

Licensing framework in a fully open market - TPG response

TPG would like Postcomm to consider carefully the following key concerns when reviewing its “light-touch” licensing proposals.

Risk of over-regulation

TPG would like to see a stronger commitment to early de-regulation. TPG understands that Postcomm wishes to understand and manage market opening, but it must be more firmly committed to handing its role over to customers as soon as possible. The current proposals go in the opposite direction, imposing greater regulation than ever before.

The risk of over-regulation is that it leads to greater non-compliance and enforcement action. In a liberalised market, it will be difficult to justify any measure which has the effect of restricting competition, innovation and market entry.

The higher Postcomm sets the regulatory bar, the greater the number of participants who will choose simply to pass underneath it.

Codes of practice

A key concern is the introduction of the concept of regulation through codes of practice.

General

Licence conditions cannot be changed, without consent or the safeguard of review by the Competition Commission. No such safeguard exists for codes of practice. For that reason, regulation by mandatory code of practice is to put unchecked power in the hands of Postcomm. That is not acceptable, especially in a system which is intended to be “light touch”.

Interoperability

Interoperability issues do need to be resolved and TPG acknowledges the considerable amount of work, resource and expertise dedicated to this issue, by Postcomm. The major issue, though, is to establish what happens when mail, carried by other operators, ends up in the Royal Mail system. TPG firmly believes that operators should be free to agree the most appropriate arrangements with Royal Mail. Royal Mail’s (super) dominance requires it not to discriminate in its treatment of other operators. This then leads to their being obliged to offer the same conditions to equivalent customers.

Rather than Postcomm manage and impose a code of practice, it should be left to the operators to sort out.

Only if this is impossible, should there be any form of binding Postcomm intervention.

Those providing only unlicensed services (e.g. express services; outbound cross border mail services and consolidation services) are not subject to licence conditions and must not be subject to mandatory codes of practice. As the line between licensed and unlicensed activity is often far from clear, it becomes virtually impossible to assess those

who are, and those who are not, bound by the code of practice in respect of any given mail item. This argues that a voluntary system is the most appropriate.

In conclusion, any code of practice on interoperability should be freely negotiated and, if key issues cannot be resolved, then - and only then - should it be mandatory: and for Royal Mail alone. There is no need for any interoperability code to be mandated upon new market entrants.

Mail integrity

The argument for a mail integrity code of practice is more understandable. However, it must be proportionate and not lead to over regulation. Mail integrity is very important – that is why it is a criminal offence to interfere with or intentionally delay the mail. TPG believes that serious operators will take the threat of prosecution extremely seriously. Less serious operators, are more likely to fear prosecution than a code of practice.

In other words, the safeguards for mail integrity are already enshrined in statute. Their inclusion in a code practice will do nothing to stop the unscrupulous and will serve only to burden the serious with more red tape.

Service levels and service data should be customer – not regulator - driven

There is no need for new market entrants to produce service data or to be subject to minimum service requirements. Customers will dictate if this is desirable. If the new market entrants do not deliver, customers will leave.

The express industry has no mandate to provide relative service data: nor does the motor industry - yet figures are offered by the players in each of these industries. This is done in response to customer demand.

For those operators who choose to publish quality data, customers are well protected. Advertising claims are subject to the generally applicable laws and advertising codes and to regulation by Trading Standards. Mandating the provision of service quality figures is inappropriate. Many services are not measured and, those which are, are unlikely to be measured on the same basis. The cost of measurement can be significant, and is likely to benefit the larger players, especially Royal Mail, at the expense of the smaller players.

Customers should be free to demand service quality figures but, more importantly, they should be free to negotiate contractual commitments to back these up. Operators will offer this, if it is in their competitive interest to do so.

Mandating service levels and service quality data would be to require further regulation which benefits the users little and costs the new market entrants much.

Guarantees

If a licensee can provide sufficient financial support to ensure the “dying breath” mail is delivered, it should be free to do this in the most efficient manner possible. Bank

guarantees are unlikely to be readily available. To insist on too great a commitment is to deter market entry.

Accounting separation serves no useful purpose

The requirement for certain new market entrants to produce separate, audited financial accounts for licensed, non licensed and other services is excessive. It is also discriminatory as it applies only to licensees who happen to be in the same group as a monopoly in another country (which, by law, must be regulated by an independent regulator, if located in another EU country).

As the licensed activities involve no exclusive rights, there is simply no question of a monopoly subsidising other services nor is there any issue of a new market entrant having a dominant position. In other words, there is no possible distortion of competition.

In a “light touch” licensing regime, TPG would strongly urge Postcomm to remove such provisions from its licence. Postcomm will continue to have general information gathering powers, should it have concerns. However, for the reasons stated, TPG does not see how there can be any possible distortion of competition demonstrated from the production of such accounts.

The requirement for TPG Post UK Limited to produce separate accounts for different service groups is not only futile but also costly and time consuming. It places certain private operators at a competitive disadvantage.

Fees to Postwatch

Operators will pay a heavy price for bad service. They will lose customers. It is unnecessary to impose a fee on operators based on the extent of Postwatch involvement. This is to doubly penalise operators. Customers will secure their own redress by seeking compensation, on freely negotiated terms, and if they are not satisfied, by changing supplier.

Equal treatment

All market entrants should be subject to the same conditions and fees.

If the regulation is to be “light touch”, then all operators should be regulated on the same “lighter touch” basis.

Naturally, greater regulation of super-dominant Royal Mail is necessary, pending effective competition.

Conclusion

Postcomm must demonstrate its commitment to eventual de-regulation by reducing, rather than increasing, the level of red tape and regulation of new market entrants.

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