



Richard Chandler  
Licensing Team  
Postcomm  
Hercules House  
6 Hercules Road  
London  
SE1 7DB

17 August 2007

Mail Users' Association  
70 Main Road  
Hermitage  
Near Emsworth  
West Sussex  
PO10 8AX

Mobile: 07976 710315  
Tel/Fax: 01243 370840

## **MUA RESPONSE TO POSTCOMM'S AMENDMENTS TO THE 2006 LICENSING FRAMEWORK CONSULTATION**

1. MUA thanks Postcomm for the opportunity to respond to its consultation on proposals for amendments to the 2006 licensing framework. As an association representing key stakeholders in the UK postal industry, MUA has consulted with its members on Postcomm's proposals and wishes to make the following statements:
2. **Introduction**
  - 2.1 MUA fully supports Postcomm's commitment to undertake a review of the licensing framework for Other Licensed Operators (OLO's) in the UK, but wonders why Postcomm feels it is necessary to amend the licensing framework ahead of the full review in 2008. As stated in previous submissions, members believe a periodic review of the licensing regime is necessary to ensure the framework remains justifiable in terms of the regulatory burdens it imposes on new market entrants. More important to business mailers, however, is the fact that the licensing framework continues to protect the interests of postal customers, who ultimately rely on the regulatory aspects of the regime, to act as a surrogate for the effective competition that has yet to develop.
  - 2.2 With this in mind, MUA believes it is essential that any amendments to Postcomm's existing licensing regime are made with all due regard to the overall market picture, and are not simply based around assumptions relating to the difficulty and/or burden new market entrants may have with the application process. As Postcomm is aware, there are good economic reasons why new entrants may have so far chosen not to enter the market, and members do not believe these are principally related to the application process. VAT exemption is alluded to in Postcomm's consultation document as being one such barrier. There are also the arguments recently postured by a number of OLO's, regarding the limited profit margins on access pricing.

**2.3** MUA is prepared to accept these types of economic argument may fall ‘outside the scope of the licensing framework and of this review’<sup>1</sup>. However, members believe other potential barriers to entry, such as those associated with customer behaviour and inertia should not be overlooked, and need to be considered as part of the licensing framework debate. For instance, overall industry confidence in the mail integrity aspects of new service offerings is arguably integrally linked to customer inertia as a barrier to entry. MUA therefore believes that decisions regarding changes to the existing licensing framework need to be assessed with reference to all the relevant factors and their potential implications, and not simply be dealt with in isolation.

### **3. Removal of Information Requirements**

**3.1** MUA therefore considers the effect of withdrawing requirements for licensees to provide details of how they will comply with the MI Code<sup>2</sup>, in favour of a declaration stating that senior executives are aware of their responsibilities, will ultimately serve to undermine customer confidence in mail integrity standards set by the market. The potential effect on customer behaviour is likely to be an exacerbation of the problem of inertia in the trialling of new products and services offered by other licensed operators.

**3.2** MUA bases its thinking on the fact that UK business mailers ultimately wish to see the introduction of sustainable competition. They will naturally aspire to use service operators who can clearly demonstrate the ability to take reasonable precautions to safeguard and handle their mailings, in a reliable and responsible manner. These new market entrants will also need to demonstrate the ability to interface effectively with other postal operators, given that in many cases business mailers will use more than one service provider, and/or will expect their receiving customers to be able to contact the correct operator in circumstances of incorrect delivery, delay or lost in post.

**3.3** Similarly, MUA does not believe that the obligation for potential licensed operators to explain how they will adhere to the key elements of the Code of Practice<sup>3</sup> is disproportionate to the expectations of the market. New market entrants will need to demonstrate the ability to carry out these activities from the outset of business, if they are to attract business, compete and prosper in an increasingly competitive market. It would therefore seem a logical progression that these entrants should be able to transpose this information from a business plan to an application form, and where necessary demonstrate the mechanisms to the satisfaction of Postcomm before start up. After all, the first thing a customer is going to want to see, is the very same.

**3.4** The fact that to date a number of potential licensees have apparently had difficulty in demonstrating their ability to carry out these business activities in a way deemed appropriate by Industry and the Regulator, must surely raise a question mark over whether those particular companies are ultimately up to the job.

**3.5** MUA would again re-emphasise the fact that it believes this is sending the wrong message to customers, and that maintenance of the highest level of mail integrity is

---

<sup>1</sup> Postcomm ‘Amendment of the 2006 Licensing Framework’ consultation document – May 2007, Page 12 - Para 2.19

<sup>2</sup> Postcomm’s Mail Integrity Code of Practice (a.k.a. MI Code)

<sup>3</sup> Postcomm’s Common Operational Procedures Code of Practice (a.k.a. The Code of Practice)

paramount in protecting the interests of both sending and receiving customers, thereby maintaining physical mail as the communication medium of choice.

- 3.6** Members therefore consider that Postcomm's proposal to 'dumb down' the information requirements of the application process is a false economy, and one which only stands to increase the likelihood of attracting operators with less robust business models, and undermine customer confidence in what is essentially an immature market.

#### **4. Granting of Licence Notice Period**

- 4.1** MUA would support Postcomm in its proposals to publish the notice proposing the grant of a licence at an earlier stage i.e. prior to expiry of the 28 day notice period, providing it is satisfied that an application contains all the necessary information for it to be assessed.

#### **5. Removal of the Annual Fee**

- 5.1** MUA members consider that the issues of the licence application fee and annual fee for all licensees with a turnover below £10 million, do not represent a significant barrier to entry, and believe the proposed changes will have little or no affect on market entry. In the whole scheme of things, members suggest an appropriate way forward would be to make the application fee for all applicants £100 to cover start up administrative costs, and reduce the annual fee from £1,000 to a recommended £500, but then also not to charge new market entrants the annual fee in year one, as a gesture of goodwill.

#### **6. Fitness and Propriety of an Operator**

- 6.1** MUA would argue it should remain the responsibility of Postcomm to assess from the outset, the fitness and propriety of any applicant entering a licensing regime under their control. Members would point out whilst Postcomm is on the one hand:

- proposing to remove the ex-ante MI code checks from the application process, in favour of requiring a controlling person(s) to provide a declaration that they have read and understood the MI Code,

and then on the other hand

- proposing to also do away with the provision for that same controlling person(s) to gain an ex-ante Basic Disclosure from the Criminal Record Bureau, based on the fact that it is a duplicate safeguard with the recruitment policy requirements of the MI Code (which that person is now no longer required to provide evidence up front for),

could be argued to be courting disaster.

- 6.2** MUA would wish to understand when in the process of market entry will an applicant be required, under the proposed arrangements, to demonstrate that they do not have current unspent criminal convictions. After all, were an unscrupulous applicant to simply sign the Mail Integrity Code declaration, there would appear to be no point in the application process where this information is checked for its accuracy.

- 6.3** Once again, MUA would argue that the existing process does not represent a barrier to entry, given that any responsible controlling person(s) would expect to have these checks carried out, and any customer would certainly wish to see them carried out, before entering into a binding contract with a new market entrant. Members can only conclude therefore that this measure is at best designed to dumb down the process, and at worst, simply to pass on the responsibility and administrative costs to the customer of having to carry out these checks themselves – which in itself could be argued to be an ignominious start to a business relationship.

## **7. Appropriateness of a Financial Guarantee**

- 7.1** MUA's stance on this matter remains unchanged from its original submission to Postcomm's consultation in Feb 2005. Whilst MUA recognises a bank or insurance guarantee may represent a considerable barrier to entry for small businesses in that they are difficult and expensive to arrange, members continue to believe there is a need for some type of guarantee mechanism to ensure sufficient resources are available to deliver a failing company's mail 'in system', at point of cessation of business.
- 7.2** Members would therefore suggest Postcomm should look to put in place a measure that ensures all new market entrants have in place provision for alternative arrangements to deal with any back log in the event of liquidation, but additionally that all companies with an annual turnover in excess of £10 million (for instance) should continue to be required to secure a financial guarantee.
- 7.3** This threshold approach would cover the larger more established postal operators, where the effect of liquidation would have the most serious impact on the market, and thereby provide a safety net for the vast amount of consumers, whilst at the same time allowing smaller market entrants an alternative provision to propose separate arrangements.

## **8. Data Protection Act Registration**

- 8.1** MUA considers Postcomm's proposals to provide applicants with guidance on the relevant data protection issues which might arise as a result of a licence being granted (rather than having to provide a copy of their Data Protection Act register entry), is an appropriate way forward, given that the obligation of postal operators to comply with the terms of the DPA is not dependent on whether or not they hold a licence.

## **9. General Observation Relating to Postcomm's Investigation and Prosecution Policy**

- 9.1** MUA members would also want to raise the issue of Postcomm's Investigation and Prosecution Policy at this juncture, believing it to be pertinent to the licensing regime debate. There are indications in the approach Postcomm is taking to reviews such as this, that it is now beginning to lay the foundations for regulatory withdrawal from the licensing regime, and these signals are being met with a certain amount of concern by business mailers, as industry appears to be receiving mixed messages from the Regulator.
- 9.2** MUA is becoming increasingly concerned that as Postcomm moves toward *Ex Ante* regulation (for instance, by removing MI code checks from the application process), in

favour of *Ex Poste* measures such as Postcomm's stated 'extensive powers to investigate potential licence breaches'<sup>4</sup>, mechanisms originally put in place to protect the interests of consumers in the absence of a level playing field, are arguably being stripped out prematurely, before effective competition has been allowed to emerge.

- 9.3** For instance, in the licensing framework document (specifically relating to the removal of MI Code checks) Postcomm states its 'enforcement powers are a more effective way of ensuring compliance with these licence conditions'<sup>5</sup>. However, in Postcomm's Business Plan 2007-08, it also states in relation to a licensee's ability to investigate and prosecute alleged offences of interference with mail, that 'In an increasingly competitive market, Postcomm considers that it is a commercial decision for licensees whether or not to carry out this type of work', and that 'Postcomm will therefore only investigate and prosecute in the most serious cases'<sup>6</sup>.
- 9.4** MUA is extremely concerned that whilst Postcomm suggests in one document that 'nothing being suggested in this document will affect the way that we can take enforcement action'<sup>7</sup>, another equally valid Postcomm document implies something quite different, in that one of its over-arching goals in 2007-08, is to have less and less to do with the investigation and prosecution of alleged offences for interference with mail.
- 9.5** So, whilst MUA recognises the overall goal of any industry regulator should be to ultimately withdraw from the market leaving healthy competition to self-regulate itself, members consider Postcomm needs to ensure it does not employ too quick a rate of withdrawal, given the infancy of this particular market. Otherwise, as could potentially be the case in the removal of MI and COP code of practice checks, this may have the knock on effect of lowering mail integrity standards, and so ultimately undermine consumer confidence in the market.
- 9.6** Members therefore strongly believe that in addition to retaining ex ante MI Code checks within the licensing application process, energetically pursued enforcement policies should remain a key role for Postcomm whilst the market remains in its infancy, as they continue to be an effective deterrent against minimising offences of interference with mail.
- 9.7** I do hope you find this feedback of use to you in your deliberations. If you have any questions related to it, do not hesitate to contact MUA.

With best regards,

Jeremy Partridge  
Executive Director  
Mail Users' Association

---

<sup>4</sup> Postcomm 'Amendment of the 2006 Licensing Framework' consultation document – May 2007, Page 16 - Para 3.10

<sup>5</sup> Postcomm 'Amendment of the 2006 Licensing Framework' consultation document – May 2007, Page 16 - Para 3.10

<sup>6</sup> Postcomm Business Plan 2007-08 – Page 22

<sup>7</sup> Postcomm 'Amendment of the 2006 Licensing Framework' consultation document – May 2007, Page 16 - Para 3.10

Direct Marketing Association  
DMA House  
70 Margaret Street  
London W1W 8SS  
T 020 7291 3300  
F 020 7323 4165  
E dma@dma.org.uk  
W www.dma.org.uk

# Amendment of the 2006 Licensing Framework

## DMA's response

Alex Walsh  
August 2007

### ***Section 1.01DMA***

The Direct Marketing Association (DMA) UK Ltd is the largest trade association in the communications sector, representing both users and suppliers of Direct Marketing. We represent the majority of the major users of postal services and our client membership base represents the largest Royal Mail customer group. We represent all aspects of the

supply side of postal services from mailing houses to consolidators and from agencies to data bureaux. Our members have both contributed to and benefited from the development of competition in the Postal Market and these proposals would impact their business as major users of mail.

**Introduction**

As major users of mail DMA members are keen to see the development of genuine competition in the UK market. We believe that even the limited competition that exists at present has had a beneficial effect on prices, quality of service and levels of customer service. Further competition - especially end to end competition - would give more choice and provide an environment that would encourage innovation and better value.

We are concerned, however, that there is a danger with these proposals of lowering the entry criteria for new operators too far which could have a detrimental effect on the future of mail as a whole. The current licensing requirements - particularly the COP and Mail Integrity codes of practice - have provided a guarantee that has encouraged users to "take the plunge" and try competitors. Without these assurances - or at least the perception that they provide a guarantee of service - there is a danger that users will simply stick to the "big name" operators that they believe they can trust.

**Experiences in other licensing regimes**

We note the examples of the experience in other markets but - as Postcomm itself points out - the licensing regime, development of competition (especially access to the incumbent's network) and even business culture mean that it is difficult to find direct comparisons. The development of downstream access in the UK market has resulted in an unique situation that has arguably seen more market share "lost" (or at least the collection and sorting elements) to competition than in the other liberalised markets.

It is true that some markets have seen more development of end to end competitors but this has been because new entrants competitors have been forced into developing these networks simply to compete. We understand that the market share of new entrants in the other liberalised markets is very low with the result that you can end up with an even more dominant market position of the incumbent with a small competitive market share being fought over by a large number of smaller operators. Of greater concern is the relatively high number of new entrants into the postal market in the examples given that don't survive (we understand that there has been an even higher level of failures in the Spanish postal market over the years).

Comparison with the Energy supply and Telecommunications markets also gives rise to some concern. Although competition has undoubtedly given rise to innovation, lower prices and improved customer service the early days were also marked by confusion in the market and some customers suffering as suppliers went out of business.

We are very concerned that relaxing the current requirements too far could result in undermining the current high expectations that mail will reach it's destination within a specified timescale.

It is with these concerns in mind that we have the following comments on the proposed changes:

**The Licence Application proposals**

<b>Current Requirement</b>	<b>Proposed amendment</b>	<b>Comment</b>
Basic disclosure provided by CRB	Replace with declaration about criminal convictions	Agree with proposals provided there is no dilution of requirements under the Mail Integrity Code of Practice
Copy of applicant's registration under DPA	Not required	Our experience indicates that there are still many organisations who do not comply with the DPA. Postcomm should be at least be obtaining a declaration from the potential

		licensee that they will be notifying the IC. We would still prefer that applicants prove that they are registered given the public concerns about personal data.
Details about how the licensee proposes to comply with the COP code of practice	Replace by a declaration	We don't understand why this is seen as a potential barrier to entry. Currently applicants are only asked to explain how they would comply and this at least ensures that they both know about the COP and that they have responsibilities under it.
Application fee of £1,000	Reduced to zero or £50	We understand Postcomm's reasoning for wanting to reduce the application and annual fees to encourage SMEs to apply for licences. We would be interested to understand what services the small companies and sole traders who were put of by a cost of £2,000 were proposing to provide since this doesn't seem excessive in relation to the costs of starting up a business. We would need more evidence that these fees have actually deterred any serious potential licensees. We would be concerned that an SME that couldn't afford £1,000 or even £2,000 was being entrusted with mail that could easily be worth far more than this. We appreciate that this doesn't provide any form of on-going guarantee of financial stability but believe that no fees would encourage the wrong kind of applicant and send out the wrong messages to mail users. Maybe the application fee and annual fee should be related to the services they are providing and the proposed volumes rather than simply turnover.
Annual fee of £1,000	Not required	See above