licensing framework should spell out Postcomm's contingency plans if the guarantee of an operator in financial difficulty proves insufficient to clear their backlog of mail. Will there be a "provider of the last resort" and, if so, how will their activities be funded if the failed operator's financial guarantee is insufficient?

Royal Mail believes the enhancements to Postcomm's proposed application process suggested above would help preserve the integrity of the UK mail network by discouraging applications from inappropriate operators. This will help ensure a smooth transition to an open market, thereby avoiding adverse publicity and retaining customers' confidence. Further details on our suggestions, and other comments on the application process, can be found in the main body of this report.

Once the open market is established, and several operators licensed, it is essential to be able to identify incompetent or fraudulent activities by licensees or their employees as soon as possible. Unfortunately, in a market as extensive and widespread as postal services, some such activities are inevitable, and can be expected to increase with the number of operators, especially as some of the entrants will have had little, if any, experience of establishing and monitoring mail integrity procedures. Indeed, Postcomm's press release on 19th January 2005 acknowledges they are already aware of several "*instances of mail dumping by licensed operators*", including one that was serious enough to warrant prosecution of the individual concerned. Failure to identify incompetent or fraudulent activities quickly, and take appropriate punitive action, will increase the inconvenience to customers and lead to unfavourable publicity, thereby undermining customer confidence in UK postal services in general, and the competitive postal market in particular.

Royal Mail therefore supports Postcomm's proposal for a Code of Practice on Mail Integrity that all licensees are required to regard as a minimum standard for their operation. Furthermore, Royal Mail believes it is essential for Postcomm to monitor all operators' compliance with the Code, and be in a position to take immediate action to enforce compliance when necessary.

Early identification of non-compliant operators will be facilitated by routine reporting of performance by licensees and systematic monitoring of licensees by Postcomm. This is recognised and catered for in Postcomm's proposed licensing framework, but Royal Mail believes the licence requirements proposed in this area should be strengthened. For example, we believe that all Standard Licence obligations should apply to all operators, regardless of size. Reporting frequency should also be the same for all operators: data collection and analysis costs will not be disproportionate for small operators because the volume of data to collect will be roughly proportional to the size of each operator's business.

With regard to licensees' standards of operating performance, Royal Mail agrees that this is a matter between the licensee and their customers, and that performance information should be available to customers to enable them to make informed choices. However, we do not believe merely requiring licensees to have a performance monitoring system in place is sufficient. Some common measures are needed to facilitate comparison of operators on a fair and consistent basis. Defining common measures where there are no common service standards is difficult, but there are some measures of universal relevance, for example the number and proportion of items delivered to specification, the number of complaints, the number and proportion of complaints unresolved after two weeks. Collecting this type of common data from all operators, and publishing it quarterly, would help users differentiate between operators, and may give Postcomm early indications that some operators are failing to comply with the Code of Practice for Mail Integrity.

Once the licensing framework is finalised, and the open market commences, it is imperative that Postcomm undertakes the thorough investigation of both applicants and licensees laid down in the framework. Although it may be intimated by some that these investigations may seem to be discouraging potential entrants, or overstressing Postcomm's resources, and that rejection of a few early applications may also be seen as hindering the development of a competitive postal market, Royal Mail believes otherwise. The failure to identify and reject inappropriate applications may lead to more entrants in the short-term but, in the medium and long-term, the build-up of customer dissatisfaction and adverse publicity could undermine the credibility of the open market and put at risk the confidence that people have in the integrity of UK postal services.

Main Response

Responses to Postcomm's specific questions

Introduction

This is Royal Mail's Main Response to Postcomm's consultation paper on a Licensing Framework for a fully Open Market, published in November 2004. The response considers each of the specific questions posed by Postcomm in its consultation paper. For ease of reference the question and chapter numbers used below refer to the appropriate section in the consultation paper.

Question from chapter 2: Licensing in an Open Market

i) Do consultees agree with Postcomm's objectives for its licensing framework?

In general Royal Mail agrees with Postcomm's objectives for its licensing framework, but believes some implied objectives should be more explicit and given greater emphasis.

Equal scope for all licensees.

It is important that all Standard Licence conditions apply to all licensees. Royal Mail accepts that some licence criteria or requirements will have to be applied differently to small operators than to national operators. Allowing these differences in application to become too significant, or excusing small operators from some licence obligations completely, would reduce both the safeguards on the integrity of the mail and customers' confidence in these operators. Avoidance of some licence obligations imposed on their competitors would also give these licensees an unfair competitive advantage.

Section on punitive action and licence revocation

In paragraph 2.9 Postcomm proposes three sections for the framework: the application process, the licence and monitoring of licensees' activities/compliance Royal Mail proposes that, additionally, a separate section be included which sets out Postcomm's guidelines for punitive action in the event of non-compliance (for example making clear the powers within the Act relating to the issuing of Enforcement Orders and rules of revocation etc).

Risk Assessment

Royal Mail agrees with the risks identified in paragraph 2.13 of the consultation paper but, in our view, Postcomm's proposals do not recognise or give due account to Postcomm's primary duty under the PSA 2000 – namely the provision of the Universal Service. Para 2.14, for example, makes no reference to the USO – only that of promoting competition. The issuing of licences and the reduction in Royal Mail's revenues is potentially a very serious outcome which requires recognition and reference. For example, at what stage does Postcomm decide not to issue any further licences? And what rules would then be actioned? It is not only a matter of licensees being deterred but of the impact on the ability to fund the USO.

Additionally, of the four risks set out Postcomm gives too high a priority to mitigation of the first risk, over-regulation, at the expense of the other three. Royal Mail agrees with the principle of “light touch” regulation, but not to the extent that it may threaten the integrity of the mail and customers’ confidence in UK postal services. This would lead to a steady decline in postal business which, ultimately, would further threaten the financial viability of the Universal Service.

Royal Mail believes that the few, comparatively minor enhancements to Postcomm’s proposed licensing framework suggested in this response would significantly strengthen the safeguards for the integrity of the mail as well as helping customers make informed decisions, thereby maintaining customer confidence and protecting the Universal Service.

Questions from chapter 3: The Licence Application Process

ii) Do consultees agree that the application process should be used to establish standards for market entry?

Royal Mail considers it is essential that the application process is used to establish standards for market entry. It is equally essential that the application process is sufficiently thorough to enable Postcomm to identify applicants unlikely to be able to provide a reliable, safe and secure postal service. Although it will be possible for Postcomm to revoke the licence of a licensee who proves to be fraudulent or incompetent, this will inevitably involve a lengthy process, especially if the licensee appeals against Postcomm’s decision. Refusing a licence to such an operator at the application stage should be a much simpler process, and would prevent the fraudulent or incompetent operator’s actions bringing the competitive postal market as a whole into disrepute. Rejecting an initial application would require valid grounds: the application process needs to be extensive enough to unearth valid grounds when they exist.

iii) Do consultees agree that Postcomm should make an assessment at the application stage of an applicant’s ability to comply with the Code of Practice on Mail Integrity? What form should such an assessment take? Should Postcomm retain flexibility in how it makes each assessment?

Royal Mail agrees Postcomm should assess applicants’ ability to comply with the Code of Practice on Mail Integrity at the application stage. Royal Mail understands Postcomm’s wish to avoid the assessment being “unnecessarily intrusive”, but is concerned that this may render the assessment ineffective. For the reasons stated in the answer to question ii) above, Royal Mail believes it is important to identify applicants who are unlikely to be able to comply with the Code at the application stage.

For example, the licence application form should specifically ask what measures are already in place (or, for start-up businesses, are planned) to ensure adequate employee training, the security of vehicles, the security of buildings and arrangements for checking sub-contractors. This information on mail integrity arrangements is already required from applicants for Standard Licences, and should be the minimum required under the new licensing framework.

Furthermore, Royal Mail believes that a site visit is required to check the accuracy of the mail integrity arrangements declared on the application form, and assess the applicant’s ability of complying with the Code of Practice on Mail Integrity. If the applicant is a start-up business, a site visit after a reasonable period of operation (perhaps six months), should confirm the

declared mail integrity plans have been implemented, and assess how well they are working. The applicant's licence could be issued subject to a favourable assessment at this site visit. Applicants who already have an established business in, say, the parcels market should have a site visit at the application stage to assess both their existing operation, and their plans to extend that operation to the letters market.

iv) Do consultees agree that the fitness and propriety of an applicant are relevant considerations in the application process? Do consultees think that convictions for dishonesty, or like conduct, and convictions under the Postal Services Act should be taken into account? Is there anything else Postcomm should consider in this context?

Royal Mail agrees applicants' fitness and propriety are relevant considerations in the application process. However, Royal Mail believes **all** unspent convictions, not just those for dishonesty or under the Postal Services Act, should be taken into account.

Furthermore, Royal Mail also believes it is essential that these considerations should be applied to "controlling persons" as well as Directors. Many of the small businesses Postcomm envisages applying for licences will be partnerships or sole traders. The majority of these small businesses will be legitimate and financially sound, but it is important for Postcomm to identify the few that are not, before their failings cause disproportionate damage to customers' confidence in the liberalised postal market.

v) The proposal not to carry out any financial assessment of applicants but to rely on the provision of a financial guarantee, and any alternatives that Postcomm should be considering.

Royal Mail is satisfied the provision of a financial guarantee would guarantee the delivery of mail on hand, provided that:

- the guarantor is a reputable financial institution;
- the licence requires the value of the guarantee to be linked to the maximum level mail likely to be on hand;

Royal Mail is pleased to note the first proviso is covered by Postcomm's proposal in paragraph 4.21.

The second proviso is partially covered by paragraph 4.23 but, as discussed more fully in our response to question xv, we believe the financial guarantee should be sufficient to clear at least four weeks' backlog of mail, rather than the single week proposed by Postcomm.

The size of the guarantee is crucial: if it is insufficient, what contingency plans will Postcomm have for clearing the excess. Will there be a "provider of the last resort" and, if so, how will their activities be funded?

vi) Do consultees agree that the application fee should remain at £1000?

Royal Mail believes that an application fee of £1,000 is acceptable.

However, we note that Postcomm concludes that a scaled fee "*might lead to applicants understating their forecast income which would have an impact on the level of the guarantee provided.*" Understating forecast income to reduce the level, and cost, of the applicant's

guarantee is a disreputable practice which, if widespread, would threaten the integrity of the mail and customers' confidence in postal operators and the market

vii) Do consultees agree that Postcomm should no longer take references from an applicant's existing customers?

Royal Mail accepts that there are reasons why some references will be of limited value, in particular that existing customers will tend to be satisfied with the service they are receiving, and start-up businesses will not be able to provide a list of customer contacts. Nevertheless, given the limited information available to assess applicants' suitability, Royal Mail believes it would be wrong to stop collecting some of the information that is currently available. Even if references alone will not provide sufficient evidence that an operator is incompetent, they may help Postcomm come to a firm decision in borderline cases.

Also, it would be possible to overcome some of the disadvantages of references. Providing lists of customer contacts should not be a significant burden on applicants; nor should requesting and providing references if Postcomm limits requests to applications where there are other reasonable grounds for doubting the applicant's competence or probity. Start-up businesses could be asked to provide customer contacts once they start trading. These references could not be used when assessing the applicant's suitability for the original licence, but could be used during subsequent reviews and, in extreme cases, may provide invaluable support for revocation.

Questions from chapter 4: Licence Conditions in a Fully Open Market

viii) Do consultees agree that the licence should be used to provide safeguards to prevent the system being abused and to ensure sufficient provision of information to enable the market to function properly?

Royal Mail believes it is essential that licences provide safeguards to prevent abuse of the system, and to ensure the provision of sufficient information. The information required should be sufficient to demonstrate compliance with the licence as well as enabling the market to function properly. The fact that the issuing of licences is enshrined in statute indicates the importance of the licensing framework in the UK regulatory system

ix) Do consultees think that a minimum licence period of seven years is sufficient? Or would a longer period encourage market entry?

Royal Mail believes that a seven year minimum licence period is sufficient. The seven year minimum period has not prevented several large and medium postal operators applying for the existing Standard Licence. The small operators Postcomm is keen to encourage are unlikely to be contemplating significant investment in their new businesses and certainly not at a level that would require them to operate for more than seven years to achieve a satisfactory return on their investment.

x) Do consultees agree that there should be different obligations on licensees according to their size? Should size be defined by reference to the number of employees? Is 10 or more employees the appropriate place to draw the line?

Royal Mail agrees there should be a common licence for all sizes of postal operator. Royal Mail believes all Standard Licence obligations should apply to all operators, even if the

application of the obligation varies with the size of the licensee. In these cases, the licence should clearly define precisely what is required from licensees in each size group.

Ten employees is a reasonable threshold for differentiating small operators, though it may be necessary to include contractors in the employee count. Otherwise an operator could develop a substantial business with seven or eight central administration staff and hundreds of contractors.

xii) Do consultees agree that these safeguards are relevant to providing assurance to customers? Are there other areas where Postcomm should be requiring measures to provide assurance?

Royal Mail agrees with the four safeguards proposed by Postcomm but believes that, as well as knowing what the operator's performance monitoring systems are, customers would like to see and compare the output from these systems.

xiii) Do consultees agree that a Code of Practice on Mail Integrity is a sensible means of setting and monitoring standards for the industry? Do consultees agree with the stated purposes of the Code? Are there any additional issues which the Code should cover?

Royal Mail fully supports Postcomm's proposals for a Code of Practice on Mail Integrity, including the objectives of the Code, and the initial list of procedures Postcomm envisages the Code will cover. However, Royal Mail believes Postcomm should consider extending the objectives of the Code to cover the "essential requirements" specified in Article 2 of EU Directive 97-67. These include the confidentiality of correspondence, the security of the network as regards the transport of dangerous goods, data protection and environmental protection.

Royal Mail looks forward to contributing, along with other postal operators, to the precise nature and detail of the Code after publication of Postcomm's consultation document in Spring 2005.

Royal Mail believes it is essential that the Code of Practice on Mail Integrity is in place prior to market opening and that, as proposed, licences "*require that licensees use all reasonable endeavours at all times to comply with the Code of Practice*" (para 4.10). This requirement is fundamental to maintaining customer's confidence in postal services and the success of the open market. Royal Mail therefore believes it is essential for Postcomm to monitor all operators' compliance with this requirement, taking immediate action to enforce it when appropriate.

xiv) Do consultees agree that Postcomm should have regard to the continued fitness and propriety of a licensee? Are the measures proposed sufficient to ensure that Postcomm can do so? Do consultees agree with Postcomm's proposed definition of 'controlling person'?

Royal Mail agrees with the proposal for ongoing assessment of licensees' fitness and propriety. This is essential to prevent licensees becoming less vigilant once they have been granted a seven year licence. It is also essential for Postcomm to have the power to revoke licences with immediate effect where licensees fail to maintain an appropriate standard. Without the threat of revocation in the background, ongoing assessment would be meaningless.

As already discussed in our response to question iv, we support Postcomm's definition of "controlling person" provided it is applied to all licensees, including partnerships and sole traders.

xiv) Do consultees agree with the purpose of the requirement for financial guarantees to be put in place? Do consultees agree that parent and associated company guarantees should not be accepted? Are there other measures which Postcomm should be considering?

Royal Mail agrees with the requirement for financial guarantees to ensure mail on hand is cleared if an operator experiences financial difficulties. Royal Mail also agrees that guarantees from parent and associated companies should not be acceptable, and that Postcomm needs to set a minimum credit rating for guarantors.

xv) Do consultees think that 50p an item for one week's volume of mail is an appropriate level of guarantee to protect users' interests? Do consultees agree with the proposal to use forecasts and not historical actual volumes? Is 10% the right growth figure in this context?

Royal Mail accepts Postcomm's proposed rate of 50p per item, but believes this should be applied to at least four weeks' volume of mail rather than the single week's volume proposed by Postcomm. This is because, as Postcomm notes, "*where an operator gets into difficulty it is possible that its activities will be disturbed for some time before it becomes insolvent*". Also, operators in financial difficulty are likely to try to hide the fact from their customers to maintain their revenue stream. They may therefore make every effort to maintain collections, giving deliveries a lower priority. This would lead to an ongoing build-up of undelivered mail, possibly for several weeks. Royal Mail therefore believes that four weeks' volumes are the minimum that should be covered by the financial guarantee.

Royal Mail prefers the volumes to be based on historical actuals rather than forecasts, but accepts this approach is not possible for the first year of operation, and that it can understate volumes during periods of business growth. The use of forecasts cannot be avoided for the first year of operation but Royal Mail suggests that, for subsequent years, when actual volumes are higher than the previous year, the same annual rate of increase is assumed to continue. This provides a firm basis for calculating the weekly volumes and minimises the use of forecasts, which are inevitably subjective and liable to be inaccurate, especially in years of rapid change.

xvi) Do consultees agree that Postcomm should not specify service standards? Do consultees agree that the performance records of licensees should be available and easily compared? Are the measures Postcomm proposes sufficient to achieve this? Or are the measures too much?

Royal Mail supports Postcomm's overall approach and, in particular, the provision of comparable information on operators' performance. This type of information improves the operation of the competitive market by enabling customers to make informed decisions about their choice of supplier. Royal Mail suggests the following enhancements to Postcomm's proposals to further facilitate the comparison of operators' performance:

- the regularity of performance reports to Postcomm and Postwatch should be specified. Quarterly reports would give customers reasonably timely information without imposing an undue burden on operators;

- Postcomm or Postwatch should be committed to publishing regular (ideally quarterly) comparisons of operators' performance rather than just retaining the right to do so;
- all operators should be required to provide some performance data. Providing a few key performance measures would not be an undue burden, even for small operators who, by definition, would not have much activity to measure;
- knowing operators have a performance measurement system in place is of little benefit to customers, nor is having performance data on an inconsistent basis. Defining common measures where there are no common service standards is difficult, but there are some measures of universal relevance, for example the number and proportion of items delivered to specification, the number of complaints, the number and proportion of complaints unresolved after two weeks;
- performance data to be subject to independent audit.

xvii) What views do consultees have on a scheme where licensees are charged by Postwatch when the volume of complaints about them exceeds a minimum threshold?

Although a good theoretical idea, Royal Mail is not convinced the benefits would justify the administrative costs, especially as those costs are likely to be exacerbated by disputes about the definition of complaints, and whether they have been resolved. Royal Mail believes it would be better to publish complaints data for all operators, so that customers become aware of which operators receive comparatively high, and low, levels of complaints.

xviii) Do consultees agree that a differing and less onerous approach to complaint handling and performance measurement is appropriate for small operators?

Royal Mail accepts that a differing and less onerous approach to complaint handling and performance measurement is appropriate for small operators, but not that they should be excluded from all routine reporting, as Postcomm is proposing. Even when a small operator is providing a tailored, local service, the customer's choice may be influenced by the relative reliability of the service. Indeed, the small operator may benefit from favourable comparisons with larger, more distant competitors.

Almost by definition, small operators' activity levels will be low and comparatively easy to measure: providing basic performance measures should not impose an undue burden.

xix) Do consultees agree that the information provisions proposed are sufficient to enable Postcomm and Postwatch to discharge their statutory functions? Is the information Postcomm proposes to seek from licensees too little, too much or about right?

Royal Mail accepts the need for information provision as proposed. Royal Mail urges that Postcomm specifies regular information requests in licences whenever possible, thereby keeping ad hoc requests to an absolute minimum. Licensees can plan the provision of regularly required information in advance, making it easier to allocate resources and ensure the information provided matches Postcomm's requirements.

Royal Mail disagrees with Postcomm's proposal for small operators to report volumes and revenue annually rather than quarterly. To obtain annual data, operators must maintain volume and revenue records throughout the year: to collate these records, and report the totals to Postcomm, quarterly is not a serious imposition, even for small operators. But, without small operators' data, Postcomm's quarterly information and analysis of the competitive market will be incomplete and potentially misleading, possibly even leading to non-optimal regulatory or business decisions.

xx) Do consultees agree that the annual licence fee might be a barrier to entry for smaller operators? Is the fee level suggested by Postcomm appropriate?

Royal Mail does not believe an annual fee of £1,000 would deter serious licence applicants, even smaller ones, but has no objection to the fee structure proposed.

xxi) Do consultees agree that Postcomm is right to satisfy itself that licensees' income is correctly stated? Are Postcomm's proposals too onerous? Are there other options Postcomm could consider?

Royal Mail supports independent verification of licensees' licensed area turnover.

xxii) Do consultees agree that there is a continuing need for the accounting separation requirement?

Royal Mail accepts the need for the accounting separation requirement as set out, but believes it should be included in all operators' licences. The potential for cross-subsidisation is not limited to companies with a statutory monopoly in their domestic market.

xxiii) Do consultees agree that a Code of Practice on Common Operational Issues is a sensible means of setting and monitoring standards for the industry? Do consultees agree with the stated purposes of the Code? Are there any additional issues that the Code should cover?

Royal Mail agrees that a Code of Practice on Common Operational Issues:

- is a sensible means of setting and monitoring standards for the industry;
- should aim to protect the needs of users of postal services and ensure that common operational issues are not allowed to become a barrier to the development of competition. It does not, however, agree to the Postcomm view that "arrangements in their current form may also be considered a barrier to the development of effective competition in the postal market".
- should be transparent and fair;
- should provide a safety net in the standards applicable to common operational issues for senders and receivers of mail, postal operators and other stakeholders;
- should cover the issues listed in paragraph 4.44 of Postcomm's consultation paper .

Royal Mail believes these objectives can be best achieved by a Code of Practice that covers standards and principles, is agreed by postal operators, and which all postal operators, including unlicensed businesses only operating in the unreserved area, are committed to observe.

Royal Mail has serious reservations about any such code being mandatory and fails to see, based on initial discussions with Postcomm and other licensed operators, how any proposed

mandatory arrangement would be made to apply to unlicensed operators. On the other hand, Royal Mail can envisage a voluntary Code into which operators of all types may or may not opt, with the market then making choices based on its perception of that choice. Royal Mail also is not clear how Postcomm envisages its own role in the operation and management of a Code.

Any Code need not, and should not, cover the detailed operational procedures for interaction between postal operators. These operational details should be governed by the principles and standards in the Code but the optimum means of interaction between any two postal operators will vary, being dependent on the precise nature of the two operators' individual operating procedures. Agreement about how their two particular sets of operational procedures should interact is, therefore, best left to the postal operators involved.

Royal Mail will continue to work with Postcomm, and other postal operators, to develop an appropriate Code, and looks forward to receiving Postcomm's consultation paper in Spring 2005.

Questions from chapter 5: Monitoring of Licences

xxiv) Do consultees agree that Postcomm should monitor licensees? Do consultees agree that there should be both reactive and proactive monitoring? Do consultees agree with the proposed balance between the two stances?

Royal Mail considers it is essential that Postcomm monitors licensees' compliance with their licence conditions, and is able to impose sanctions, including, ultimately, licence revocation, when there is sufficient evidence of non-compliance. Without such monitoring, and the threat of sanctions, incompetent or fraudulent operators who obtain a licence may be able to continue trading for seven years. During this time they could cause considerable inconvenience to customers and, as a result, considerable damage to the credibility and reputation of the competitive postal market.

Royal Mail believes the most effective monitoring is regular, routine reports by all operators. This is one reason why Royal Mail proposes more extensive performance reports than set out by Postcomm (see responses to questions xvi, xviii and xxii above). Although this will inevitably involve some additional work by operators, this should not be significant and, in relation to the volumes carried, should affect every operator more or less equally. This minimal extra effort will give Postcomm considerable information about licensees' operations and licence compliance; customers will have access to information that facilitates informed competitor choices.

Royal Mail agrees that, where the routine reporting, or other information, indicates it is appropriate, Postcomm should seek further information or undertake a monitoring visit.

xxv) Do consultees agree that these are the right areas of focus for Postcomm's monitoring? Is there any justification for extending the areas where monitoring is applied? If so, to what areas and how should this be achieved?

Royal Mail agrees mail integrity, financial guarantees, licensees' fitness and propriety, complaint handling and performance measurement should all be areas of focus. As already discussed in the answer to question xvi, the monitoring should include a few common performance measures as well as the mere existence of performance measuring systems.

xxvi) Do consultees agree with Postcomm's suggested approach to the monitoring of mail integrity? Should Postcomm be doing more? Or less?

Royal Mail agrees with Postcomm's proposals for operators to provide regular reports, and establish routine reporting processes, on their compliance with the Mail Integrity Code of Practice. Royal Mail welcomes Postcomm's proposals for monitoring visits on an ad hoc basis and expects Postcomm to ensure that sufficient resources will be made available for these visits, especially during the early years of the fully open market when there will be many new applications for licences, many new licensed operators, and the need for site visits is likely to be at a peak.

xxvii) Do consultees agree with Postcomm's approach to the monitoring of financial guarantees? Should Postcomm be doing more? Or less?

Royal Mail agrees with Postcomm's approach to the monitoring of financial guarantees, subject to the greater use of actual volumes in calculating the size of the necessary guarantee, as discussed in our response to question xv. Royal Mail would also expect the credit rating of guarantors to be checked annually.

xxviii) Do consultees agree with Postcomm's approach to the monitoring of the fitness and propriety of licensees? Should it be doing more? Or less?

Royal Mail agrees with Postcomm's approach to the monitoring of the fitness and propriety of licensees.

xxix) Do consultees agree that Postcomm's proposals are consistent with its aim to be a "light touch" regulator? Is it doing too much? Too little?

Royal Mail agrees Postcomm should collect regular information on the volumes of licensed mail each operator carries, and the revenues from this mail (though quarterly for all customers – see our response to question xix). There are other instances in this response where Royal Mail suggests Postcomm collects slightly more information than is proposed in the consultation document (refer, in particular to the responses to questions xvi, xviii and xxii).

However, even if Postcomm accepted all of Royal Mail's suggestions for additional information reporting, Royal Mail believes the regulatory approach towards new operators would be "light touch". The information required would not impose an undue burden on operators, but would provide Postcomm with sufficient information to monitor the open market and protect customers' interests; equally importantly, it would also enable customers to make informed choices.