

Summary of responses to Postcomm's review of Royal Mail's special privileges consultation, published January 2004

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November 2004

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Introduction

- 1.1 In January 2004, Postcomm published a consultation document reviewing the privileges granted to Royal Mail, as the universal service provider (USP), and invited responses on Postcomm's initial assessment of how each privilege should be treated¹. It also sought views on whether Royal Mail enjoys other privileges beyond those dealt with in the document. Fifteen responses were received and their views are summarised in this document. Non confidential responses have also been published on Postcomm's website².
- 1.2 Postcomm will publish its recommendations to Government, on how Royal Mail's operational privileges should be treated, in February 2005, as part of the "Revised Market Opening Timetable" decision document.
- 1.3 Postcomm's recommendation to Government on Royal Mail's VAT exemption and a summary of respondents' views on this issue, was included as part of the Competitive Market review published in September 2004³.

¹ "A Review of Royal Mail's Special Privileges, A consultation document", January 2004.

² Non confidential responses can be viewed from Postcomm's website at www.psc.gov.uk.

³ "Competitive Market Review, Proposals for consultation", September 2004.

Background

- 1.4 Royal Mail Group plc ("Royal Mail"), as the provider of the UK's universal postal service, has over the years benefited from a range of special privileges which were considered necessary for the provision of the universal service. These special privileges were all granted at a time when Royal Mail was the national monopoly provider of postal services.
- 1.5 Royal Mail's special privileges cover a wide range of operational and business issues. The impact of these privileges on the postal services market varies enormously but in some cases it seems clear that they do, or have, a real potential to distort competition.
- 1.6 Postcomm's remit from the Government's White Paper "Post Office Reform: A World Class Service for the 21st Century", is to review all Royal Mail's special privileges including its VAT exemption and make recommendations to the relevant Government departments responsible for making a decision to maintain, amend or abolish these privileges

Summary of responses

General comments

- 1.7 A major user group supported creating a level playing field, while ensuring the continuing provision of a universal service with minimal obligations on USPs. It argued any privilege that was retained needed to be extended to all licensed providers of similar services.

- 1.8 The CWU⁴ & Amicus/CMA⁵ believed Postcomm's approach ignored its key purpose, which is to ensure the provision of a universal service at a uniform and affordable tariff. They believed special privileges were in the main sensible and reasonable to allow the USP to meet the obligations of its licence. Another Trade Union argued the proposals seemed to be aimed at providing wider choice for large business users at the expense of Royal Mail's wider customer base. It argued Royal Mail could not be treated the same as other operators, as long as it had special obligations in relation to the universal service obligation (USO).
- 1.9 One operator believed that while there may be some justification for Royal Mail to have a limited number of privileges, Parcelforce was no longer a USP and all its special privileges should be removed to create competitiveness and fairness.

Operational privileges

Customs clearance procedural exemptions

Comments on the provisional view that there may be justification for Royal Mail retaining its privilege in relation to customs clearance procedures provided any distorting effects are minimised and limited.

⁴ Communication Workers Union.

⁵ The Communication Managers section of Amicus.

1.10 Ten responses were received to this specific question. Royal Mail believed the simple customs procedures recognised the reality that national postal operators (Royal Mail and Parcelforce in the UK) did not know what items were being sent through their networks for delivery and would have to open a significant volume of items to determine their content. This is in contrast to express operators who had control over the complete transaction from acceptance in one country to delivery to another. Royal Mail said international mail was a small proportion of its revenue within the licensed area, and customs procedures were therefore not a significant barrier to entry. The CWU & Amicus/CMA, and another Trade Union also argued this privilege should be retained.

1.11 The majority of the other respondents believed this privilege afforded Royal Mail and Parcelforce a considerable advantage, and should be removed or extended. A major user group and operator argued that given express services were time critical, Parcelforce had a clear advantage over other operators. The major user group supported a simplified procedure for all operators. The operator supported removing Parcelforce's exemption given it no longer was a USP. Another major user group said it supported maintaining the privilege and extending it.

1.12 A licensed operator and major user group argued Royal Mail had as much control over the content of exported mail items as other postal operators. The licensed operator argued universal postal parcels were not very different from private parcels and few operators had total end to end control of parcels. The major user group said with respect to imported mail or mail in transit, given security issues, Royal Mail more than ever had a responsibility for maintaining the integrity of its international mailing pipeline.

1.13 Postwatch suggested looking at the privilege in terms of the traffic stream to which it applied. On this basis it believed inbound international parcels delivered by Parcelforce appeared to be like those delivered by Royal Mail. Like Royal Mail, Parcelforce does not have control over what is posted in another country. Postwatch believed this distinguishes Parcelforce from operators such as FedEx. Postwatch believed Royal Mail not having to complete import/ export documentation may actually not be an advantage. Other operators may actually facilitate the smooth flow of items through their customers submitting information electronically, making it easier to identify problem packets, unlike Royal Mail's whose customers provide data in written form that must be extracted manually. The real advantage Postwatch argued was in Customs and Excise calculating the duty payable for Royal Mail, while other operators had to do it themselves. For non-USO items, Royal Mail should be responsible for the calculation.

Any other observations on how this privilege might be addressed, in the light of the current initiative by Customs and Excise.

1.14 Royal Mail stated it was working closely with Customs & Excise to review customs arrangements in the context of the forthcoming changes to the community customs code (CCIP). The changes have been proposed by the EC (with the aim of creating a more level playing field, although national postal operators will continue to be entitled to use simplified procedures.

1.15 Once the precise requirements of changes to the CCIP are known Royal Mail and Customs & Excise will jointly develop and sign a Memorandum of Understanding that sets out how these new customs regulations will work in practice.

1.16 Both a major user group and licensed operator believed Postcomm should maintain pressure on Customs & Excise to ensuring all postal operators were treated equally. The major user group objected to Parcelforce sharing a privilege they believed it was no longer entitled to within a competitive market. The licensed operator said that so long as any retained privileges did not distort competition, and were necessary, then it saw no objection to the proposed way forward. However in principle, it believed all operators should be subject to the same obligations.

Exemption from Traffic Regulations

Comments on the possible approaches outlined by Postcomm on Traffic Regulations, particularly in view of the significant impact parking restrictions can have on the provision of postal services.

1.17 Ten responses were received to this question. The majority supported retaining this privilege, with many arguing it should be extended to operators providing similar services.

1.18 Royal Mail argued it does not have a special privilege as the exemption from Traffic Regulations applies to all USP's (The Postal Service Act 2000 (Consequential Modification to Local Enactments No. 1) Order 2001). It also said exemptions from waiting and loading restrictions are not automatic and had to be granted by the Highway Authorities under the Road Traffic Regulation Act 1984.

1.19 Royal Mail argued the nature of its operation is such that it cannot be efficiently carried out by taking advantage of general exemptions normally contained in Traffic Orders. It argued exemptions were necessary for the purposes of providing an efficient delivery and collection service and if this was removed, quality of service to the senders and receivers of mail would be affected. Royal Mail also stated that Parcelforce did not claim or enjoy the benefit of such exemptions.

1.20 The CWU & Amicus/CMA, and another Trade Union also argued this privilege should be retained to allow Royal Mail to meet its USO. The CWU & Amicus/CMA said Royal Mail's exemption from traffic regulations was far from consistent and Postcomm should recommend that Royal Mail's entitlements in this area were reinforced by the relevant local traffic authorities.

1.21 Many respondents argued this exemption gave Royal Mail and Parcelforce a significant advantage. They called for a level playing field, and most supported extending the exemption to operators providing similar services. Four respondents, while supporting certain exemptions to allow Royal Mail to carry its universal service duties, argued Royal Mail should not enjoy special privileges in providing services that compete directly with express operators. Three of these respondents argued that express services were essential for businesses and therefore should enjoy similar privileges to Royal Mail. Another major user group said it did not believe that extending the privilege to other postal operators would create perverse incentives for firms to become licensed operators.

1.22 Two major user groups and Postwatch agreed Parcelforce should no longer enjoy traffic exemptions on the basis that it distorts competition, and is no longer justified.

1.23 Two major user groups believed the traffic exemptions were necessary for Royal Mail's USO, but only in respect of collections from pillar boxes. These respondents believed the exemption should be accorded to all licensed postal operators providing USO, but the exemption should either be withdrawn completely, or extended to all postal operators providing similar services. One operator also argued that if express operators were not allowed the same traffic exemptions, then Parcelforce and the non-USO parts of Royal Mail should have to relinquish these privileges. Postwatch believed that except for pillar box collections, for all other types of collections and deliveries, Royal Mail should rely on general waiting and loading exemptions like other operators. Postwatch also suggested that Postcomm should consider providing guidance to local authorities.

Carriage of Mail-bags by Ship and Aircraft

Comments on the provisional view that Royal Mail no longer needs its privilege in relation to the carriage of mail-bags by ship and aircraft.

1.24 Seven respondents commented on this specific question. The CWU & Amicus/ CMA, another Trade Union, and Royal Mail supported the retention of this privilege to address unforeseen contingencies. Royal Mail argued the privilege was required to allow it to have the necessary tools to fulfil its USO should it come across difficulties securing reliable, regular transportation to remote/ inaccessible areas, given that in some cases this was only possibly through a monopoly transport provider. Royal Mail said it does enter into commercial negotiations but this privilege was needed as a contingency. In the case that this privilege was used, the fee for the service would either be agreed by the USP and transporters, or in the absence of such agreement by an independent tribunal. Royal Mail therefore argued it was unlikely to be a transportation fee which was capable of distorting competition. A major user group believed the same privilege should apply to all licensed operators operating a universal service where there was no ready access by road.

1.25 Three respondents believed this privilege should be removed on the grounds it was no longer relevant arguing that Royal Mail should be able to enter into commercial negotiations.

Harbour Legislation

Comments on the provisional view that Royal Mail no longer needs its privilege in relation to harbour legislation.

1.26 Seven respondents commented on this specific question. Only one respondent supported removal of this privilege. Royal Mail argued that in order to fulfil its obligations for international mail (both processing of inbound and export) it would be helpful to retain these provisions, so they could be used in the event of circumstances which would otherwise result in the mail being detained by harbour authorities without good reason. The majority of respondents agreed it would be prudent to maintain this privilege in order to prevent monopoly harbour authorities unreasonably detaining universal service mail. Two major user groups believed this privilege should be extended to other licensed postal operators providing similar products and services.

Power and Rights granted to Royal Mail

Comments on the provisional view that there is a case - but not a compelling one - that Royal Mail should retain its privilege in relation to immunity from prosecution for carrying and possessing prohibited articles.

1.27 Seven respondents commented on this specific question. Royal Mail argued this privilege was essential to the provision of a universal service. Principally it had no means of preventing prohibited items entering the postal system if senders posted items into post boxes. It also argued it had limited powers to open packets to ascertain their contents under schedule 83 of the PSA 2000. The CWU & Amicus/CMA also supported the retention of this privilege.

1.28 Postwatch and a major user group believed there is no case for retaining this privilege except for items of mail posted in pillar boxes (and this should be applied to all operators). For other postings, Postwatch argued Royal Mail had as much control over what was being posted as the other operators. Postwatch also argued that other operators had to maintain systems to check they did not carry prohibited items, which imposed additional costs and therefore potentially distorted competition.

1.29 Three respondents supported removing this exemption. The CAA said it have been advised by the DTI that section 96 of the PSA only applied to conduct which is within the provision of a USP and therefore given Parcelforce did not provide any part of the USO, section 96 did not apply to Parcelforce. The CAA would like to see any part of Royal Mail (including Parcelforce) which acted as a shipper for the purposes of the Air Navigation (Dangerous Goods) regulations 2002 (which regulate the carriage of dangerous goods by air) subject to those regulations and not immune from prosecution.

Compulsory Purchase Powers

Comments on the provisional view that there is not a compelling case for Royal Mail to retain its privilege relating to the use of compulsory purchase powers.

1.30 Four respondents commented on this specific question. Royal Mail believed this was an important fall back power, which was likely to have more not less importance in the future with the disappearance of suitable town centre sites for Royal Mail delivery offices. It also stated that this privilege is strictly limited to the provision of the universal service and was available to all other USP's.

1.31 The three other respondents supported removal or partial removal of this privilege. Two respondents believed there was no case for its retention. Postwatch believed the USP should be able to employ normal commercial means to obtain land. However, Postwatch believed the privilege to acquire easements or rights over land could be important for the purpose of securing access to operational premises, which could have an impact on Royal Mail's ability to carry out its USO. Postwatch therefore believed there was a case for separating this exemption, and exposing the easement element to further analysis.

Provision Relating to Public Pillar Boxes

Comments on the preliminary view that Royal Mail should retain its privilege in relation to the installation of pillar boxes and pouch boxes in streets and where there is a case for extending the privilege, in due course, to postal operators offering a public collection service on non-universal terms.

1.32 Six respondents commented on this specific question. The majority supported the retention of this privilege, as well as extending it to other postal operators. Two major user groups, and Postwatch believed Royal Mail should retain this privilege and when other postal operators were in a position to offer public collection services, this privilege should be extended. Given the length of time it would take to change the relevant legislation, one major user recommended that Postcomm should, as a matter of urgency, ensure this does not act as a barrier to entry. The CWU & Amicus/CMA also argued Royal Mail should maintain this privilege.

1.33 Royal Mail argued this privilege was necessary for the provision of the universal service. Although the provision of postal pouch boxes is not a universal service requirement, Royal Mail argued they are necessary in that they facilitate efficient delivery services, which is why specific reference to them is included in Schedule 6 of the PSA. Royal Mail, however, questioned whether this exemption should be extended to non-USP's, arguing this could lead to a large number of visually intrusive boxes and possible obstruction of the highway.

1.34 A licensed operator argued Royal Mail should not have this privilege believing pillar boxes should be subject to local planning rules only. This should be open to anyone under the same conditions and restrictions.

Classification of Royal Mail as a private carrier

Comments on the provisional view that Royal Mail should retain its privilege in relation to its classification as a private carrier.

1.35 Five respondents commented on this specific question. The CWU & Amicus/CMA, and two major user groups supported Royal Mail retaining this privilege. The two major user groups believed this should be applied to all licensed operators when providing a universal service.

1.36 Postwatch said it was unsure whether this privilege afforded Royal Mail distinct rights from those provided by Royal Mail's ability to make schemes and in particular section 90 of the PSA on exclusion of liability. It asked Postcomm to clarify whether there is any overlap and how this impacts the analysis. If this privilege is retained Postwatch believes it should be extended to all USPs.

1.37 A licensed operator believed this privilege was unnecessary, saying all private operators included terms that were not common carriers, and that Royal Mail could easily do the same.

The Powers to make Schemes (Sections 89 and 92)

1.38 Postwatch understood discussions with the DTI related to "Exclusion of liability" (Sections 90-92 of the PSA) in the context of compensation. This discussion did not directly cover Section 89 ("Schemes as to terms and conditions for provision of a universal postal service") and it was unclear to Postwatch why it had not been included in the consultation. Postwatch's view was that the power to make schemes was important to USPs in providing "terms and conditions" for customers without entering into individual contracts with everyone who used the postal system. Consequently it believed this power should be extended to all USPs. A major user group also argued this power should be extended to all operators where operating as a USP.

1.39 A licensed operator argued that when competition is opened beyond business mail it would be appropriate that the unique right to have a scheme should be reviewed. If the scheme was removed, Royal Mail could apply terms and conditions by normal contractual principles.

Further review of certain special privileges

Comments on the priorities indicated and the need for a further review of the application of certain privileges when private operators provide non-contract services.

- 1.40 Postwatch asked Postcomm to outline its proposed timetable for reviewing non-statutory privileges. It believed there were other advantages Royal Mail had which should also be assessed. These included exemptions from the Working Time Directive, Health and Safety Legislation, the issuing of stamps with the Queen's image, licensing of franking machines, and the ownership of PAF⁶.
- 1.41 Postwatch also believed Postcomm should make provision to extend any privileges to all future USPs.
- 1.42 A major user group also believed Royal Mail's ownership of PAF, exclusive rights to carry the Queen's image on stamps and the licensing of franking machine suppliers should be assessed, as well as Royal Mail's reciprocal exclusivity agreements with Post Offices.
- 1.43 A licensed operator believed Postcomm's main priority should be to apply pressure to remove the VAT distortion, with parking privilege a second priority with local government.

⁶ Postal Address File: Postcomm is currently carrying out a review of Royal Mail's management of the PAF. A consultation document was issued in June 2004, and can viewed on Postcomm's website at www.psc.gov.uk.