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Dear Sophie

**Royal Mail's Price and Service Quality Review 2006–2010:
Licence Modifications Proposals**

This letter constitutes Postwatch's response to Postcomm's consultation on its Licence Modifications Proposals for Royal Mail. It should be noted that our ability to undertake detailed analysis of the document and to provide comprehensive comments has been constrained by its extreme complexity and by the unduly short consultation period of just one month.

We understand that the current consultation is, in practice, only seeking to identify factual errors in drafting or interpretation of Postcomm's decision on the Price Control, and it is not seeking to reopen debate on the underpinning policies. We therefore confine our current comments to a few specific areas where weaknesses have been identified.

However, we feel obliged to record our disappointment that Postcomm has chosen to disregard the majority of the comments made by Postwatch in relation to the draft Licence modifications contained in its Final Proposals document (published 7 December 2005) and for the sake of completeness we attach a note of these original concerns.

We would like to make the following comments on Postcomm's proposals (numbered as per the final draft, March 2006):

- 7.5 Postwatch believes that the way in which this clause is drafted leaves significant scope for Royal Mail to act in an anti-competitive manner with regards being able to undertake confidential tenders (offering special pricing and terms) with a short publication time frame. We are concerned that this has the potential to damage the emerging competitive environment. A parallel can be drawn with the telecoms sector when it was at the same stage of competitive supply as the postal sector is currently: BT, as the dominant

operator, was obliged to publish tariffs and its standard terms and conditions 28 days in advance of the tariff going into the commercial arena. In addition, modifications to the standard terms and conditions had to pass the 'discrimination' test i.e. whether the discrimination was undue (damaging) to competing operators.

We are not satisfied that this clause provides adequate protection to new operators; rather it could be seen to be offering undue discrimination. When Royal Mail provides competitive tender information to Postcomm, there must be a requirement for the regulator to look at the associated costs for provision of the service together with other costs involved in providing such service i.e. partial haulage costs, personnel, marketing costs etc.

Postwatch is also concerned that this clause allows Royal Mail the opportunity to compete unfairly by non-publication of tariffs and terms in a timely manner. The short timeframe is not sufficient for Postcomm to be sure that Royal Mail has not abused its dominance.

- 7.6 Postwatch believes that this condition (old c.7. 5) still needs to be amended for greater clarity. "The Licensee shall ensure that the **title**, full address and telephone number of the Council is displayed with reasonable prominence in all **customer** explanatory literature it produces for users of its postal services."
- 19.3 Postwatch is concerned at the 'two pronged' approach for Royal Mail to seek the agreement of the 'Council' (Postwatch). We appreciate that this process can be overridden by 19.3(b); however, Postwatch believes that Royal Mail should be required to make a formal application to Postcomm, copying the application for the Regulated Service to Postwatch, to enable us to undertake an informed review on the customer-impact of such services.
- 19.26 & 19.27 From a legal perspective, a notice period of 5 months may be a reasonable and sufficient time frame within which to expect Postcomm to reach a decision on an application under c.19. However, using other industries as a benchmark, emerging markets can be severely damaged by dominant operators/licensees tying up the regulator with a plethora of issues to ensure that the regulator's resources are engaged in order to miss notice periods. Postwatch has concerns regarding Postcomm's resources and the opportunity for Royal Mail to game Postcomm's ability to react within the given timeframes.

Yours sincerely

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