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LICENCES UNDER THE PSA 2000: LICENSING FRAMEWORK IN A FULLY OPEN MARKET

Postcomm Consultation

DMA's Response

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Final Draft 2.03.05

DMA

The DMA has been at the forefront of pushing for market reform and an early market-opening timetable. As such we welcome the opportunity to contribute to this consultation.

LICENSING IN AN OPEN MARKET

Do consultees agree with Postcomm's objectives for its licensing framework?

The licensing framework in an open market, should aim to facilitate competition and market entry. In so doing the framework should act as a "checks and balances" on new entrants ensuring they are fit for purpose and that there are sufficient safeguards to maintain customer confidence. We agree with Postcomm's objectives.

THE LICENCE APPLICATION PROCESS

Do consultees agree that the application process should be used to establish standards for market entry?

The application process should determine if the applicant is fit for purpose. Interference or additional requirements over and above this will be interfering with the operation of the market.

Do consultees agree that Postcomm should make an assessment at the application stage of an applicant's ability to comply with the Code of Practice on Mail Integrity? What form should such an assessment take? Should Postcomm retain flexibility in how it makes each assessment?

A compliance assessment on an applicants ability is somewhat unusual but may be effective here, especially if it maintains customer confidence in mail integrity. Best practice in terms of assessment would be for the applicant to self-certify there ability to comply with the requirements of the code. About six months to a year later, Postcomm should carry out a compliance audit on site of the applicant. Here the audit is looking at how the licensee meets the code requirements for compliance. A standard approach to compliance assessment is essential, any special measures or so-called flexibility will open up the

compliance process to ridicule and damage any customer confidence in the code.

Do consultees agree that the fitness and propriety of an applicant are relevant considerations in the application process? Do consultees think that convictions for dishonesty, or like conduct and convictions under the PSA should be taken into account? Is there anything else Postcomm should consider in this context?

The fitness and propriety of applicants are fundamental elements within the application process. Such considerations help in determining the ability of the applicant to meet licence requirements, respect and meet mail integrity and customer confidence. All relevant disqualifications and convictions should be taken into account. Although only unspent convictions should be considered. Convictions under PSA 2000 should be considered but not the final arbiter of whether a licence is granted. We have postal companies who have been fined under PSA 2000 but are still operating.

Do consultees agree that Postcomm should not carry out any financial assessment of applicants but should instead place reliance on a financial guarantee? Do consultees have views on the ease of obtaining such guarantees? Are there alternatives that Postcomm should be considering?

Financial assessments in a fully open market are somewhat redundant especially when considering the nature of the respective companies applying for licences. Applicants should take out some type of financial indemnity, to indemnify it against financial and operational problems. Financial indemnity is very commonplace in the business community. Other alternatives could be bonds taken out by applicants, similar to bonded systems in other industries, e.g. travel agents.

Do consultees agree that the applicant fee should remain at £1000?

If best practice around regulated industries were an applicant fee of £1000, then it would be pragmatic for Postcomm to retain the £1000 level. The only concern would be the potential barrier to new small niche start-ups, where such a fee may be too high.

Do consultees agree that Postcomm should no longer take references from an applicant's existing customers?

We agree that references from existing customers are somewhat redundant in an open market.

LICENCE CONDITIONS IN A FULLY OPEN MARKET

Do consultees agree that the licence should be used to provide safeguards to prevent the system being abused and to ensure sufficient provision of information to enable the market to function properly?

The licence can be used to ensure customers maintain confidence in the mail process. In addition provision of information will help the market to grow and function through choice and competition. Although the final arbiter on performance will be the customer.

Do consultees think that a minimum licence period of seven years is sufficient? Or would a longer period encourage market entry?

We have to consider if seven years is sufficient time for new entrants to invest and generate a profitable return from their investment. For most licence holders seven years is probably sufficient but for licence holders wishing to develop an alternative network or to invest in sortation infrastructure, seven years would appear too short. A longer period of between ten and fifteen years would attract those companies wishing to invest substantially in the postal services market.

Do consultees agree that there should be different obligations on licensees according to their size? Should size be defined by reference to the number of employees? Are 10 or more employees the appropriate place to draw the line?

There should be overarching principles for all licence holders, covering areas such as security and mail integrity. Anything over and above should relate to the size of the organisation, where an obligation can be achieved because of the size of the licence holder. The only sensible way of determining size appears to be by number of employees. The 10 plus cut off for additional obligations appear adequate as it, mirrors DTI definitions.

Do consultees agree that these safeguards are relevant to providing assurance to customers? Are there other areas where Postcomm should be requiring measures to provide assurance?

Meeting customers concerns and giving assurance is vital to maintain trust and confidence in the mail system. The areas of security, operator fitness, guarantees and performance measurement are key.

Do consultees agree that a Code of Practice on Mail Integrity is a sensible means of setting and monitoring standards for the industry? Do consultees agree with the stated purposes of the code? Are there any additional issues that the Code should cover?

A Code of Practice on Mail Integrity sets the minimum level for operators. Although in essence standards will be determined by the market and the reaction of customers.

Do consultees agree that Postcomm should have regard to the continued fitness and propriety of a licensee? Are the measures proposed sufficient to ensure that Postcomm can do so? Do consultees agree with Postcomm's proposed definition of "controlling person"?

The continued fitness and propriety of a licensee is a clear indication of their ability to deliver and handle mail. Postcomm must ensure it can keep a check on licensees and any changing circumstances. The definition proposed from the consumer credit act would appear the most sensible way to move forward. It is tried and trusted and works.

Do consultees agree with the purpose of the requirement for financial guarantees to be put in place? Do consultees agree that parent and associated company guarantees should not be accepted? Are there other measures, which Postcomm should be considering?

The fundamental aspect here and the most important is to ensure in the event of an operator ceasing trading, there is the ability to deliver outstanding mail, so ensuring customers' and consumers' confidence in the mail system is preserved. Any financial guarantees should work on this premise. Best practice in other areas, points to a bonding system (for example ABTA in the travel sector); this may be applicable to postal licences.

A guarantee from a parent or associate is only effective if they are worded very carefully as in many instances they are unenforceable.

Operational flexibility should be de rigueur with licences mandated within their licence to have emergency arrangements with Royal Mail or another licensed operator, to deliver mail.

Do consultees think that 50p an item for one week's volume of mail is an appropriate level of guarantee to protect users' interests? Do consultees agree with the proposal to use forecasts and not historical volumes? Is 10% the right growth figure in this context?

50p per item is definitely at the higher end of the mail, licensed operators will be carrying. Therefore it over compensates well above the average unit price. One weeks mail is lower than two weeks mail, as per the original licence condition and there is no real evidence to reduce this to one week's mail. With growing market and market opening brought forward to January 2006, only forecast volumes can be used to set and calculate the guarantee. The growth figure used of 10% is completely arbitrary and as such should be used as a minimum.

Do consultees agree that Postcomm should not specify service standards? Do consultees agree that the performance records of licensees should be available and easily compared? Are the measures Postcomm proposes sufficient to achieve this? Or are the measures too much?

The customer and the market will determine Service standards of the new operators. If the licensed operator does not perform to their own standards they stand the risk of losing that piece of business. This is the ultimate incentive for performance. All operators should record their service performance and send regular reports to Postcomm and Postwatch. With regard to systems, the licensed operators will by their very nature develop systems to track and record complaints and service performance.

What views do consultees have on a scheme where licensees are charged by Postwatch when the volume of complaints about them exceeds a minimum threshold?

For the dominant player in the market, a scheme where Postwatch charges based on the volume of complaints is fair. To bring in such a system for other licensees could

be construed as a barrier to competition and should be avoided.

Do consultees agree that a differing and less onerous approach to complaint handling and performance measurement is appropriate for small operators?

This requirement should be probably addressed to niche licences offering small, local and regional services, rather than small operators. There could be a situation where a small company applies for a national licence; it would be ridiculous if they were exempt from reporting and complaint monitoring because they were small.

Do consultees agree that the information provisions proposed are sufficient to enable Postcomm and Postwatch to discharge their statutory functions? Is the information Postcomm proposes to seek from licenses too little, too much or about right?

It is essential that Postcomm and Postwatch obtain from licensed operators, information which allows them to meet their respective statutory obligations. Although Postcomm must ensure that the information does not become over burdensome to the point of acting as a barrier to competition. The licence holders should report on forecast volumes, actual quarterly volumes, actual quarterly revenues and report and accounts. In addition a template performance against the mail integrity code of practice would be very effective, acting as a code compliance evaluation analysis.

Do consultees agree that the annual licence fee might be a barrier to entry for smaller operators? Is the fee level suggested by Postcomm appropriate?

A lower fee for smaller operators should ensure that the licence fee does not become a barrier to entry for them. It is difficult to gauge where to pitch the licence fee for smaller operators but £250 on turnover less than £100k, represents less than .25% of turnover. So for a larger operator, they have to generate £400k turnover before they reduce their cost to turnover ratio to .25%.

Do consultees agree that Postcomm is right to satisfy itself that licensees' income is correctly stated? Are Postcomm's proposals too onerous? Are there other options Postcomm could consider?

For the licence fee system to work effectively and to ensure all regulatory costs are covered the only pragmatic way for Postcomm to check information provided is correct is through an audited statement and/or self/certified return.

Do consultees agree that there is a continuing need for the accounting separation requirement?

Postal reform in the EU and UK context is based on the principle of accounting separation. To remove the requirement would unravel the reform process.

Do consultees agree that a Code of Practice on Common Operational Issues is a sensible means of setting and monitoring standards for the industry? Do consultees agree with the stated purposes of the code? Are there any additional issues that the Code should cover?

A Code of Practice on Common Operational Issues should ensure the smooth running of the market, minimise interoperability issues and maintain consumer and customer confidence in the postal system. Other un-deliverables besides postal returns and forwarded need to be included.

MONITORING OF LICENSEES

Do consultees agree that Postcomm should monitor licensees? Do consultees agree that there should be both reactive and proactive monitoring? Do consultees agree with the proposed balance between the two stances?

By the very fact that Postcomm is empowered to carry out enforcement action within the PSA 2000, it must by definition need to monitor to ensure it can enforce. Postcomm should act on information received and carry out compliance visits to ensure the licensee is meeting licence requirements. Postcomm does not have to be more proactive than this, the market (users and competition) will quickly alert Postcomm to any non-compliance.

Do consultees agree that these are the right areas of focus for Postcomm's monitoring? Is there any justification for extending the areas where monitoring is applied? If so, to what areas and how should this be achieved?

Postcomm should focus on the areas previously identified as being the key concerns of users. By focusing on mail

integrity, financial guarantees and fitness and propriety, customer trust and confidence is protected.

Do consultees agree with Postcomm's suggested approach to the monitoring of mail integrity? Should Postcomm be doing more? Or less?

Best practice in the area of compliance monitoring focuses on compliance visits, annual returns and reports of potential problem areas and rectification. Visits should be annual with the possibility of last minute visits for problem areas.

Do consultees agree with Postcomm's approach to the monitoring of financial guarantees? Should Postcomm be doing more? Or less?

Monitoring of actual and forecast mail volumes will provide the information to determine if the guarantee in place is fit for purpose.

Do consultees agree with Postcomm's approach to the monitoring of the fitness and propriety of licensees? Should it be doing more? Or less?

The monitoring of the fitness and propriety of licensees depends very much on the quality of the information flow Postcomm receives. Providing it is of a high quality then Postcomm can take the appropriate action.

Do consultees agree that Postcomm's proposals are consistent with its aim to be a "light touch" regulator? Is it doing too much? Too little?

Postcomm's proposals are based on a light regulatory touch with the market and competition determining the evolution of the postal market.