

5 September 2002

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Dear Ros

I am responding to the Commission's Consultation Document on Licences under the Postal Services Act 2000: Standard conditions, which was published at the end of July. I firstly respond in turn to each question as raised in your covering letter and then I make some additional points.

*(a) The proposed definitions of "bulk mailing" and "consolidation" and in particular Postcomm's approach to "same format" in the "bulk mailing" definition.*

Bulk Mailing.

Bulk mailings are defined as mailings in which 4000 or more pieces of mail in the same format are collected from a single user from a single site in any period of 24 hours. This is intended to "help" limit the scale of the initial market opening to 30% by revenue in the first stage of the transition period. This condition would allow mail from a single user to be collected from one of the premises of a third party such as a mailing house.

The consultation document states (para 3.6):

"Postcomm accepts that it may not always be possible for a customer to provide 4,000 or more pieces on every occasion and has extended the provision to cover circumstances where the customer expects to send out 4,000 pieces of mail per mailing *on average*. This means that customers who send large mailings but whose mailing volumes vary slightly can still take advantage of competition in the market place. The licensee will need to be satisfied that the expectation of 4,000 items on average is reasonable at the time the contract is signed and will need to

ensure that the contract includes suitable provisions to terminate it if the requisite mail volumes were not being achieved. If a contract clearly indicates that mail volumes would be not less than 4,000 items and in the same format then the reasonable expectation would be apparent. Postcomm does not wish to become involved in specifying contract terms and considers that there is no need to go further than is proposed, but would expect licensees to take necessary steps to ensure that they comply and can demonstrate readily that they do comply with these restrictions”.

It will be extremely difficult to enforce this, as the licensee will always be able to argue that they accepted ‘in good faith’ that the poster intended to post an average of 4,000 items. It will not be in the interests of either the licensee or their customer to ensure that this condition is satisfied. This should be monitored by an independent third party to deter the signing of exaggerated contracts.

Postcomm has considered whether the ‘single originator’ requirement could be replaced with a requirement that to qualify as a bulk mailing all the mail should have the same return address printed on the envelope (this is a requirement for ‘direct mail’ in some countries). Postcomm does not see it as necessary to impose the ‘same return address’ requirement on bulk mailings and considers that the ‘single originator’ requirement will suffice to achieve its objectives. Postcomm does, however, accept the point that a ‘same return address’ would be prima facie – although not conclusive – evidence that mailings were from the same originator.

Postcomm's view that there should be no requirement for 'same return address' could open a loop-hole that would negate the principle of Licensees not being able to consolidate mail into bulk mailings. Current practice in mailing houses preparing and posting mail for clients can be either (a) the posting is made using an account and documentation in the clients name or (b) using an account and documentation in the mailing house's name. Under (b), the items will carry the clients return address but the mailing house might be deemed the "originator". This would allow a number of mailings for different clients (each carrying the relevant return address) to be mailed with the mailing house as the "originator" and hence achieving the 4,000 item requirement for posting under a bulk mailing licence, when the mail has effectively been consolidated and comes from more than a single originator. The requirement for 'same return address' would deter this.

However, third parties would be able to collect mail from a number of sites, e.g. a trading estate, and then hand this to the licensee as a single originator. Using the same return address would not be an adequate safeguard against this as the third party could simply stamp a return address on each letter. It should also be a requirement that each originator has a contract with the licensee and records are kept detailing the items that have been posted each day.

### **Same Format**

Postcomm proposes that the pieces of mail in any bulk mailing must all be of the same format. This requirement has been included to ensure that the size of the initial market opening is limited to about 30%. Postcomm suggests that the

implementation of the requirement for the pieces of mail to be in the same format can be achieved by a licence provision specifying that the length and breadth of letters in a bulk mailing must be the same (subject only to minor variations) in line with the International Standard for envelopes. An alternative suggested is to specify that the same format means only envelopes, which meet one of the international standards. In proposing to employ the simpler requirement, Postcomm notes that the international standards cover the range of standard formats but do not provide for non-standard formats.

We have no statistics on the proportion of envelopes in mail that do not conform to ISO 269 standard sizes. It is likely to be a very small proportion and confined to greetings cards and direct mail shots which rely on creative envelope design to attract customer attention. Such designs will be operationally more costly to handle than standard size envelopes and so are unlikely to be attractive to new market entrants. From the point of view of attempting to limit the market size by the "same format" restriction, therefore, either of these approaches is likely to lead to broadly the same outcome. However, limiting to the use of the ISO 269 standard sizes would make the monitoring of conformance an easier task.

Neither of the "same format" proposals includes mention of the weight or the thickness of the items. The intention of this restriction, it is understood, is to limit the market opened to competition to approximately the existing pre-sort products. However, Mailsort 1400, for example, requires, as one of its entry restrictions, that letters should be "of the same size, shape and weight". Without including the weight and thickness in the definition "of the same format" the limiting of the volumes open to competition to the intended level of 30% of the market cannot be confirmed. The definition of "the same format" should include the requirement that the items are of the same weight and thickness.

As before, since it is not in the interests of either the postal operator or the customer to monitor conformance to this requirement and it is unlikely that they will employ adequate resources to the task of ensuring compliance. It will be necessary for independent monitoring systems to be used.

*(b) The proposal to introduce "mailroom services" and "enhanced document exchange services" as defined activities in accordance with Postcomm's market opening strategy.*

The proposed Service Restriction definition for Mailroom Services and Enhanced Document Exchanges include the provision to convey letters by the licence holder between a customer and the universal service provider. The licence holder will, therefore, be in a similar position in relation to their customers and the universal service provider as operators with a consolidation licence. It will be necessary for such service providers to agree with Consignia terms for access to the universal postal network unless access is based on existing standard products and services.

*(c) The proposal not to impose particular service standards on operators but to require them to record and publish their performance.*

Consignia supports the requirement that all licence holders should have a requirement to monitor and report on performance against their contracted obligations. Other licensees should have the same requirements as Consignia to use a measurement system that is representative, independent, compliant with the Directive and audited. At the very least, performance reports should state the measurement methodology used and whether or not the measurement is carried out independently. It is also important that the measurement methodology is specified and harmonised so that comparisons between different operators will be meaningful. Similarly, information about complaint categories and their definitions should be supplied.

At the European level standards (CEN) are being introduced to facilitate proper comparison between different postal authorities. The CEN standards for performance measurement and complaints reporting specify the methodologies for measuring performance in some details and have been designed to apply to all carriers. Standards will be in operation soon for priority single piece mail (i.e. first class stamped & metered). Standards for bulk mailings are expected to be in place within two years. All UK licence holders should adopt these standards when they are agreed by the EC.

All licensees should have the same requirement as Consignia to publish Postwatch contact details.

*(d) The requirement for licensees to have mail protection procedures and, in particular, the obligation on operators to report on these arrangements annually and to review them every two years.*

If information on lost, stolen and damaged items from Consignia is to be published, the same performance information from other operators should also be published in the same form for comparison. Any information that is to be passed to Postcomm in addition to that which is in the annual report must be mandatory on all licensees and will, therefore, constitute an "industry standard" which should be reflected in the standard licence condition for Protecting the Integrity of the Mail. All licensees should have the same requirements to ensure that the entire mail "brand" is protected.

All licensees should furnish Postcomm with a quarterly schedule of all robberies, all burglaries, all thefts of and from vehicles and all pouch thefts. Over and above the quarterly reporting, licensees should also report at the time of the event any robbery or attempted robbery where a firearm was discharged, any individual enquiry involving mail recovery in excess of 5,000 items and any "sensitive" enquiry concerning mail. It may be necessary to encourage the prosecution of staff or contractors caught interfering with the mail.

*(e) Whether the various requirements on licensees to provide information either to Postcomm, Postwatch or more generally are reasonable, particularly the proposed 6 monthly performance and market monitoring requirements.*

Consignia is content with these proposals.

- (f) The nature and size of the guarantee required under the business cessation provisions and the proposal to allow other approved postal operators (in addition to Consignia) to offer clear-up arrangements.*

The cost of a clearing up operation is higher than normal mail acceptance and so the proposal of one month's volume of mail at £1 per item is appropriate as a guarantee. However, the guarantee at this level can only cover the operating cost of delivering the items and not any claims for compensation against the failed operator.

- (g) The proposal to impose an additional requirement on those licensees who have a statutory monopoly in their home postal market to prepare regulatory accounts showing separately the results of their UK operations in their licensed area.*

Consignia welcomes this proposal but the requirement to prepare separate regulatory accounts for the UK market should not be restricted to operators who have a statutory monopoly in their home market. It should also apply to companies which have a dominant position in their home market and to licence holders who are subsequently acquired by such companies

Additional points:

- (i) The draft standard terms specifies, in accordance with the new policy, that consolidated mail that is not bulk mail must be passed to Consignia for delivery. The statement of the new licensing policy published in May states (para A1.8) that "Where an operator intends to apply for a licence covering more than one type of business it will need to demonstrate how it intends to ensure that licence restrictions will be complied with (e.g. how it will ensure that consolidated mail is kept separate from large mailings and properly handed over to Consignia)." The standard terms should contain a condition to this effect. Licence holders whose licence contains both bulk mail and a consolidation clauses should be required to describe the procedures that they are putting in place to ensure that the two mail streams – consolidated mail and bulk mail - are treated separately in their operational processes and thereby ensuring that there is no breach of the service restriction defined in Condition 2.
- (ii) Holders of bulk mail licences and enhanced document exchange licences will need to reach agreement with Consignia as the universal service provider, on the treatment of items that are sent to the wrong address through the licence holders' network and forwarded by the recipient through Consignia's universal postal network or which are returned to sender through Consignia's universal postal network having been delivered by another licence holder.

- (iii) Consolidation and bulk mail licences should contain a clause preventing any licence holder that is also a universal service provider in a foreign country from inserting any UK produced mail that they do not deliver themselves into the Consignia network through a Terminal Dues arrangement. Increasingly overseas universal service providers have (extra-territorial) Offices of Exchange on UK territory. If these operators are also UK licence holders these OEs could be misused. That is that domestic UK traffic could be passed to Consignia through the OE in the TD stream. This would be ABA remail, which is illegal.

It may be very difficult to identify such mail items which may, for example, have an overseas return address, as it could be handed over with the usual inward international mail stream. Licence holders should be required to specify the procedures that they are putting in place to ensure that this does not occur.

Finally, I note that, although Postcomm is consulting separately on the method of implementing the new European Postal Directive in the UK, text is inserted in square brackets into the draft proposed standard conditions in a number of places as an example of the text that would be necessary if it was decided to implement the revised weight and price thresholds by means of amended licence conditions. The drafting of these insertions as they stand is in error and if inserted in the standard terms as shown they would have an effect opposite to that which is intended.

Yours sincerely

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