

GRANT OF LICENCE TO DEYA LTD

DECISION DOCUMENT

NOVEMBER 2001

Summary

On 17 September 2001, the Postal Services Commission ("Postcomm") issued a consultation notice on the proposal to grant a short term licence to Deya Limited ("Deya"). Representations on the granting of that licence were requested by 16 October 2001. The representations have been considered by Postcomm which has decided to grant a licence to Deya, in terms modified in minor respects from the draft consultation licence.

This document summarises the main points of the responses to the consultation, sets out the background to and the reasons for the decision to grant a licence to Deya and explains the changes made to the consultation draft of the licence.

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1. Introduction

Purpose of this document

- 1.1 This document explains the outcome of the consultation process recently undertaken on the licence application received from Deya Limited ("Deya") and outlines the background to and the reasons for the decision taken to grant a licence to Deya.

Background

- 1.2 On 26 March 2001 the new regulatory regime for postal services established by the Postal Services Act 2000 came into force. On 6 August 2001, an application was received from Deya for a licence under Section 11 of the Postal Services Act 2000 ("the Act") under the terms of Postcomm's Interim Approach to Licensing published in April 2001.
- 1.3 On 17 September 2001 Postcomm issued a consultation notice on the proposal to grant a short term licence to Deya under Section 11 of the Act. This sought views on Postcomm's proposal to grant a licence to Deya and the form of that licence. Under the terms of the statutory notice, representations regarding the draft licence were requested by 16 October 2001.
- 1.4 The proposed licence covered the conveyance of letters sent by or on behalf of –
- (a) any holder of a licence granted under the following Acts or Orders -
 - (i) the Telecommunications Act 1984
 - (ii) the Gas Act 1986
 - (iii) The Electricity Act 1989
 - (iv) the Water Industry Act 1991
 - (v) the Electricity (Northern Ireland) Order 1992, or
 - (vi) the Gas (Northern Ireland) Order 1996, or
 - (b) any local authority within the meaning of the Local Government Act 1972, or
 - (c) any Council constituted under section 2 of the Local Government etc (Scotland) Act 1994, or
 - (d) any district council within the meaning of the Local Government Act (Northern Ireland) 1972

in any period commencing on, and ending at the expiry of the ninety second day after the revocation of, a determination by Postcomm that there is a failure, as a result of industrial action,

an emergency or natural disaster, on the part of an operator of the universal postal service in the United Kingdom or in any part of the United Kingdom, in the provision of that service.

- 1.5 Postcomm received formal responses from eight respondents. None of the responses were marked "confidential". A list of those who responded or enquired is attached at Appendix 1. Copies of the responses are held in Postcomm's library.
- 1.6 The responses to the consultation focused on a number of key areas, including:
 - o The impact, if any, of the grant of the licence on the universal service;
 - o Postcomm's longer term licensing strategy; and
 - o The terms of the proposed licence.
- 1.7 We gave very careful consideration to the representations received and have amended the consultation draft of the licence in response to them. Postcomm is satisfied that the granting of this licence, with the safeguards it contains, is a proper exercise of its functions under the Act.
- 1.8 This decision document summarises the main points arising from the consultation and explains the basis of our decision to grant a licence to Deya in the terms in which it has been issued. In particular it explains the basis of decisions taken in relation to specific aspects of the licence especially where there have been changes from the consultation draft of the licence.

Contact details at Postcomm

- 1.9 If you have questions about any aspect of this document please contact Ros Poulson or Shahida Mukhtar at:

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2. Consultees' representations

Requests for further information

- 2.1 No requests for further information were received.

Universal service obligation

- 2.2 Both the Communication Workers Union (CWU) and the National Federation of Sub Postmasters (NFSP) expressed concern that any liberalisation of postal services would affect Consignia's ability to provide the universal service at uniform tariffs. The CWU referred to Consignia's recent announcement that it wishes to reduce its cost base by 15% and the fact that, in their view, any liberalisation is bound to reduce Consignia's revenues and profits and put more pressure on the cost base. They assert that pressure will fall on staff who will find it harder to provide the quality of service which customers are looking for. The CWU is concerned that Consignia may use this cost cutting exercise to reduce its investment programme and that the loss of profitable revenue to competitors would further challenge the investment programme, at a time when, in the CWU's view, customers need more investment not less.
- 2.3 The NFSP is concerned that the grant of a licence to an operator with low operating costs and high returns, could undermine the universal service and result in a reduction of funding available to support the Post Office network. The NFSP draws attention to its long held view that competitors will only be interested in taking on profitable areas of the postal sector, thereby taking income used to support less profitable but socially vital services. This is a particular concern for the NFSP at a time when post office closure rates are higher than ever.
- 2.4 The CWU and NFSP both draw Postcomm's attention to the recent announcement from the Council of Telecommunications Ministers on reductions in the reserved area and the impact that this might have on the universal service, which they believe can only be compounded by the grant of licences to competitors. They assert that this combination of actions poses great dangers to the universal service at uniform tariffs and express the view that Postcomm should rethink fundamentally its approach to licensing in the light of what it now knows about the approach in Europe.
- 2.4 The CWU also refers to accumulating evidence that growth in mail volumes is starting to slow down and that this is therefore the wrong time to be introducing competition, especially competition which is targeted at the most profitable mail streams.

Grant of this type of licence

- 2.5 The CWU raised objections to the grant of a licence for “strike breaking” activities, viewing it as unnecessary and provocative, particularly at a time when the CWU was working with management with the aim of reducing the incidence of industrial action.
- 2.6 No other objections were made in principle to the granting of such a licence. The proposal was positively welcomed by Postwatch as an example of a new and innovative service which they believed would benefit all consumers. British Gas Trading stated that they did not wish to jeopardise the universal service, but were bound to minimise the impact of any disruption on their cash flow and customer service provision. The granting of a licence to Deya would enable users of the universal service to enhance Centrica’s contingency arrangements.
- 2.7 The NFSP accepted the need to put systems in place to cope with emergencies, but remained concerned that this could present a slippery slope to hiving off a further lucrative niche market for competitors. Consignia confirmed that they had no objection in principle to the granting of a licence to provide a service in periods when the universal service was disrupted.

Terms and conditions of the licence

- 2.8 Both Consignia and the NFSP were concerned that the 92 day run off period, provided to take account of the need for Consignia to manage the backlog of mail without further disruption to the universal service, was too long. Both considered a period of around 30 days reasonable for this.
- 2.9 Consignia expressed concern that the licence had no limitation on coverage and this could mean that Deya were able to introduce a service throughout the UK when there was only a limited failure of the universal service. They suggested that the licence condition should limit Deya geographically and temporally to the services affected.
- 2.10 Consignia expressed the view that the licence should be clearly limited to utility industry licence holders and not their parent or associated companies. The example of the gas industry is quoted, where they suggested that the licence should allow Deya to provide a service to British Gas Trading but not others in the Centrica Group such as Goldfish or the AA.
- 2.11 On the licence requirement for mail protection procedures, Consignia raised the point that a definition might be needed in the licence of “staff”. They stated that many of Deya’s staff were self employed and it was necessary to ensure that security issues surrounding these staff were captured in the procedures.

- 2.12 Deya cannot carry out any services under the licence unless a determination has been made by Postcomm. Consignia requested that the criteria for making such a determination, such as the minimum length of the disruption, be set out.

Level playing field

- 2.12 Postwatch highlighted points made in their response to the Postcomm's consultation document on promoting effective competition¹. In particular, Postwatch's view is that in its licensing role Postcomm should provide clarity, certainty and support to potential competitors to Consignia. This would include providing certainty in terms of ensuring a level playing field for all companies – for example in having licences of equal length for all providers. They also believe it is important that new entrants to the market are actively encouraged and that Consignia does not abuse its dominant position through predatory or intimidatory strategies or vexatious litigation. Licences should also not be restrictive but should allow businesses the freedom to grow.
- 2.13 The Welsh Language Board takes the view that while effective competition between postal suppliers has the potential to improve the service to consumers, it is equally important to ensure a level playing field. Thus they maintain that there should be a licence requirement for operators who offer a service in Wales to provide bilingual services in Welsh. That has to include an expectation or service benchmark that services can be delivered in either language.
- 2.14 The provision of Welsh language services would include the ability to deal with the organisation face to face or on the telephone in Welsh and the ability to correspond in Welsh and receive written replies in Welsh. The organisation would also publish material aimed at the public in bilingual form in Wales, including tariffs, customer service information etc. The fact that Consignia already commits to this and more is highlighted.

Performance standards

- 2.15 Postwatch expressed the view that for the foreseeable future a strong legal framework would be needed to control Consignia's monopoly position to protect consumers from abuse of its dominant position. Consignia should be regulated by the standards of service in its licence and all operators must offer basic guarantees (eg security of post) and adhere to minimum standards of service.

¹ Promoting Effective Competition in UK Postal Services – June 2001

3. Postcomm's views on the representations

Universal service obligation

- 3.1 Postcomm is satisfied that the licence contains adequate safeguards for the universal service. Under the terms of the licence, the Deya service would only be operational when the universal service was disrupted and for a short period thereafter. Postcomm's view is that such a limited service will have no discernible adverse effect on the universal service. In terms of taking revenue from Consignia and thus impacting on their ability to fund the universal service, if Consignia are not in a position to provide that service then they are not in a position to earn that revenue. Postcomm also notes that Consignia does not oppose the grant of this licence.
- 3.2 The restrictions in the licence on the potential customer base for Deya's services and on the length of time when Deya is able to offer its services, also provide limiting factors on the impact on the universal service. It is, of course, quite possible that Deya will not provide a service throughout the period of the licence.
- 3.3 Postcomm takes the view that the points raised by the CWU and the NFSP on the recent announcement on the EU directive are a matter for its long term licensing policy and not for licences which are considered under its interim approach to licensing.

Grant of this type of licence

- 3.4 Postcomm's primary duty is to seek to ensure that customers continue to enjoy a universal postal service. Postcomm is of the view that the grant of the licence to Deya enhances the provision of postal services generally, since it provides a measure of cover for periods when the universal service is otherwise disrupted. Specifically in relation to the universal service the grant of the licence to Deya will enable the universal service to be restored more quickly after disruption by reducing the backlog of mail. The grant of such a licence is accepted by all respondents other than the CWU, and Postcomm does not consider the grant of the licence to be unnecessary or provocative but in keeping with its statutory duties.

Terms and conditions of the licence

- 3.5 Both Consignia and the NFSP considered that the 92 day run off period provided for was too long. It is difficult to estimate the amount of time that is needed since the circumstances in which it will be implemented are unknown. Our view is that it is better to provide regulatory certainty, particularly for Deya who will need to have some information on which to base their service levels. If the

universal service is up and running again during the 92 day period then Deya's clients may opt to revert to that.

- 3.6 We have also given careful consideration to Consignia's point on the lack of limitation on the service to be provided by Deya. The difficulty in imposing any limitation through the licence is that the extent of the effect of any disruption will depend on where it occurs and how long it lasts. It may be that only one mail centre is affected, but this could be the mail centre closest to the billing centre of a Deya client thereby impacting the whole of their operation. Also, we cannot ascertain in advance of circumstances arising whether Deya clients will wish to separate their mailings although only a limited area is affected, or whether they will wish Deya to handle all their post. We have also to bear in mind that this is a pilot licence and if we are to learn from its operation, we need to retain flexibility and not impose unnecessary limits on the service.
- 3.7 The licence has been amended to take account of Consignia's point on limiting the customer base to utility licence holders and not their parent or sister companies. The new wording clarifies that any letters conveyed pursuant to the licence must be letters sent for the purposes of the businesses of the utility licence holder.
- 3.8 The point raised by Consignia on the definition of staff for the mail security procedures is accepted. A reference to "agent" has been included and will now be included in all interim licences.
- 3.9 Consignia requested that Postcomm set out the basis on which a determination that Deya may implement the services under the licence would be made. This is an area where Postcomm believes flexibility is required as we do not wish to be in a position where unforeseen circumstances arise which fall outside the framework of a rigidly pre-determined basis set out in the licence. The type of things we would be likely to take into account in considering whether to issue a determination are set out below, but this list should not be considered to be exhaustive.
 - Nature of the disruption
 - Geographical extent of the disruption
 - Estimated length of the disruption (where possible)
 - Deya's estimate of time taken to implement their service
- 3.10 The only amendment made to the draft licence issued is therefore the change to condition 5 on mail security procedures.

Level playing field

- 3.11 This licence is granted in accordance with Postcomm's interim approach to licensing which set out the expectation that licences would not last more than 12 months. At this stage in Postcomm's licensing activity, it is inappropriate to consider granting licences of commensurate length with that granted to Consignia.
- 3.12 Whilst Postcomm does not disagree with Postwatch's views on the need to encourage potential licensees and to grant licences which are not restrictive and enable businesses to grow, these considerations are more appropriate for the long term licensing strategy. At this stage Postcomm is seeking to respond to applicants fairly and rationally and as positively as possible in the context of its interim approach to licensing.
- 3.13 The Welsh Language Board suggests that there should be a level playing field with all licensees required to produce documents in Welsh, as Consignia does. There is, however, no licence requirement on Consignia to produce documents in Welsh and Postcomm's view is that this is not a licensing matter. Licensees may, of course, decide that the provision of information in Welsh makes good business sense.

Performance standards

- 3.14 Postcomm's view is that performance standards are inappropriate for interim licences which do not include a universal service element. This will be revisited when the longer term licensing policy is established, although Postcomm has no interest in regulating when the market is capable of moderating behaviour.

4. Postcomm's decision

Background

- 4.1 In taking its decision to grant the licence to Deya, Postcomm considered the responses received to the consultation notice and the contents of responses to Postcomm's consultation paper on promoting effective competition.

Assessment of impact on the universal service

- 4.2 This is a licence for a service which will largely only be provided when the universal service is disrupted. Many of the points which have been made in responses to the consultation about the impact on the universal service do not, in our view, give this point sufficient weight. Postcomm's view is that the grant of this licence will have no discernible adverse impact on the universal service. On the contrary, Postcomm believe that the grant of this licence will help ensure the provision of the universal service as it will provide a disincentive to disruption of the universal service, and enable the universal service to be restored more quickly after any disruption by reducing the backlog of undelivered mail. Postcomm also noted that Consignia did not object to the grant of the licence.
- 4.3 Whilst not positively endorsing UK Mail's revenue projections, we are of the view that, taking into account this anticipated level of business, and the anticipated level of business arising from other licences that have been granted, to grant this licence in the form proposed would not have an adverse effect on the provision of the universal service.

Safeguards

- 4.4 Postcomm noted that the following safeguards were in place:
- The short term nature of the licence (one year)
 - the limitations on when the service can be provided
 - the restrictions on the activities that may be conducted
 - the limited customer base which Deya may serve

Competition

- 4.5 We have no doubt that the grant of the licence will further the interests of users of postal services by promoting competition and will encourage efficiency on the part of the postal operators.

Ability to finance licensed activities

- 4.6 We are satisfied that Deya can finance the proposed licensed activities and that the grant of the licence would not prevent any other licence holder from financing the activities authorised or required by its licence.

Decision

- 4.7 We concluded that to grant an interim licence to Deya in the terms amended as described in paragraph 3.7 above is a proper exercise of our functions under the Act in that it would have no discernible adverse effect of the provision of the universal service and would further our duty in relation to the interests of consumers and competition. We therefore decided to grant the licence.

Responses to the consultation notice were received from the following bodies/individuals:

1. British Gas Trading
2. Communication Workers Union (CWU)
3. Consignia plc
4. National Federation of Sub Postmasters
5. Postwatch
6. Welsh Language Board