

Amendment of the 2006 Licensing Framework

A Decision Document

January 2008

Summary

- S.1 The UK postal market has been fully open to competition for nearly two years. Around 20 postal operators have applied for licences to operate in the licensed area of the market. Those customers who have switched to new operators report a high degree of confidence in and satisfaction from the new services they receive¹. Nevertheless, Postcomm believes that in order for the market to develop further, it is desirable to create conditions in which a broader range of operators can offer services to customers in the licensed area.
- S.2 While there have been many enquiries from small businesses about getting into the postal market, most have abandoned their pursuit of a licence. The reasons for this are not clear, but Postcomm is aware of a number of factors which could deter operators from entering the market. For example, customer inertia and Royal Mail's VAT exemption can make it difficult to break into the market. However, some potential licensees have also suggested that the licence fees and other regulatory requirements present barriers to them.
- S.3 Postcomm believes that smaller operators in particular have the potential to contribute significantly to the range of services available to mail users. It is often smaller organisations which have the flexibility to provide innovative services tailored to specific customer needs, and today's small operator can become tomorrow's market leader. Yet it is also smaller businesses which are likely to struggle most to meet the requirements of the licensing framework that has been in place since market opening.
- S.4 It is Postcomm's view that some of the checks it does on licence applicants as part of the application process are no longer necessary. The confidence in using different operators that customers demonstrate suggests that while these checks may have been

¹ See Postcomm's Business Customer Survey, 2007, for customer views of operators' performance.

important previously, they are no longer necessary. Postcomm believes that it is now the time to remove these checks on new entrants and allow market forces to ensure that customer needs are met.

- S.5 Postcomm does not expect that these amendments will necessarily have a dramatic impact on the number of licence applications it receives, since there are other, more significant barriers to entry which are outside its control. However, Postcomm wishes to ensure that, while acting in accordance with its statutory duties, it reduces unnecessary burdens in this area.
- S.6 This document sets out the responses to Postcomm's May 2007 consultation on amending the licensing framework for the UK postal market. It also explains the decisions that Postcomm has reached on its proposals to amend the licensing process.
- S.7 The May 2007 consultation document described a two stage process. This process consists of amending the current framework in 2007, and beginning a more fundamental review of the licensing framework in 2008. This document explains the outcome of the consultation on the first stage.
- S.8 When it implemented the current licensing framework, Postcomm recognised that what was appropriate in the early stages of market opening may not continue to be appropriate.
- S.9 The two stage review aims to ensure that the licensing process and the licensing framework are relevant to today's and tomorrow's postal market, imposing regulation only where justified.
- S.10 This document explains amendments to the current framework which will:
- redefine Postcomm's internal procedures for processing licence applications to ensure they are proportionate in a liberalised market

- reduce the application fee to £50 for future applicants, and remove the annual fee for future licensees with a turnover below £10 million
- remove the requirement on future applicants to provide a financial guarantee or contract with another postal operator, and
- remove the requirement to provide information about how certain licence conditions will be complied with, as part of the application process.

It also sets out those licence modifications that Postcomm has decided to propose, to give effect to the relevant amendments for existing licensees, namely to:

- remove the annual fee for all licensees with a turnover below £10 million, and
- remove the requirement on existing licensees to provide a financial guarantee.

S.11 This document primarily deals with the licensing framework for those operators in the UK postal market who do not currently have a dominant position or universal service obligation. These operators currently handle around 20% of letters at some point during their transit but actually deliver only about 1% of all letters.

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1 Introduction

1. Introduction

Purpose of this document

- 1.1 This decision document discusses the responses received by Postcomm to its May 2007 consultation document, 'Amendment of the 2006 Licensing Framework'. It explains the amendments Postcomm is making to the licensing framework and why they are being made. It also sets out those licence modifications that Postcomm has decided to propose, to give effect to the relevant amendments for existing licensees.

About Postcomm

- 1.2 The Postal Services Act 2000 ("the Act") established the Postal Services Commission ("Postcomm") as the regulatory body for the postal services industry in the United Kingdom. Postcomm's business plan, which can be found on its website www.psc.gov.uk, gives details of its duties, functions, objectives and work programme.
- 1.3 Postcomm has a statutory duty to exercise its functions in a manner which it considers is best calculated to ensure the provision of a "universal postal service". The current universal postal service comprises, amongst other things, the delivery and collection of mail items up to 20 kilograms in weight at least once every working day and the provision of a registered postal service, all at affordable prices that are geographically uniform throughout the UK.
- 1.4 Postcomm is also charged with furthering the interests of users of postal services, wherever appropriate by promoting effective competition between postal operators. In carrying out all its functions, Postcomm must have particular regard to the interests of individuals who are disabled or chronically sick, individuals of pensionable age, individuals on low incomes and individuals who reside in rural areas.

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- 1.5 Postcomm has a further duty to exercise its functions in a manner which it considers is best calculated to promote efficiency and economy on the part of postal operators.
- 1.6 In exercising its functions Postcomm must also have regard to the need to ensure that licence holders are able to finance the activities authorised or required by their licences.
- 1.7 Postcomm's vision for the postal services market in the discharge of its functions is "a range of reliable, efficient, and innovative postal services, including a universal service, valued by customers, and delivered through a competitive postal market".²

Background to Postcomm's proposals

- 1.8 Four years after the market was first opened to competition there are 18 operators in the market. Confidence in the market has been maintained as, broadly, mail operators have achieved high standards of service quality and customer satisfaction. However, Postcomm has been sensitive to suggestions that the current licensing arrangements could do more to facilitate market entry for some small and medium sized potential mail operators – and therefore promote the development of choice and innovation for mail users.
- 1.9 In its August 2005 decision document on the licensing framework Postcomm said that it believed that what may be appropriate in the early stages of market opening, when establishing and maintaining confidence is crucial, may not continue to be appropriate as the market develops. For this reason, Postcomm said it would conduct a full review of the licensing framework in 2008 which would take into account developments in the market in the intervening period.
- 1.10 In May 2007 Postcomm published a consultation document which proposed amendments to the 2006 Licensing Framework³. In the May

² Postcomm Forward Work Programme and Business Plan. April 2002.

³ Amendment of the 2006 Licensing Framework. A consultation document. May 2007.

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2007 consultation document Postcomm said that it would conduct the review in two stages:

- stage 1 – amendment to the 2006 licensing framework. The stage 1 process began in May 2007 with the publication of a consultation document which proposed some amendments to the current licensing regime;
- stage 2 – a fundamental review of the licensing framework, to begin in January 2008, which would seek views and consider whether a licensing regime remains appropriate.

1.11 This decision document discusses the responses received by Postcomm to its May 2007 consultation document. It also sets out the amendments that Postcomm is making to the licensing framework and the modifications Postcomm is proposing to existing licences as a result of Stage 1 of its review.

1.12 The Commission is deliberating the most appropriate way to take forward the fundamental review of the licensing framework. The Commission's decision will be announced in the first quarter of 2008.

Stage 1 - amendment of the current licensing framework

1.13 The amendments which Postcomm will make to the 2006 Licensing framework will require the modification of some of the standard licence conditions in licences granted to new operators. Postcomm considers that, where possible, it is desirable that the terms and licence conditions in all licences granted to licensees other than Royal Mail Group Ltd (Royal Mail) are the same. Unnecessary differences between the licence conditions of operators could cause confusion for licensees and other stakeholders. This document therefore proposes modifications to the relevant conditions in the licences held by existing licensees as well as amendments to the standard licence that would be granted to successful new applicants. Licence modification proposals are set out at Appendix 3 to this document.

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- 1.14 The changes set out in this document do not significantly affect the licence granted to the dominant postal operator in the UK, Royal Mail. A modification is, however, proposed to licence condition 20 of Royal Mail's licence ("Payments of amounts to Postcomm") to reflect the changes to be made to all other licences.
- 1.15 Royal Mail is currently the UK's largest mail operator, collecting and trunking around 80%, and delivering around 99% of all letters in the UK. Royal Mail's licence requires it to provide the universal postal service. Royal Mail's licence also includes provisions to protect customers which do not apply to other licensed operators, for example conditions relating to pricing and quality of service.
- 1.16 As part of the consultation process Postcomm actively sought to engage with its stakeholders. The engagement programme included:
- seeking views of potential licensees through business associations such as the Federation of Small Businesses, and courier trade bodies such as the National Couriers Association
 - holding a workshop hosted by Postcomm for existing licensees, and
 - contacting potential licensees who had previously contacted Postcomm about obtaining licences.
- 1.17 Postcomm explained the rationale for its proposals in its May 2007 consultation document. Postcomm considers that the amendments it is making to the licensing framework will benefit all customers indirectly, as well as benefiting some customers directly, by promoting competition and innovation in the market as a whole. Postcomm believes that the changes that it is making should remove regulation of licensees which has become unnecessary, so making it easier for them to enter the market. The increased potential for new competitors to enter the market should incentivise existing licensees to ensure their customers are satisfied with the services provided by them.

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Timescales for the review

1.18 The following are the intended timescales for the Licensing Framework Review:

- publication of this decision document and proposals to modify licence conditions - January 2008
- amendments to application procedures and the introduction of an amended standard licence for new operators from January 2008, and
- modifications to existing licences, to be implemented by the end of February 2008.

Postcomm's strategy for regulation of the postal market

1.19 Postcomm's Strategy Review, published in August 2006⁴, started a discussion about the way that Postcomm should regulate the postal market in the long term. The Strategy Review document made clear the importance that Postcomm attaches to the principles of better regulation⁵. In formulating its policies Postcomm aims to work in line with these principles which are regarded as best practice across Government. This means that Postcomm will:

- regulate in a proportionate manner and withdraw from regulation where possible, and
- focus regulation on targeting specific problems which may affect the delivery of the universal service or prevent competition developing in the market.

⁴ Postcomm's Strategy Review. The postal market - 2010 and beyond: Key questions for stakeholders. August 2006.

⁵ There are five principles of better regulation: proportionality, accountability, consistency, transparency and targeting.

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1.20 In its work Postcomm will seek to be aware of the impact of its regulation. Postcomm checks that what it is doing is effective and that the risk of detrimental side effects has been minimised. Postcomm wishes, while acting in accordance with its statutory duties, to avoid a situation where regulation of the market makes it difficult for existing operators to innovate and deters new operators from entering. Postcomm believes that as competition develops it should seek to reduce the amount of regulation, such as requirements to provide information prior to the grant of a licence.

Responses to the consultation

1.21 Postcomm received responses to its consultation from the following individuals and organisations:

Mr Colin Barrow

The Communication Workers' Union (CWU)

The Direct Marketing Association (DMA)

DX Network Services (DX)

The Mail Competition Forum (MCF)

Mail Users Association (MUA)

Postwatch

Royal Mail

Mr Tony Vitofski

Zip Mail

All responses are available on Postcomm's website.

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Structure of this document

1.22 The remainder of this document is structured as follows:

- Chapter 2 summarises Postcomm's reasons for proposing the amendments and its reaction to the responses received.
- Chapter 3 sets out the responses to Postcomm's proposal to bring forward the notice period for granting a licence, and Postcomm's assessment of the responses.
- Chapter 4 summarises the responses to Postcomm's proposal to no longer require Mail Integrity policies for checking at the licence application stage, and Postcomm's assessment of the responses.
- Chapter 5 reviews the responses to Postcomm's proposal to no longer request an explanation of how a licensee will comply with the Common Operational Procedures Code at the licence application stage, and Postcomm's assessment of the responses.
- Chapter 6 deals with Postcomm's proposal to no longer require evidence of registration with the Information Commissioner for Data Protection purposes.
- Chapter 7 covers Postcomm's proposal to no longer require Criminal Records Bureau checks.
- Chapter 8 deals with Postcomm's proposal to remove the annual fee for smaller operators and reduce the application fee for all applicants.
- Chapter 9 summarises the responses to Postcomm's proposal to remove the requirement for licensees to have a guarantee or contractual arrangement to ensure the delivery of mail in case of licensee failure.
- Chapter 10 reviews some of the other issues raised by stakeholders in their responses to this consultation.

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- Annex 1 is a summary of the amendments being made.
- Annex 2 is the revised application form.
- Annex 3 shows the text of the licence modifications which Postcomm is proposing to make.

Contact details

1.23 If you would like further clarification of any points raised in this document or Postcomm's intended action, please contact

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2. Amendment of the Licensing Framework

Postcomm's proposals

- 2.1 Postcomm considers that, in discharging its statutory duties, it should ensure that licensing processes and the licensing framework are relevant to today's more competitive postal market, imposing only justified regulations.
- 2.2 In order to help meet Postcomm's duty of furthering the interests of users of postal services, wherever appropriate through the promotion of effective competition, Postcomm's proposals were designed to reduce unnecessary regulation. Postcomm considers that removing unnecessary regulation will help to encourage competition, and so benefit customers.
- 2.3 Postcomm believes that effective competition will protect the interests of postal customers more effectively than regulation will. Postcomm sees regulation very much as a surrogate for competition and believes that it should withdraw from regulation where possible.
- 2.4 Postcomm has carefully considered whether any of the amendments that it has proposed would put customer interests at risk, and does not consider that they will.
- 2.5 Postcomm considers that new entry will tend to protect the long-term interests of customers through promoting competitive rivalry and reinforcing improvements in service and downward pressures on prices. While acting in accordance with its statutory duties, Postcomm is keen to ensure that any barriers to market entry that the licensing framework imposes do not prevent entry and unwittingly constrain the competitive pressures which will themselves benefit customers.
- 2.6 Postcomm has also carefully considered whether the amendments it is making, or the licence modifications it is proposing to licensees, would reduce Postcomm's powers of enforcement. Nothing being proposed will affect Postcomm's ability to enforce licence conditions.

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2.7 Postcomm's Stage 1 proposals did not include any changes to the Mail Integrity Code of Practice or the Common Operational Procedures Code of Practice. Licensees will still be obliged to comply with these Codes and the Act.

2.8 Postcomm's proposals focussed on checks carried out during the licensing process and on two licence conditions. Broadly speaking, the proposals were:

- to remove some licensing checks and to replace them with declarations that applicants are aware of their obligations or, in relation to criminal convictions, a requirement to provide details;
- to reduce licence fees for certain operators, and
- to remove the need for a guarantee or equivalent contractual arrangement for delivery of mail in the event of the licensee's exit from the market.

2.9 When competition was introduced Postcomm wanted, through the licensing process, to ensure that mail users were not adversely affected by the experience of using operators who might not have fully thought through operational issues. These issues included mail integrity and interfacing with other operators who did not have adequate systems in place. Any such adverse experiences could have caused a lack of confidence in the introduction of competition.

2.10 Many mail users now have experience of using new postal operators. The risks Postcomm is seeking to address have therefore changed. The risk of mail users not having the confidence in the competitive market necessary to switch operator is, we consider, no longer significant.⁶ Rather we consider that the greater risk is that potential new operators may be inhibited from entering the market. This may happen because of the length of time involved in applying for a licence. It may also happen because of the cost of having to have a guarantee or other arrangements in place in the event of exit from the market, and

⁶See Postcomm's Business Customer Survey, 2007, for customer views of operators' performance.

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because of other requirements an applicant must meet and the level of annual fees. In other words there is a risk that mail users will be offered fewer competitive choices under the present licensing framework than would be the case under a framework which imposed less regulation. The balance of Postcomm's concern has moved from a concern that mail users are not inhibited from switching, to ensuring that opportunities to switch are not unnecessarily restricted.

- 2.11 Postcomm has also reflected, over the course of the consultation, on whether it should be concerned about the degree of comfort that mail users may draw from the licensing framework. Postcomm has considered whether this comfort may lead them to act in the postal market differently to the way in which they would act in an unregulated competitive market.
- 2.12 Mail users may be aware of the mail integrity, common operational procedures and guarantee arrangements in licences. They may also know about the checks Postcomm currently makes before granting a licence. As a result, mail users may draw comfort from licensing checks and licence conditions and undertake less due diligence work themselves than they would in the absence of these aspects of the licensing system. While many mail users are not aware of the details of these procedures and licence conditions, they may draw general comfort from the fact that a licence has been granted to an operator by Postcomm.
- 2.13 In reality, Postcomm's pre-licence checks cannot give enduring confidence that the interests of mail users will be safeguarded in their dealings with licensed operators. Nor are the conditions of an operator's licence a guarantee to users that they will be able to deal with licensed operators without risk. Licence contraventions may occur and action to ensure compliance takes time.
- 2.14 It is for customers to consider, as part of the procurement process or as part of an audit of contracts, what information they need from a mail operator about its processes for complying with licence conditions and

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Codes of Practice, its financial standing, and what would happen to their mail in the event that the operator's business failed.

Responses to the consultation

- 2.15 The majority of stakeholders who responded to the consultation were opposed to most of the proposed amendments. Postcomm has given careful consideration to the points raised by respondents.
- 2.16 Postcomm anticipated an imbalance of opinion because it is unusual to get many consultation responses from smaller organisations and individuals. Despite making considerable efforts to contact potential licensees, Postcomm did not elicit a significant number of responses from this group.
- 2.17 Potential new entrants, often smaller organisations or individuals, are expected to gain more than current licensees from the proposed amendments.⁷ Current licensees have little to gain from the amendments besides the removal of the guarantee requirement. They can potentially expect to face additional competition as a result of the amendments which Postcomm proposed because several barriers to entry will be removed.
- 2.18 Postcomm is satisfied that the changes it is making and proposing are appropriate to further the interests of customers by promoting effective competition at this stage in the development of the market. They will enable the licensing arrangements for post to meet that aim in a way which is better targeted and more proportionate than the current arrangements.

⁷ Postcomm's experience is similar to that of Comreg, the Irish Commission for Communications Regulation. In its decision document "Regulation of Postal Services – Postal Service Authorisations, Reserved Area Controls & Levy" Comreg noted that despite the presence of some 500 couriers in Ireland, only 7 responses were received to its consultation.

3. Notice requirements

3. Notice requirements

- 3.1 Section 12 of the Act provides that before granting a licence Postcomm must publish a notice proposing the grant of the licence and giving its reasons for the proposal. The Act requires Postcomm to publish the notice in a manner which it considers appropriate for bringing the notice to the attention of those likely to be affected by the grant of the licence. A period of not less than 28 days must be given during which time representations about the proposed grant of a licence can be made to Postcomm.

Proposed change

- 3.2 Postcomm proposed changing its current licensing arrangements so that the notice will be published once an application has been duly made i.e. it contains all of the information required for the application to be assessed. Until now, the notice has been published only after all checks have been completed. Even with a change to the timing of publication, a licence will not be granted until all checks have been satisfactorily completed. The effect of the change would be that the period in which representations may be made (not less than 28 days from the date of publication) will start at an earlier stage than has been the case and this will speed up the licensing process.

Responses

- 3.3 The proposal prompted a mixed response. Some respondents felt that the amendment would be helpful to applicants. Other respondents considered that the proposed change would make it harder to respond effectively to the notice.
- 3.4 At the licensee workshop, one licensee was concerned that, if application processing took a long time, consulting at the start of the process might mean that issues identified later in the licensing process could not be discussed in the consultation.

3. Notice requirements

- 3.5 In its consultation response, Royal Mail did not state whether it supported or opposed the proposal to bring the consultation forward. Royal Mail did note however that the minimum 28-day consultation period was a valuable check on the issuing of a licence.
- 3.6 The CWU felt that consulting on an application before all checks are completed would place an unnecessary burden on consultees. The CWU considered that the proposal means that consultees may respond to the consultation when a response is unnecessary because the applicant has failed other checks, and so will not be granted a licence anyway.
- 3.7 Postwatch believed that it would be unable to respond to a consultation effectively if the consultation began before Postcomm had completed its checks. This was because Postwatch relies on receiving Mail Integrity information from Postcomm to help it form a view on an applicant's suitability.
- 3.8 MUA and Zip Mail supported Postcomm's proposal to begin the 28-day consultation period when Postcomm is satisfied that an application has been duly made. Zip Mail had found that delaying publishing the notice until all other checks had been carried out had been an unnecessary delay to beginning operations.

Assessment

- 3.9 Postcomm made this proposal because it considers that it is in the interests of customers for licences to be granted as quickly as possible where granting a licence is appropriate. Postcomm wishes to ensure that outdated regulation does not deter potential licensees from entering the market, as these operators may have the potential to provide innovative and good value services to customers.
- 3.10 Postcomm's proposal only related to the timing of publication of the notice. The minimum period in which representations may be made is set out in the Act. Postcomm still has a statutory duty to propose the grant of a licence and consider any responses made within 28 days.

3. Notice requirements

Postcomm's proposal is that the 28-day consultation should begin earlier in the licence application assessment process.

- 3.11 Postcomm will still be able to refuse to grant a licence if it becomes aware of information which means that granting a licence is inappropriate.
- 3.12 Postcomm does not anticipate that the processing of licences under the amended framework will take a long time, as the licensing process will be more streamlined. However, Postcomm recognises the potential issue raised at the licensing workshop. If, in exceptional cases, a considerable period of time has elapsed after the proposal to grant a licence, and Postcomm has decided that granting a licence is appropriate, Postcomm may issue another notice proposing to grant the licence.
- 3.13 Postcomm acknowledges the CWU's point that consultees may spend time responding to a consultation when a licence may not be granted for other reasons. However, it does not normally receive responses from any stakeholders other than Postwatch, so Postcomm considers that the benefits of speeding up the licensing process will outweigh the possible costs to consultees.
- 3.14 Postcomm will, under the amendments set out in chapter 4, no longer require details about how an applicant intends to comply with the Mail Integrity Code. Postwatch will therefore no longer receive this information from Postcomm. Postwatch will therefore have to decide whether and how to respond to future consultations based on other information available to it at the time.
- 3.15 Postcomm has considered the responses made to the consultation and by those attending its workshop. Postcomm considers that a licensing process that will be faster than in the past will enable licensees to enter the market sooner than has been the case. This can be expected to further customer interests by making sure that regulation does not discourage operators from applying for licences and providing services in the licensed area of the postal market. Postcomm has therefore

3. Notice requirements

decided that in future it will publish the notice, proposing the granting of a licence, when it is satisfied that an application has been duly made.

4. Mail security measures

4. Mail security measures

Proposed change

- 4.1 Postcomm proposed that the current checks by Postcomm on an applicant's intended arrangements to comply with the Mail Integrity (MI) Code should be removed from the licence application process. Applicants would instead be required to provide a declaration that they have read and understood the MI Code and will ensure that their processes are compliant before operations commence. Postcomm considered whether the adverse effects of the current checks, in extending the time that it takes a new entrant to enter the market and the costs of the checks (which are ultimately paid by customers), are justified or act as an unnecessary barrier to entry.

Responses

- 4.2 Most respondents strongly opposed the removal of checks on MI policies at the application stage. Royal Mail considered that Postcomm's proposal represented an 'abdication of responsibility' and the MCF considered the amendment to be a 'serious weakening of the process'.
- 4.3 Royal Mail and the MCF believed that the application stage checks on compliance with the MI Code should remain, since they considered that these checks gave customers confidence in the mail market. They were concerned that a drop in confidence could damage the industry, leading to a drop in volumes. The CWU considered that removing application stage checks would mean that applicants would no longer have to think about how to comply with the MI Code.
- 4.4 Three other respondents believed that the application stage checks would only deter companies from applying for a licence if they had no intention of complying with the MI Code. Such potential licensees would not want to invest in MI policies. In this case, deterrence was to be welcomed.

4. Mail security measures

- 4.5 Postwatch believed that it would be inappropriate to grant a licence to an applicant who could not prove it could comply with the MI Code at the application stage. Postwatch also questioned whether removing the application stage checks would remove a barrier to entry, since compliance with the MI Code was necessary anyway. MUA believed that application stage checks were not a barrier to competition which could be removed, since customers would anyway require evidence of compliance with the MI Code before entering into a contract with a new licensee.
- 4.6 At the licensee workshop, one licensee felt that the dialogue with Postcomm which resulted from Postcomm checking their Mail Integrity policies at the application stage helped to ensure the development of robust policies.
- 4.7 At the licensee workshop, one licensee asserted that application stage checks of MI Code compliance ensured that such compliance was incorporated into licensees' business models at an early stage. Two licensees considered that customers could draw enduring comfort from the application requirement to demonstrate MI Code compliance. Having invested in the development of a compliance policy it was felt a licensee was likely to adhere to it.
- 4.8 Two licensees also noted that the MI policies submitted in the past did not all meet the required standard at the first attempt. If Postcomm stopped doing checks at the licence application stage, some licensees would then inevitably operate without complying with the MI Code.
- 4.9 At the same workshop, one licensee considered that the MI Code was not needed at all, since the Act already made it an offence to interfere with or delay mail. In this licensee's view, the MI Code itself was an unnecessary duplication of regulation which could be removed.
- 4.10 One respondent suggested that, in order to avoid requiring applicants to submit Mail Integrity policies at the application stage, Postcomm could require policies to be submitted within three months of operations commencing.

4. Mail security measures

Assessment

- 4.11 Postcomm acknowledges the concern caused by this proposal. Postcomm carefully considered the value of these ex-ante⁸ checks before making its proposal. Postcomm has also carefully considered the views expressed during the licensee workshop and those made in formal responses and reviewed its proposal in the light of these responses. It is important to reiterate the proposal as set out in the May 2007 licensing consultation document. The proposal is to stop making checks of an applicant's policies for complying with the MI Code. Postcomm has not proposed any changes at this stage to the MI Code. In addition, it remains an offence under the Act for postal operators or other persons to interfere with mail.⁹
- 4.12 Responsibility for compliance with the MI Code (and all other licence conditions) and the Act lies with licensees. Postcomm considers that this responsibility is unambiguous and will be brought to the attention of licensees in the application process through the declaration they will have to sign. This should ensure that appropriate compliance policies are part of the applicant's business model. For as long as compliance with the MI Code remains a licence condition, the duty to comply with it will continue to be backed by the enforcement provisions in the Act.
- 4.13 Moreover, Postcomm would expect that the likely bad publicity associated with poor MI policies or possible enforcement action regarding a failure to comply with mail integrity requirements will be an incentive for compliance.
- 4.14 Against this background, it appears to Postcomm that the balance of the arguments lies in favour of making the proposed changes. Licensees will still be required to have MI policies in place when they commence operations. We believe that allowing licensees to choose the most appropriate time to produce these policies (before operations

⁸ A term that refers to future events. The provision of information before the grant of a licence can be referred to as ex-ante.

⁹ Section 83 and 84 of the Postal Services Act 2000.

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commence) will allow licensees' resources to be used most efficiently and effectively.

- 4.15 Also, in terms of enduring effect, the licensing stage checks do not add to what is required by the licence condition and the provisions of the Act. They therefore now represent an unnecessarily cautious duplication of regulation. Although such regulation was necessary when competition was first being introduced, many users have become used to using alternative service providers. The general experience of competition has proved positive for them, so the earlier need for caution has passed.¹⁰
- 4.16 Postcomm does not believe that the removal of application stage checks will decrease customer confidence in the mail market to any significant extent. Postcomm is not proposing changing the MI Code or the relevant licence condition at this time. The role and form of the MI Code will be considered as part of Postcomm's fundamental review of the Licensing Framework in 2008. To the extent that users are aware of the application process and might draw comfort from it, Postcomm considers that its proposed changes provide an important clarification of the role of the licensing process. Mail customers should not view the possession of a licence as in any way a guarantee of performance by the licensee.
- 4.17 Customers should instead carefully consider whether a licensee is capable of meeting their needs during the procurement process and before entering into contracts. Postcomm understands that a majority of large mail users, including for example the Royal Bank of Scotland Group and Norfolk County Council¹¹, already carefully audit licensees' systems and processes as part of the procurement process. This is a more appropriate approach in today's more competitive market than the regulator performing checks on new entrants. There is no

¹⁰ See Postcomm's Business Customer Survey, 2007, for customer views of operators' performance.

¹¹ See Postcomm's 2006 Competitive Market Review.

4. Mail security measures

“abdication of responsibility”¹² in this approach, rather a re-allocation of responsibility towards the way in which it would be allocated in a more established market.

- 4.18 There are a number of professional consultants in the mail market who advise customers on which operators to use. These are likely to increase the likelihood of non-compliance or poor service being reported to potential customers of a licensee. This compounds the other incentives for licensees to comply with their licences and offer good service to customers.
- 4.19 Postcomm considers that requiring policies to be submitted within a period of three months of a licensee beginning to trade, as suggested by one respondent, would delay the negative effect of the barrier to entry but would not increase the likelihood of licensees complying with the MI Code.
- 4.20 Postcomm has carefully considered the views of respondents and reviewed its proposals in the light of these responses. Postcomm considers that, given the current obligations in licences and in the Act, the duplicate regulation provided by MI policy checks is disproportionate in today’s postal market. The checks cannot ensure that licensees comply with the MI Code. However, customers can assess for themselves whether the level of mail protection provided by a licensee is sufficient for their needs. Consequently, the checks now add insufficient practical benefit to justify the burden that they involve. Postcomm has decided, therefore, that it will no longer require the submission of applicants’ MI policies for checking at the application stage.
- 4.21 In order to ensure that applicants are able to comply with the MI Code, Postcomm is revising the guidance on applying for licences, and will reinforce the advice to applicants on the need to be able to comply with

¹² “Amendment of the 2006 licensing framework: Royal Mail’s response to Postcomm’s May 2007 consultation document”, p. 10.

4. Mail security measures

the licence conditions and the requirements of the Act. Postcomm will discuss MI issues with applicants if applicants seek further explanation.

- 4.22 Postcomm will review the form and role of the MI Code as part of its more fundamental review of licensing in 2008.

5. Common Operational Procedures

5. Common Operational Procedures

Proposed change

- 5.1 Postcomm proposed removing the requirement for applicants to explain how they will ensure the requirements of the Common Operational Procedures Code (COP Code) will be met. Applicants would instead be required to provide a declaration that they have understood the COP Code's requirements and that they will be in a position to comply with the COP Code when operations commence.

Responses

- 5.2 Respondents who commented on this proposal were opposed to it, generally for the same reasons and to the same extent that they were opposed to removing the checks on Mail Integrity policies. The CWU felt that the proposal was a relaxation of the current requirements, and that Postcomm should strengthen the COP Code checks rather than remove them. MUA felt that it was 'vital' to maintaining quality of service for customers that these checks were retained. Zip Mail was concerned that removing the checks could 'damage the image of mail as a medium, and hence the whole industry'.
- 5.3 At the licensee workshop, some licensees considered that knowing that a new licensee complied with the COP Code provided a degree of reassurance to other operators. They also considered that, having invested in the development of a compliance policy, a licensee would abide by that policy.
- 5.4 One licensee at the licensee workshop considered that not having a check on COP Code compliance at the application stage could increase costs for other licensees, as they would be less certain about how newly licensed competitors would treat their mail.
- 5.5 Royal Mail and the CWU believed that removing checks on the COP Code would reduce confidence in the mail market and that this would have a negative effect on volumes. Royal Mail was also concerned that

5. Common Operational Procedures

breaches of the COP Code would continue for a long time before Postcomm began investigating reported breaches.

- 5.6 Postwatch believed that Postcomm needed to know how licensees intended to comply with the COP Code in order to ensure the integrity of mail, quality and choice in the postal market.
- 5.7 The DMA did not consider the COP Code to be a barrier to entry, since operators only have to tell Postcomm how they will comply with it.
- 5.8 At the licensee workshop, one licensee felt that the dialogue with Postcomm which resulted from Postcomm requiring their Common Operational Procedures at the application stage helped to ensure the development of robust policies.

Assessment

- 5.9 Postcomm is aware of the concern with which stakeholders view this proposal. Postcomm carefully considered the value of these checks before making its proposals. It has considered the views expressed during the licensee workshop and those made in formal responses and reviewed its proposals. Postcomm is not proposing any changes that affect licensees' need to comply with the COP Code at this time. The function and content of the COP Code will, however, be reviewed as part of the fundamental licensing review in 2008.
- 5.10 It is a condition of the standard licence that licensees comply with the COP Code. Postcomm believes that the same points made about the checking of MI policies are relevant for Common Operational Procedures policies. The checking of Common Operational Procedures policies on application was a necessary condition at the time of full market opening when a more cautious approach to licensing was appropriate. On market opening Postcomm wanted to minimise the risk of the first users to switch operator suffering experiences which may have discouraged other users from exploring competitive alternatives. Now that users have the confidence to switch because the experience of competition has been good, it is appropriate for Postcomm to consider whether that caution remains appropriate.

5. Common Operational Procedures

- 5.11 Market disciplines which were not present at the time competition was introduced are now emerging. It is in the best interests of a licensee to comply with the COP Code because an increasing number of customers could now move their business to an alternative operator if affected by their operator's poor performance. If there is non-compliance the bad publicity that a licensee could attract as a result of enforcement action can be expected to impact on their ability to retain and attract customers. Moreover the licence condition will continue to apply. Postcomm will consider the role and form of the COP code as part of the fundamental review of the Licensing framework in 2008.
- 5.12 Postcomm considers that it is sufficient to ensure that licensees confirm that they understand the requirements of the COP Code and that it is a condition of their licences that must be complied with. As detailed in the August 2005 *Postal Code of Practice for Common Operational Procedures*¹³, the idea of a Code of Practice is that it gives operators flexibility to determine how best they can comply with the principles and objectives of the code.
- 5.13 As is the case for the MI Code, the COP Code currently presents a barrier at the licence application stage, whereas it is only necessary for licensees to comply with the COP Code by the time they begin operations.
- 5.14 As well as reviewing its guidance, which gives applicants the information they need to determine how to comply with the COP Code, Postcomm will discuss the requirements with applicants and licensees if further explanation is sought.
- 5.15 Postcomm considers that there is potential for the unjustified regulation represented by requirements such as this to deter operators from competing in the licensed area. If operators do not enter the market for this reason, customers will lose out because there will be a less extensive range of service providers to choose from.

¹³ Postcomm, 2005, *Postal Code of Practice for Common Operational Procedures*.

5. Common Operational Procedures

- 5.16 Postcomm considers that, at this stage in the development of the market, the benefits of maintaining the application stage requirement about the COP Code are outweighed by the barrier to entry that the requirement presents. We believe that requiring applicants to demonstrate an understanding of the COP Code, perhaps many months before operations would be ready to commence, is not an efficient or effective use of resources. Licensees will in any case be required to comply with the COP Code before commencing operations.
- 5.17 Postcomm has therefore decided that it will no longer require the submission of details of how a licensee proposes to comply with the Common Operational Procedures Code at the application stage.

6. Data Protection Act 1998 - registration

6. Data Protection Act 1998 – registration

Proposed change

- 6.1 Postcomm proposed that it would not check whether an applicant for a licence has notified the Information Commissioner (IC) that it will be handling personal data, or the terms of the register entry. Postcomm proposed that instead it would provide applicants with guidance on relevant data protection issues which might arise as a result of a licence being granted.

Responses

- 6.2 Most stakeholders who replied to the consultation did not comment on this proposal. Of those who did comment, there was a mixture of support and opposition.
- 6.3 At the licensee workshop, several licensees agreed that compliance with Data Protection legislation was a matter for the companies handling personal information and the IC. MUA, in its consultation response, also agreed that it was not necessary to ensure that licensees were registered appropriately with the Information Commissioner.
- 6.4 However, three respondents considered that, since companies had to register anyway, and since checking would incentivise companies to register, Postcomm might as well check that applicants are compliant.

Assessment

- 6.5 Those handling mail, whether or not they are licensed, must register with the IC. Postcomm's proposal cannot and does not change this obligation.
- 6.6 Ensuring compliance with Data Protection legislation continues to be the responsibility of licensees and the IC. Postcomm considers that for it to provide guidance to applicants on this issue is therefore sufficient.

6. Data Protection Act 1998 - registration

6.7 Postcomm considers that ensuring licensees are sufficiently incentivised to register with the IC is not Postcomm's responsibility, but that of the IC. Postcomm considers that the current arrangements add no value while imposing an administrative burden on applicants.

6.8 Postcomm has, therefore, decided that it will no longer require a copy of an applicant's Data Protection registration for checking that applicants are registered with the IC and will provide guidance, as proposed.

7. Fitness and propriety of an operator

7. Fitness and propriety of an operator

Proposed change

- 7.1 Postcomm proposed that the current requirement for the provision of a Criminal Records Bureau (CRB) Basic Disclosure should be removed from the licence application process and replaced by a requirement for applicants to provide details about any criminal convictions.

Responses

- 7.2 Only some stakeholders responded on this issue. Of those that did respond, most were strongly in favour of retaining the requirement for CRB Basic Disclosures. In particular, Royal Mail and the MUA were strongly opposed to the proposal.
- 7.3 Three respondents believed that postal operators should be required to demonstrate fitness and propriety at the application stage. Without a CRB Basic Disclosure requirement, Royal Mail perceived that there would be an increased risk of traders entering the market who are not 'legitimate and financially sound'. This, Royal Mail considered, could lead to bad customer experiences and a loss of confidence in the market.
- 7.4 The CWU considered that the MI Code did not provide enough reassurance that a licensee would protect the mail, and so CRB Basic Disclosures should be required. MUA did not consider that CRB Basic Disclosure checks were a barrier to entry, since customers would want such checks carried out before entering into an agreement with a new licensee. By disposing of the checks, MUA considered that Postcomm was passing costs onto customers.
- 7.5 The DMA agreed that it was appropriate to not require CRB Basic Disclosures, as long as there was no 'dilution' of requirements under the MI Code of Practice.
- 7.6 At the licensee workshop, several participants agreed that the CRB Basic Disclosure requirement was of limited use. It was suggested that

7. Fitness and propriety of an operator

checks on overseas residents were difficult to carry out. Participants also pointed out that a criminal could control a postal business without formally becoming a director of that business.

Assessment

- 7.7 Postcomm considered the impacts of removing these CRB Basic Disclosure checks before publishing its consultation document, and has considered the responses it has received.
- 7.8 Postcomm considers that where customers wish to know about the status of the controlling persons of a licensee, either as part of a procurement exercise or as part of contract audit procedures, information can be requested from licensees directly. Licensees may choose to provide CRB Basic Disclosures as a way of differentiating themselves from other operators. Postcomm believes it is appropriate to leave such information disclosures to be determined by market demand. This will also ensure that such information, when provided, is up to date.
- 7.9 Postcomm considers that the current arrangements cannot provide ongoing assurance about the fitness or propriety of a licensee. It is always possible for an unfit person to gain control of a business without being named as a 'controlling person'. Consequently, checking basic disclosures of controlling persons gives limited assurance, especially in the long term, that a licensee, as a whole, is 'fit'. Postcomm is concerned that the current arrangements could be misunderstood and that customers may draw disproportionate comfort from the checks.
- 7.10 In today's market, where a large number of customers have experience of more than one operator, and have confidence in them¹⁴, Postcomm considers that the benefit of retaining this requirement is outweighed by the administrative burden which the requirement imposes. Postcomm has therefore decided that CRB Basic Disclosures should no longer be required as part of the application process, and should be replaced by

¹⁴ See Postcomm's Business Customer Survey, 2007, for customer views of operators' performance.

7. Fitness and propriety of an operator

a requirement for applicants to provide details about any criminal convictions, bankruptcy and disqualification from being a company director.

8. The application and annual fees

8. The application and annual fees

Proposed change

8.1 Postcomm proposed:

- lowering the application fee to zero or £50 for all applicants, and
- setting the annual fee for all licensees with a turnover below £10 million to zero.

Responses

8.2 Postcomm received a range of responses to this proposal. Royal Mail believed that removing the application and annual fees was a 'disproportionate and misplaced response' while one respondent, considering entering the market, suggested that the fees would influence his decision about when to enter the market.

8.3 Some respondents considered that a £1000 licence fee or application fee was not so expensive as to constitute a barrier to entry. While sharing this view, MUA considered that it would be possible to reduce licensees' contributions towards Postcomm's costs to £100 for an application and £500 for the annual fee.

8.4 The MCF also considered that the fees were not high enough to constitute a barrier to entry, but that perhaps it would be helpful to not charge an annual fee in the first year, because in that year the application fee is paid.

8.5 Royal Mail considered that applicants should cover the costs of their applications and contribute to Postcomm's ongoing costs. It argued that since the market was worth £7bn per year and was until recently a monopoly, £1000 was a small cost relative to the potential benefit of entering the market.

8.6 Some respondents considered that a £1000 application fee and £1000 annual fee would help ensure that only credible and committed

8. The application and annual fees

operators would enter the market. The CWU felt that licence fees should be directly proportionate to turnover.

- 8.7 Several respondents believed that the application fee should reflect the cost of processing an application and that the annual fee should be retained in order to contribute towards the ongoing costs of Postcomm and Postwatch. One respondent considered that if cost-reflective fees were high enough to deter potential applicants, Postcomm should reduce its costs. If fees remained too high after this, Postcomm should no longer require smaller operators to be licensed.
- 8.8 At the licensee workshop, a participant pointed out that if a number of smaller operators did not pay application or licence fees, Royal Mail would have to pay a disproportionately large part of Postcomm's costs.
- 8.9 Another participant argued that the £10 million threshold, above which licensees must pay a licence fee based on revenue, should be index-linked, since the threshold was lowered in real terms every year by inflation.
- 8.10 Zip Mail supported a reduction in fees, on the basis that the annual and application fees constituted a significant barrier to entry to small and medium-sized enterprises.
- 8.11 Postwatch agreed to the removal of the fees because it felt there should be as few hurdles for applicants to negotiate as possible.

Assessment

- 8.12 Postcomm considered the possible impacts of this amendment before proposing it and has considered the views and responses that it has received. Postcomm is concerned that although a £1000 application fee is not a large amount of money to some current licensees, the fee could be enough to deter new, small businesses. Postcomm considers that it should seek to create conditions that enable entry into the market by a wide range of businesses, since this is important to the vitality of the market and to the market's ability to provide customers with the services they want. The size and potential opportunities available to

8. The application and annual fees

operators once in the licensed area may be considered irrelevant to the impact that the application fee has on deterring potential licensees.

- 8.13 Postcomm does not consider that ability to pay application or annual fees is an appropriate test of the 'credibility' of prospective licensees.
- 8.14 While Postcomm recognises that a £1000 application fee could deter uncommitted applicants from applying, it could also deter small but committed ones. Postcomm considers that a lower fee, of £50, could prevent Postcomm spending resources on processing frivolous applications. A £50 fee would also make it easier than it has been for small operators to enter the market.
- 8.15 Postcomm recognises that the current £10 million threshold does not adjust for inflationary changes. However the erosion by inflation of the £10 million threshold is unlikely to have an appreciable effect on the function of that threshold. Postcomm considers that the £10 million threshold will continue to represent a reasonable dividing line between smaller and larger postal operators for some time to come. The current threshold provides regulatory certainty and Postcomm does not consider it appropriate to revise the threshold level at this time.
- 8.16 Postcomm acknowledges the fact that Royal Mail will pay a marginally larger proportion of Postcomm's costs if the annual fee is removed. However, if any of its competitors increase their licensed area turnover to more than £10 million, these competitors will contribute to Postcomm's costs and Royal Mail's contribution will decrease.
- 8.17 Postcomm does not consider that the removal of licence fees for licensees with licensed area turnover below £10 million will impact significantly on Royal Mail's ability to finance the Universal Service.
- 8.18 Postcomm believes it is in mail users' interests for there to be as few barriers to entry as possible. Small businesses, for which £1000 could be a significant deterrent to applying for a licence, should be able to operate in the licensed area. Postcomm has therefore decided that the application fee should be reduced to £50 and that there should be no

8. The application and annual fees

annual fee for licensees with an annual turnover of less than £10 million.

9. The financial guarantee and contract

9. The financial guarantee and contract

Proposed change

- 9.1 Until now, licensees have been required to have a guarantee or a contract with another operator to ensure that if a licensee ceased to operate, any licensed area mail in its possession at that time would be delivered. Postcomm proposed that the requirement should be removed from the standard licence.

Responses

- 9.2 This proposal was welcomed by some licensees because they saw the cost of maintaining a guarantee or contract as an unnecessary cost. However, several respondents were very concerned that without this requirement, mail could be left undelivered when an operator fails. Several respondents felt that a guarantee was valuable because they believed it helped to mitigate licensee failure.
- 9.3 Royal Mail suggested that Postcomm could consider requiring alternative forms of insurance, such as a performance bond. MUA considered that a guarantee could remain a requirement for operators with an annual turnover of more than £10 million and a more proportionate provision could be made for smaller operators.
- 9.4 Three respondents considered that the guarantees were expensive and unnecessary. They argued that, since services were paid for in arrears, if an operator failed, its customers could pay another licensee to deliver their mail.
- 9.5 Royal Mail considered that the cost of a guarantee was reasonable. It also considered that the need for a guarantee or similar arrangement increases as more operators, who might not charge for their services in arrears, enter the market.
- 9.6 The CWU felt that the benefits of a guarantee, namely protection of mail and of the reputation of the mail industry, outweighed its costs.

9. The financial guarantee and contract

9.7 At the licensee workshop, several licensees felt that the value of the guarantee – 50p per item for two weeks' worth of volumes – was unnecessarily high. Because of the way it is calculated, the total cost of the guarantee also increased as licensees carried more mail, and so perversely incentivised licensees to keep their volumes low.

Assessment

9.8 Postcomm has considered the views and responses that it has received and the advantages and disadvantages of removing the requirement for a guarantee or contract. Postcomm is concerned that the guarantees are difficult and expensive to arrange and maintain. Meanwhile, applicants can only make contractual arrangements with another operator if that operator is willing to do so. Postcomm does not consider it appropriate for the entry into the market of one operator to depend on the willingness of others to cooperate with it. The current requirement to set up a guarantee or a contractual arrangement with another operator therefore represents a considerable barrier to entry.

9.9 Postcomm thinks that it is important for stakeholders to recognise that regulation cannot fully protect against licensee failure. The existing arrangements about the amount of the guarantee only cover licensed mail. High value items such as express items and heavy parcels are not considered when determining the size of the guarantee. The exception from the need for a licence for “pre-paid” mail under Section 7(2)(h) of the Act means that conveyance and delivery to a licensee of pre-paid access mail for final delivery need not be considered in setting the value of a guarantee. Therefore, even under the existing arrangements, it is unlikely that bank guarantees would enable all its customers' mail to be delivered should a licensee fail.

9.10 Postcomm is concerned that customers may not fully understand the limited degree of protection offered by the guarantee. They may believe that their mail is protected to a greater extent than it is. If customers believe this, they may not consider during the procurement process whether a licensee is likely to fail or what will happen to their mail if it

9. The financial guarantee and contract

does. Postcomm is concerned that customers may draw more comfort from the guarantee requirement than it actually provides.

- 9.11 Postcomm does not believe that there are special conditions in those areas of the mail industry where competition already exists which mean customers need more protection than in other, non-regulated industries. Postcomm notes that, in other regulated industries, where a service provider has failed, other operators have been very interested to take over its portfolio of customers. It seems reasonable to expect that the same incentive will apply in post and that it will encourage another licensee to take the opportunity to 'rescue' customers' mail should a postal business fail.
- 9.12 In addition, Postcomm considers that if customers in these areas of the industry are concerned about the effects of their postal operator failing, they have the choice of using an alternative operator.
- 9.13 Postcomm researched and considered various alternative arrangements, including a performance bond, in 2005 when it developed the current licensing framework. The arrangements that were implemented were considered more appropriate.
- 9.14 Postcomm has considered its proposals in light of the views and responses received from stakeholders. Customers can undertake their own assessments of the benefits of moving their mail contracts to a new operator and the financial standing of that operator.
- 9.15 Postcomm believes that it is now disproportionate to require companies to have guarantees or alternative contractual arrangements.

10. Other issues raised

10. Other issues raised

10.1 Respondents raised a number of other issues. Most of these issues were about the need to amend the current framework.

Evidence

10.2 Several respondents asserted that there was insufficient evidence of the licensing requirements presenting barriers to entry to justify removing those barriers. Postcomm has been told by potential and existing licensees that the requirements can be a barrier to entry to smaller operators. Additionally, several potential applicants have asked about the timing of Stage 1 of Postcomm's Licensing Framework Review, since the outcome might encourage them to apply. This supports Postcomm's view that the current requirements may discourage new operators from entering the market.

10.3 Postcomm also considers, however, that it cannot know how many potential licensees have been deterred by the current requirements, because it does not know (and cannot reasonably find out) how many potential applicants have decided not to apply.

10.4 An important reason for this review is the need to ensure that regulation is proportionate. Postcomm considers that some of the current precautionary licensing requirements, while appropriate at the time of market opening, are no longer appropriate. To continue regulating in the same manner, where the need for such regulation cannot be clearly established, would not be proportionate.

Comparison of the UK postal market with that of Germany

10.5 Several respondents considered that Postcomm's comparison of the German postal market was inappropriate. Postcomm referred to the German market only as a case study of a different postal market, and did not intend to suggest that it represented a market ideal that the UK should seek to reach. Consequently, while differences between the

10. Other issues raised

British and German postal markets are noted, they do not affect this review.

Increasing the number of operators to improve choice and competition

- 10.6 Postwatch questioned whether choice and competition will be improved by the encouragement of more, smaller licensees. Postcomm considers competitive pressures have the potential to better protect customers than regulation. Removing barriers to entry and ensuring that regulation is proportionate is likely to facilitate new entry, so increasing competitive pressures and helping to protect the interests of customers. Postcomm considers that choice and competition will enable customers to obtain better services at lower prices than would otherwise be the case.

Light-touch regulation

- 10.7 Royal Mail and MUA considered that reducing the requirements at the application stage, such as the requirements to provide information on how an applicant would comply with the Codes of Practice, would require Postcomm to regulate in other, potentially more intrusive, ways in order to ensure that licensees comply with their licences.
- 10.8 Postcomm does not believe this to be the case. The incentive for licensees to comply with the requirements of their licences and the Act will remain unaltered. Failure to comply would, as under the current arrangements, risk enforcement action or prosecution, and the loss of dissatisfied customers to compliant competitors.

The need for competition vs. regulation

- 10.9 The CWU felt that Postcomm should regulate licensees' service quality, as it does Royal Mail's, and should check licensees' financial viability, to protect the reputation of mail. These suggestions were outside the scope of this consultation. However, Postcomm considers that regulating other licensees' service quality is unnecessary. These

10. Other issues raised

licensees and their customers can negotiate and agree service standards commercially.

10.10 Royal Mail, as the dominant provider of postal services, is subject to rules about anti-competitive behaviour but, subject to these rules, it can agree individual contracts with customers. If any licensee's performance is unsatisfactory, it risks losing those customers who have a choice of operator. However, given Royal Mail's dominant position, it is proportionate to regulate some aspects of its service quality to protect customers (especially those who do not yet have a choice of operator) from poor performance. It is for customers (including those of Royal Mail) to decide what level of assurance they require about a licensee's financial position.

10.11 A number of other issues were raised which are more appropriate to be considered in the context of Stage 2 of the Licensing Framework Review and other policy areas such as reviewing the price control on Royal Mail. These included:

- the role of the licensing framework relative to competition
- the barriers to market entry presented by VAT and possible customer inertia, and
- the effect on competition of Postcomm controlling Royal Mail's prices.

The application form

10.12 In the conduct of this review, Postcomm has become aware that there may be opportunities to make the licence application form more user-friendly. Postcomm will further review the questions in the application form with a view to rephrasing or removing any that are unnecessarily complex. Postcomm does not consider that it will need to consult again for any of the changes it may make, and will update the form as appropriate.

10. Other issues raised

DHL Express (UK) Limited

10.13 In the consultation document, Postcomm talked about modifying Royal Mail's licence and the Standard Licences. This was intended to cover all current licensees. DHL Express (UK) Limited (formerly Securicor Omega Express Limited) does not have a standard licence. However, it is in no different a position to any of the other standard licensees as far as the proposals are concerned. For this reason, the decision document and licence modification proposals notice reflect Postcomm's intention and refers to DHL Express (UK) Limited along with Royal Mail and Standard Licensees.

Current licence applications

10.13 There are currently two outstanding licence applications. Postcomm will write to these applicants to seek confirmation as to whether they still wish to pursue their applications. If the applicants intend to pursue their applications they will be asked to meet the requirements of the amended licensing framework.

Appendix 1

Appendix 1: Summary of changes

Current requirements in the licence applications form	Change under proposed amendments
Name and address of applicant	No change
Nature of applicant – public limited company etc	No change
Body corporate – registered addresses and directors details	No change
For other entities (sole traders, partnerships etc)	No change
Details of controlling persons	No change
Other major shareholders	No change
Previous licences and applications	No change
Description of proposed postal service	No change
Forecast of volume and revenues	No change
Details of disqualification orders or undertakings	No change
Basic disclosure provided by the Criminal Records Bureau	Replaced by a requirement to provide details about any criminal convictions.
Details of proceedings or investigations	No change
A copy of applicant's registration under the Data Protection Act 1988.	Not required
Details about how the licensee proposes to comply with the Mail Integrity Code of Practice	Replaced by a declaration.
Arrangements for a guarantee or other arrangements to ensure that mail is delivered in the event that the applicant ceases to be a postal operator	Not required
Details about how the licensee proposes to comply with the Common Operational Procedures Code of Practice	Replaced by a declaration.
Details of standard licence conditions which the applicant believes should not apply or conditions which should be included.	No change
Application fee of £1000	Reduced to £50
Annual fee of £1000	Not required

Appendix 2: Revised application form

- A.1.1 Postcomm has produced the attached revised application form which takes account of the changes proposed to the current licensing framework.

LICENCE APPLICATION FORM

POSTCOMM

The Postal Services Commission

Application form for a licence to be granted under section 11 of the Postal Services Act 2000

Please read the Guidance provided with this application form. Those applying for a licence should take time to understand the conditions of a licence and the Codes of Practice on Mail Integrity and on Common Operational Procedures. Licensees must be able to comply with the terms of their licence as soon as they commence operation. Postcomm considers that failure to comply with the conditions of a licence is a serious matter which could lead to the imposition of a fine and the revocation of any licence granted. If there are any queries which are not covered in the Guidance or Codes please contact Postcomm.

Information about the applicant

1. Please provide the following details –
 - (a) name of applicant in full,
 - (b) any trading name(s),
 - (c) main business address, and
 - (d) name, address, telephone number and e-mail address (where available) of person to whom correspondence or enquiries about the application should be directed.
2. Please state whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the applicant's legal status).
3. If the applicant is a body corporate, please state –
 - (a) the jurisdiction in which it is incorporated,
 - (b) if applicable, its Company/corporate registration number,
 - (c) the address of the registered office,
 - (d) the full names and personal addresses of its current directors (including any shadow directors within the meaning of section 251 of the Companies Act 2006) or, where applicable, its corresponding officers,
 - (e) the name and registered office of any holding company (within the meaning of section 1159 of the Companies Act 2006) of the applicant and the name and registered or principal office of any parent undertaking (within the meaning of section 1162 of that Act) of the applicant.

Appendix 2

4. If the applicant is not a body corporate (e.g. it is a sole trader, partnership or other entity) please state -
 - (a) full name of each individual concerned in the management of the applicant, each partner of the applicant and/or each parent undertaking of the applicant within the meaning of section 1162 of the Companies Act 2006
 - (b) address of each such individual,
 - (c) date and place of birth of each such individual, and
 - (d) date and place of registration and registration number of each such undertaking.
5. Give the name of any “controlling persons” of the applicant not named in response to questions 3 or 4 above, together with details of any such person’s date and place of birth and address.
6. Where any person (other than a person whose name is given in response to questions 3(e) and 4) holds 20 per cent or more of any class of the shares of the applicant, give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.

The applicant’s proposed postal service business

7. State whether the applicant or any person, company or other entity referred to in response to paragraphs 1-6 above holds, has held or has previously applied for a licence under section 11 of the Postal Services Act 2000.
8. Please provide a description of the proposed postal service, with particular reference to the type or types of mail the applicant proposes to carry under this licence, and the likely geographical coverage (referring to postcodes if possible). Please include the proposed timescale for commencement of licensed operations.
9. Please provide a forecast of volume and revenue for the applicant’s licensed postal services business for at least the first year and the basis on which such forecasts have been prepared.

Protecting the integrity of mail

10. Please provide, in relation to any of the persons named in response to questions 3(d), 4(a), 5 or 6
 - (a) full details of any disqualification orders or undertakings under the Company Directors Disqualification Act 1986 or a declaration that there are none
 - (b) full details of any criminal convictions of the applicant and any

Appendix 2

other person, company or other entity referred to in response to paragraphs 1-6 above (other than for offences referred to in the Road Traffic Offenders Act 1988 or convictions which are spent under the Rehabilitation of Offenders Act 1974) or a declaration that there are none, and

- (c) full details of any proceedings or investigations of which the applicant is aware which may lead to any such disqualifications, or to any convictions for dishonesty or like conduct, or to any convictions for offences under the Postal Services Act 2000.

11. Please provide a signed declaration from a director or controlling person confirming that the applicant has understood the requirements of the Mail Integrity Code of Practice (condition 3 of the licence) and that the applicant (if granted a licence) will comply with the code from the time at which operations in the licensed area begin.

Common Operational Procedures

12. Please provide a signed declaration from a director or controlling person confirming that the applicant has understood the requirements of the Common Operational Procedures Code of Practice (condition 4 of the licence) and that the applicant (if granted a licence) will comply with the code from the time at which operations in the licensed area begin.

Application of standard licence conditions

13. If the applicant believes any of the standard licence conditions should not apply to it, please indicate which these are and provide reasons in each case. (Note: Condition 11 is required only where the licence applicant is a member of a group which includes a postal operator which has a statutory monopoly in its home market).
14. Please indicate if there are any other conditions the applicant believes should be included in its licence.

I confirm that having made due enquiry the information supplied is complete and correct to the best of my knowledge and belief. I understand that any incorrect or misleading information provided on this application form could lead to revocation of any licence granted, in accordance with Schedule 3 of the licence.

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I confirm that I am willing to provide such further information as Postcomm requests in connection with its consideration of this application. *I also enclose a cheque for the sum of £50/I have arranged for an electronic transfer of funds to Postcomm for £50. * Delete as appropriate

Signed

Print name

Print job title

For and on behalf of

Dated

Appendix 3: Text of proposed Licence Modifications

Postcomm will publish a notice, proposing:

- (a) to delete paragraphs 1 to 3 inclusive of Condition 9 in Schedule 2 to the Standard Licences and to delete paragraphs 1 to 3 inclusive of Condition 10 in Schedule 2 to the DHL Express (UK) Limited Licence,
- (b) to re-number existing paragraphs 4 and 5 of Condition 9 in Schedule 2 to the Standard Licences as paragraphs 1 and 2 and to re-number existing paragraphs 4 and 5 of Condition 10 in Schedule 2 to the DHL Express (UK) Limited Licence as paragraphs 1 and 2,
- (a) to delete the reference to paragraph 4, previously in paragraph 5 of Condition 9 in Schedule 2 to the Standard Licences and of Condition 10 in Schedule 2 to the DHL Express (UK) Limited Licence, and to insert in its place a reference to paragraph 1,
- (b) to delete paragraph 2 of Condition 10 in Schedule 2 to the Standard Licences and to delete paragraph 2 of Condition 11 in Schedule 2 to the DHL Express (UK) Limited Licence and to delete paragraph 2 of Condition 20 in Schedule 2 to the USO Licence and to insert the following text in the place of paragraph 2 of Condition 10 in Schedule 2 to the Standard Licences:-
 - “2. *The amount payable under paragraph 1 in respect of a relevant year shall be, if the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, exceeded £10 million, calculated by –*
 - (a) *taking the total recoverable costs,*
 - (b) *adding to that amount the amount (if any) determined by Postcomm (in consultation with the Competition Commission) as having been incurred by the Competition Commission in the preceding relevant year in connection with references made to it under section 15 of the Act, and*
 - (c) *multiplying the amount calculated as aforesaid by the factor –*
$$\frac{A}{B} ,$$

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where –

“A” is the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, and

“B” is the turnover excluding access payments in that year of all holders of licences granted under the Act, from activities which apart from those licences would be prohibited by section 6(1) of the Act.”

and to insert the following text in place of paragraph 2 of Condition 11 in Schedule 2 to the DHL Express (UK) Limited Licence and paragraph 2 of Condition 20 in Schedule 2 to the USO Licence:-

“2. The amount payable under paragraph 1 in respect of a relevant year shall be, if the Licensee’s turnover in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, exceeded £10 million, calculated by –

- (a) taking the total recoverable costs,
- (b) adding to that amount the amount (if any) determined by Postcomm (in consultation with the Competition Commission) as having been incurred by the Competition Commission in the preceding relevant year in connection with references made to it under section 15 of the Act, and
- (c) multiplying the amount calculated as aforesaid by the factor –

$$\frac{A}{B} ,$$

where –

“A” is the Licensee’s turnover in the preceding relevant year, from activities which apart from this Licence would be

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*prohibited by section 6(1) of the Act,
and*

“B” is the turnover in that year of all holders of licences granted under the Act, from activities which apart from those licences would be prohibited by section 6(1) of the Act.”

- (d) to delete the following text in paragraph 6 of Condition 10 in Schedule 2 to the Standard Licences and paragraph 5 of Condition 11 in Schedule 2 to the DHL Express (UK) Limited Licence and paragraph 5 of Condition 20 in Schedule 2 to the USO Licence:-

““minimum sum” in relation to a relevant year, means £1,000,”

The changes set out above would have the effect that the Standard Licence Condition 9 and the DHL Express (UK) Limited Licence Condition 10 reads as follows:

“Cessation of business as a postal operator

1. *The Licensee shall use reasonable endeavours to give to Postcomm not less than three calendar months’ notice in writing of any decision it may take to cease to carry on the activity of a postal operator.*
2. *The Licensee shall publish any notice served on Postcomm pursuant to paragraph 1 in such manner as Postcomm may direct for the purpose of bringing the notice to the attention of customers and potential customers of the Licensee.”*

The proposed modifications would also have the effect that the Standard Licence Condition 10 reads as follows:

“Payment of amounts to Postcomm

1. *The Licensee shall pay to Postcomm in any relevant year the amount determined in accordance with paragraph 2 at the times stipulated in paragraph 3.*
2. *The amount payable under paragraph 1 in respect of a relevant year shall be, if the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, exceeded £10 million, calculated by –*
 - (a) *taking the total recoverable costs,*

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- (b) *adding to that amount the amount (if any) determined by Postcomm (in consultation with the Competition Commission) as having been incurred by the Competition Commission in the preceding relevant year in connection with references made to it under section 15 of the Act, and*
- (c) *multiplying the amount calculated as aforesaid by the factor –*

$$\frac{A}{B} ,$$

where –

“A” is the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, and

“B” is the turnover excluding access payments in that year of all holders of licences granted under the Act, from activities which apart from those licences would be prohibited by section 6(1) of the Act.”

3. *The amount due under paragraph 1 shall be payable on 30 June in the relevant year, or, if later, on the expiry of one month from the day on which Postcomm serves notice on the Licensee of such amount.*
4. *The Licensee shall maintain records and furnish Postcomm with information as to the Licensee’s turnover in any relevant year from activities which apart from this Licence would be prohibited by section 6(1) of the Act.*
5. *The records maintained for the purposes of paragraph 4 shall be independently audited by independent auditors, except where the Licensee is not subject to, or is exempt from, the requirement under the Companies Act 1985 to file audited accounts, in which case it shall make such records as Postcomm may direct available for verification by independent auditors.*
6. *In this condition –*
“access payments” means payments made to any other holder of a Licence under the Act for the conveyance of letters conveyed by the Licensee from its customers to that other Licence holder,

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“independent auditors” means an individual or a firm (meaning a body corporate or a partnership) eligible for appointment as a company auditor pursuant to Part II of the Companies Act 1989,

“relevant year” means any year beginning on 1st April,

“total recoverable costs” means the aggregate of –

- (a) the amount estimated by Postcomm as likely to be the costs incurred by it during the relevant year in the exercise of the functions assigned to it or arising by or under –
 - (i) the Act,*
 - (ii) any other Act of Parliament,*
 - (iii) any subordinate legislation made under any Act of Parliament, or*
 - (iv) any Community obligation,**
- (b) the amount so estimated by Postcomm after consulting the Secretary of State as likely to be the amounts to be paid by the Secretary of State during the relevant year in respect of the expenses of Postwatch in accordance with paragraph 17 of Schedule 2 to the Act or in relation to the establishment of Postwatch, and*
- (c) the amount of the difference, if any, between the costs mentioned in sub-paragraph (a) or (b) which Postcomm considers were actually incurred during the previous relevant year and the estimate of the costs in question made by it for the purposes of this condition, where the latter exceeds the former the amount of the difference being treated as a negative amount.”*

The proposed modifications would also have the effect that the DHL Express Licence Condition 11 and Condition 20 of the USO Licence read as follows:

Payment of amounts to Postcomm

- 1. The Licensee shall pay to Postcomm in any relevant year the amount determined in accordance with paragraph 2 at the times stipulated in paragraph 3.*
- 2. The amount payable under paragraph 1 in respect of a relevant year shall be, if the Licensee’s turnover excluding access payments in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, exceeded £10 million, calculated by –
 - (a) taking the total recoverable costs,**

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- (b) *adding to that amount the amount (if any) determined by Postcomm (in consultation with the Competition Commission) as having been incurred by the Competition Commission in the preceding relevant year in connection with references made to it under section 15 of the Act, and*
- (c) *multiplying the amount calculated as aforesaid by the factor –*

$$\frac{A}{B} ,$$

where –

“A” is the Licensee’s turnover in the preceding relevant year, from activities which apart from this Licence would be prohibited by section 6(1) of the Act, and

“B” is the turnover in that year of all holders of licences granted under the Act, from activities which apart from those licences would be prohibited by section 6(1) of the Act.”

3. *The amount due under paragraph 1 shall be payable on 30 June in the relevant year, or, if later, on the expiry of one month from the day on which Postcomm serves notice on the Licensee of such amount.*
4. *The Licensee shall comply with any requirement by Postcomm by notice in writing to maintain and audit records and furnish Postcomm with information as to the Licensee’s turnover in any relevant year from activities which apart from this Licence would be prohibited by section 6(1) of the Act.*
5. *In this condition –*
- “relevant year” means any year beginning on 1st April,*
- “total recoverable costs” means the aggregate of –*
- (a) *the amount estimated by Postcomm as likely to be the costs incurred by it during the relevant year in the exercise of the functions assigned to it or arising by or under –*
- (i) *the Act,*
- (ii) *any other Act of Parliament,*

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- (iii) any subordinate legislation made under any Act of Parliament, or*
- (iv) any Community obligation,*
- (b) the amount so estimated by Postcomm after consulting the Secretary of State as likely to be the amounts to be paid by the Secretary of State during the relevant year in respect of the expenses of the Council in accordance with paragraph 17 of Schedule 2 to the Act or in relation to the establishment of the Council, and*
- (c) the amount of the difference, if any, between the costs mentioned in sub-paragraph (a) or (b) which Postcomm considers were actually incurred during the previous relevant year and the estimate of the costs in question made by it for the purposes of this condition, where the latter exceeds the former the amount of the difference being treated as a negative amount.*