

**LICENCE GRANTED TO  
TPG POST UK LIMITED**

**DECISION DOCUMENT**

**SEPTEMBER 2002**

## Summary

On 25 July 2002, the Postal Services Commission (“Postcomm”) issued a consultation notice on the proposal to grant a short term licence to TPG Post UK Limited (“TPG”).

Representations on the granting of that licence were requested by 27 August 2002.

Postcomm, having considered the representations, decided to grant a licence to TPG.

This document summarises the main points of the responses to the consultation and sets out the reasons for the decision to grant a licence to TPG.

# Table of contents

## 1. Introduction

Purpose of this document  
Background  
Contact details at Postcomm

## 2. Consultees' representations and Postcomm's views on the proposed licence grant

Support for the grant of TPG Post UK Limited's licence  
Consistency with Postcomm's Market Opening Strategy and Standard Terms licence

*Bulk mail definition*  
*Same format letters*  
*Service performance*  
*Separation of bulk and consolidated mail*  
*Mail protection procedures*  
*Cross subsidisation and accounting separation*

Other points raised

*Mail volumes*  
*Provision of Information*  
*Access to Consignia's network*  
*Welsh Language scheme*

## 3. Postcomm's decision

Background  
Changes to the draft licence  
Assessment of impact on universal service  
Safeguards  
Competition  
Ability to finance licensed activities  
Decision

## Appendix 1

List of those who responded to the consultation notice on the proposal to grant a licence to TPG Post UK Limited.

# 1. Introduction

## **Purpose of this document**

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

## **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 28 June 2002 an application was received from TPG for a licence under Section 11 of the Postal Services Act 2000 ("the Act"). This application was considered under the terms of Postcomm's Interim Approach to Licensing published in April 2001 as recently amended to take account of the principles of Postcomm's long term licensing framework.
- 1.3 On 25 July 2002 Postcomm issued a consultation notice on the proposal to grant a short term licence to TPG under Section 11 of the Act. This sought views on Postcomm's proposal to grant a licence to TPG and the form of that licence. Under the terms of the statutory notice, representations regarding the draft licence were requested by 27 August 2002.
- 1.4 The proposed licence was for the conveyance of letters which originate from a single user at one address and which are mailings of 4,000 or more items and for consolidation of mailings of less than 4,000 items for conveyance to Consignia plc and subsequent conveyance by Consignia plc. The total number of letters that can be conveyed in any rolling 12 month period must not exceed 20,000,000.
- 1.5 Postcomm received formal responses or enquiries from five 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 Postcomm is satisfied that the granting of this licence, with the safeguards it contains, is a proper exercise of Postcomm's functions under the Act.
- 1.7 This decision document summarises the main points arising from the consultation and explains the basis of Postcomm's decision to grant a licence to TPG 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.

## Contact details at Postcomm

1.8 If you have questions about any aspect of this document please contact Shahida Mukhtar at:

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## 2. Consultees' representations and Postcomm's views on the representations

### Support for the grant of TPG Post UK Limited's licence

#### Consultees' representations

- 2.1 Postwatch supports the proposal to issue a licence to TPG on the basis that the licence is unlikely to have an appreciable adverse effect on the provision of a universal service and that it is consistent with Postcomm's recently published proposals for a longer term licensing regime.

### Consistency with Postcomm's Market Opening Strategy and draft Standard Terms licence

- 2.2 Postcomm published its Market Opening Strategy on 29 May 2002 and its draft Standard Terms licence and licensing regime for consultation on 4 July 2002. The consultation period for the draft Standard Terms licence closed on 12 September 2002 and the responses are currently being analysed. It is envisaged that Standard Terms licence decision document will be published at the end of October 2002.

#### Consultees' representations

- 2.3 Consignia questioned the consistency of the TPG licence, in several areas detailed below, with Postcomm's Market Opening Strategy and the draft Standard Terms licence that will apply when competition is introduced from 1 January 2002.

#### Postcomm's response

- 2.4 Postcomm recognises that there are several areas in which the TPG licence differs from the draft Standard Terms licence, published for consultation on 4 July 2002. However, those Standard Terms have not been finalised and will not be effective until 1 January 2003. TPG has applied for an interim licence and its licence as drafted is consistent with the interim licensing policy and with other interim licences, particularly the licence granted to Express Limited on 25 July 2002, about which Consignia did not raise these concerns, and the licence granted to Deutsche Post Global Mail (UK) Limited ("Deutsche Post") on 28 August 2002 where Consignia did raise these concerns and Postcomm addressed them in the Deutsche Post decision document. The TPG licence is a short term, small scale licence, which will allow TPG to convey in one year only a quarter of the number of mail items that Consignia carries every day. Postcomm's view is that the additional conditions that Consignia is demanding are disproportionate to the size of the proposed licence and furthermore the consultation on the Standard Terms licence has recently closed and consideration of the responses is currently underway. TPG is aware that any longer term licence that it may be granted will not be on the same terms as this interim licence.

### ***Bulk Mail Definition***

#### Consultees' representations

- 2.5 Consignia pointed out that a bulk mailing is defined in the TPG licence as 4,000 items from one user at one site in 24 hours. It notes that Postcomm's Market Opening Strategy does not make any reference to a 24 hour time period being used to define a bulk mailing, but rather that the phrase "a single mailing" is used. Consignia argues that this licence, therefore, is not consistent with Postcomm's Market Opening Strategy and the licensing policy contained therein.

Postcomm's response

- 2.6 TPG's licence is an interim, pilot licence. It is consistent with the licences recently granted to Express Limited and Deutsche Post, in which a bulk mailing is defined by a 24 hour time period rather than any reference to "a single mailing", and with the interim licensing policy, which Postcomm continues to operate under until the commencement of the Standard Terms licensing policy, which will implement the Market Opening Strategy, on 1 January 2003. The definition of the service restriction in this licence is deliberately less constrained than that of the draft Standard Terms licence as this is a short term licence that is limited in scope. However, Postcomm will take into account Consignia's representations on the definition of a bulk mailing when considering the final form of the Standard Terms licence, which we are currently in the process of considering the representations.

**Same Format Letters**

Consultees' representations

- 2.7 Consignia noted that there is no requirement for the letters comprising a bulk mailing to be in the same format, as there is in the draft Standard Terms licence.

Postcomm's response

- 2.8 TPG's licence is an interim, pilot licence. The definition of the service restriction in this licence is deliberately less constrained than that of the draft Standard Terms licence as this is a short term licence that is limited in scope. Postcomm chose not to include a requirement for the letters forming a bulk mailing to be in the same format as this is a short term, small scale licence, which will allow TPG to convey in one year only a quarter of the number of mail items that Consignia carries every day. Postcomm notes that this licence may offer reduced flexibility for licensees when compared to the proposed Standard Terms licence as it does not enable bulk mail volumes to be averaged over a 12 month period. This is consistent with the licences recently granted to Express Limited and Deutsche Post.

**Service Performance**

Consultees' representations

- 2.9 Consignia noted that the draft Standard Terms licence contains provisions requiring licensees to establish systems and report on service performance and that the TPG draft licence does not contain such a requirement. Consignia requested that such a provision should be included in TPG's licence

Postcomm's response

2.10 Should TPG choose to apply for a Standard Terms licence it will be subject to all the requirements of that licence. Although, the consultation of the Standard Terms licence has recently ended and the representations are currently being considered, it is Postcomm's intention that the Standard Terms licence shall contain a requirement for the licensee to establish systems and report on service performance. This TPG licence, however, is an interim licence and is consistent with the interim licensing policy, which does not require this kind of reporting arrangement from interim licensees.

### ***Separation of Bulk and Consolidated Mail***

#### Consultees' representations

2.11 Consignia suggested that Postcomm include a provision in the TPG licence to keep consolidated mail separate from its bulk mail to ensure that the consolidated mail is handed over to Consignia for delivery.

#### Postcomm's response

2.12 The service restriction in TPG's licence clearly states that consolidated mail must be passed to Consignia for delivery. TPG has provided information to Postcomm on how it will comply with this licence requirement and Postcomm is satisfied that TPG has appropriate systems in place. Failure to comply with this service restriction would be a breach of the licence and could lead to enforcement action.

### ***Mail Protection Procedures***

#### Consultees' representations

2.13 Consignia argues that the draft Standard Terms licence contains a requirement for licensees to submit annual reports on the number of items lost and damaged and to review mail security procedures with Postwatch every second calendar year, whilst the TPG licence does not. Consignia suggests that the TPG licence should also include this requirement.

#### Postcomm's response

2.14 Postcomm has not included any requirement for TPG to review its mail security procedures with the Council every second calendar year because this is an interim licence and as such is only intended to apply for a period of 12 months. The mail security requirement in the TPG licence is consistent with other standard interim licences.

### ***Cross Subsidisation and Accounting Separation***

#### Consultees' representations

2.15 The draft Standard Terms licence requires that foreign postal operators that wish to operate in the UK produce separate financial accounts to allow Postcomm to ensure that the foreign postal operator does not cross subsidise its UK operations from profits made within its own domestic postal monopoly. Consignia suggests that such a requirement should be included in the TPG licence.

#### Postcomm's response

2.16 TPG has confirmed that it intends to apply for a Standard Terms licence before 1 January 2003. It will then be subject to all the requirements of that licence. Representations on the draft Standard Terms licence are currently being considered, but Postcomm has proposed that the Standard Terms licence will contain a requirement for licensees who benefit from a statutory monopoly in their domestic market to prepare separate accounts covering their licensed activities in the UK. This TPG licence, however, is an interim licence and is consistent with the interim licensing policy, which does not require separate financial accounts from foreign operators. Because of the very limited nature of this licence, Postcomm does not feel that there is sufficient risk from cross subsidisation to require evidence and regular investigation to ensure that it is not happening.

## **Other Points Raised**

### **Mail Volumes**

#### Consultees' representations

2.17 Consignia argues that TPG should be required to report on its mail volumes to ensure that it is complying with the first part of the service restriction in its licence.

#### Postcomm's views

2.18 Postcomm will require TPG to report on its mail volumes under Condition 8 of its licence and will monitor its adherence to the limit imposed by its licence.

### **Provision of Information**

#### Consultees' representations

2.19 Consignia pointed out that Conditions 8 and 9 of the TPG licence, governing the provision of information to Postcomm and Postwatch, are identical to Conditions 16 and 17 of Consignia's licence. Consignia noted that it has previously made representations to Postcomm regarding the validity of these Conditions, arguing that postal operators should not be subject to information requests under their licences that are wider than the powers set out in the Act.

#### Postcomm's views

2.20 Postcomm rejects totally Consignia's arguments about the validity of Conditions 8 and 9 of postal licences. Consignia has raised this issue with Postcomm before and Postcomm has fully explained its position and agreed with Consignia that Consignia will comply with its licence requirements.

### **Access to Consignia's Network**

#### Consultees' representations

2.21 Consignia noted that TPG needs to agree access terms and conditions with Consignia to fulfil the consolidation element of its licence unless TPG is prepared to access Consignia's network by making use of Consignia's standard workshare products.

#### Postcomm's views

2.22 Access arrangements are not an issue, in the first instance, for Postcomm but a matter for the operator and Consignia to negotiate. Consignia has been able to set out the basis on which access would be acceptable to it and Postcomm believes that this should provide a starting point for access negotiations between TPG and Consignia. Postcomm notes that section 9 of Consignia's licence requires it to negotiate in good faith with a postal operator or large user with a view to agreeing the terms of such access.

### **Welsh Language Scheme**

#### Consultees' representations

2.23 The Welsh Language Board agrees that effective competition between postal suppliers has the potential to improve the service to customers, but feels equally that it is important to ensure a level playing field and that therefore a requirement for postal operators to provide bilingual services in Welsh would be appropriate. This is something that Consignia currently offers.

#### Postcomm's views

2.24 Postcomm's view is that this is a not matter for it as regulator but is a management issue for those licensees for whom it is relevant under the Welsh Language Act. Consignia's licence does not contain a requirement for it to provide bilingual services in Welsh. There is therefore no requirement to provide bilingual services in Welsh in TPG's licence.

### 3. Postcomm's decision

#### **Background**

- 3.1 In taking the decision to grant the licence to TPG , Postcomm considered the responses received to the consultation notice and for consistency considered Postcomm's Market Opening Strategy published in May 2002.

#### **Changes to the draft licence**

- 3.2 Postcomm reconsidered the wording of the licence in conditions 2 and 3 and felt that it would benefit from minor amendments to make it clearer. In condition 2 paragraph 4 the words "of paragraph 2" have been deleted; in condition 3 paragraph 1 (a) has been reworded from "to collect postal packets from its customers as agreed with them" to "to collect letters from its customers on such terms as are agreed with them"; and in condition 3 paragraph 1 (b) the words "postal packets" have been replaced by the word "letters". These changes do not affect the services permitted by the licence.

#### **Assessment of impact on the universal service**

- 3.2 Because of -
- a) the short term nature of the proposed licence, and
  - b) the restrictions on the activities that may be conducted by TPG
- Postcomm felt that it was highly improbable that it will have any discernable adverse effect on the continued provision of the universal service, either taken alone or in conjunction with other licences already granted.

#### **Safeguards**

- 3.4 Postcomm has drafted the TPG licence in such a way as to restrict the extent to which the business permitted by the licence can be developed.
- 3.5 This supplements the safeguard provided by Postcomm's ability to terminate the licence after a year. Although Postcomm has considered this licence in line with the its new long term market opening policy, Postcomm has made clear to TPG that it will need to apply for a new licence under that policy in due course. TPG cannot assume that the terms of any new licence will be the same as for the licence now granted. Terms and conditions appropriate at that time to safeguard the universal service will need to be included in any new licence.

#### **Competition**

- 3.6 Postcomm has no doubt that the grant of the licence would 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**

- 3.7 Postcomm is satisfied that TPG 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**

- 3.8 Postcomm's overall assessment of the points made about the way the licence is drafted, the conditions therein and its duration, is that the licence should be granted for a one year period. Postcomm concluded that to grant an interim licence to TPG is a proper exercise of Postcomm's functions under the Act in that it would have no adverse effect on the provision of the universal service and would further Postcomm's duty in relation to the interests of consumers and competition. Postcomm therefore decided to grant the licence.

## Appendix 1

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

1. Armagh City and District Council
2. Consignia plc
3. The Northern Ireland administration
4. Postwatch
5. The Welsh Language Board