

Secretary and Legal Adviser's Office



Our Ref: 2C/70/1/1

13 February 2004

Tasneem Azad
Deputy Director, Competition
Postcomm
Hercules House
6 Hercules Road
London
SE1 7DB

Dear Ms Azad

REVIEW OF ROYAL MAIL'S SPECIAL PRIVILEGES

I am responding to the consultation document dated January 2004 concerning the review by Postcomm of the special privileges of the Royal Mail.

My response is in respect of the privilege of immunity from prosecution.

Section 4(3) of the Postal Services Act 2000 provides that

“References in this Act to a universal service provider shall be construed as references to any person -

- (a) whose identity is notified by the Secretary of State to the European Commission in accordance with Article 4 of the Postal Services Directive as that of a person providing a universal postal service or a part of such a service in the United Kingdom, and
- (b) on whom the Secretary of State has served a notice informing him of that fact and the fact that he will be treated as a universal service provider for the purposes of this Act.”

Section 96 of that Act provides that

“A universal service provider and a person who is engaged in the business of such a provider shall be entitled to the same immunity from prosecution for conduct in the provision of a universal postal serviceas the provider and that person would be entitled to if the provider were a government department.”

I have been advised by DTI that the immunity from prosecution conferred on the universal service provider by section 96 only applies to conduct which is:

- (a) in the provision of a universal postal service and
- (b) within the scope of sub-section (2).

DTI further understands that Royal Mail Group plc is the universal service provider and that as a matter of policy Royal Mail has decided that Parcelforce should not provide any part of the universal service. Accordingly if Parcelforce does not provide any universal postal services, section 96 will have no application to its business.

The concern of the Civil Aviation Authority is that it is responsible for enforcing the Air Navigation (Dangerous Goods) Regulations 2002 which regulate the carriage of dangerous goods by air. These Regulations impose a number of obligations on shippers of dangerous goods, being persons who deliver goods for carriage by air, to ensure that they do not deliver goods which are prohibited for such carriage and that any goods they do deliver are properly packaged and documented. You will appreciate I am sure that the strict observance of these requirements is of critical importance to ensuring the safety of any flight on which such goods are carried. The CAA therefore considers that any shipper, including Parcelforce, should be subject to these Regulations and not be immune from prosecution.

At present, based on the current arrangements within Royal Mail as understood by the DTI, it would seem that Parcelforce cannot rely on the immunity at Section 96. However, it seems unsatisfactory that whether or not Parcelforce has the benefit of the immunity appears to depend upon the internal organisation of Royal Mail.

Accordingly, the CAA would like to see an outcome whereby any part of Royal Mail which acts as a shipper for the purposes of the Air Navigation (Dangerous Goods) Regulations will be subject to those Regulations and not immune from prosecution.

Yours sincerely

A handwritten signature in black ink that reads "Robi Allan". The signature is written in a cursive, slightly slanted style.

R J Allan
Deputy Secretary & Legal Adviser