

POSTAL SERVICES ACT 2000

Sections 11 and 13

Licence granted to Royal Mail Group Ltd

Schedule 2 Part 3 Condition 7(5)(b)

Direction in relation to Royal Mail's Sameday service

Whereas:

- (1) Royal Mail Group Ltd ("Royal Mail") is the holder of a licence ("the Licence") granted on 23 March 2001 by the Postal Services Commission ("Postcomm") under section 11 of the Postal Services Act 2000 ("the Act").
- (2) The Licence was amended on 1 April 2003, 2 November 2005 and 25 May 2006.
- (3) Paragraph 5 of Condition 7 relates to the prices and terms applicable to contracts won for the conveyance of postal packets by Royal Mail through a competitive tendering process which is open to other postal operators and to which such operators can reasonably be expected to be capable of responding. In such a case paragraphs 2 and 3 of Condition 7 do not apply but Royal Mail is required to provide Postcomm a copy of the contract and a statement of the differences from the standard terms for the most closely comparable Controlled Service or Controlled Services within seven days of entering into the contract, or if a written contract has not been concluded a summary of the main terms followed by provision of the written contract.
- (4) Paragraph 5 (b) of Condition 7 requires Royal Mail to submit to Postcomm and Postwatch within fourteen days after the expiry of the calendar month in which the contract was entered into, a statement setting out the main terms of these contracts. This includes contract duration, price, weight and format, volumes, sortation requirements, access times and points, delivery standards and requirements for postcode volume distribution. In addition, unless Postcomm by direction in writing provides otherwise, Royal Mail must publish each statement in

a manner that will give reasonable publicity to it within seven days of its submission to Postcomm and Postwatch.

- (5) On 30th January 2007, Postcomm excepted Royal Mail from the three month pre-notification requirements set out in Condition 7 (2) and (3) and therefore, by implication, the publication requirements of Condition 7 (4). Postcomm noted that the service appeared to be offered in a developed sector of the market in which Royal Mail was not dominant.
- (6) On 6th February 2008, Royal Mail applied to Postcomm for an exemption from the publication aspect of Condition 7 (5) (b) for the Sameday service. A description of the Sameday service is set out in the Annex to this Direction.
- (7) Postcomm is not obliged to consult on a request for an exemption from the publication aspects of Condition 7 (5) (b). However, Postcomm consulted interested stakeholders, on an informal basis, to determine industry views on the application. One response was received stating that Royal Mail should continue to be required to publish certain details of contracts won through competitive tenders to prevent it from cross subsidising this service with standard Royal Mail products.
- (8) Royal Mail has stated that the Sameday prices are based on a standard pricing model. Therefore if Royal Mail won a contract through a competitive tender for its Sameday Service and published its prices as required under paragraph 5 (b) of Condition 7, then its competitors would gain an understanding of its pricing model and therefore an advantage in the next competitive tendering situation.
- (9) In any event Royal Mail will still be required to provide Postcomm with a copy of any contract won through a competitive tendering process under paragraph 5 (a) of Condition 7. In addition, Royal Mail will also be required to provide Postcomm and Postwatch a statement setting out the main terms of the contract under paragraph 5 (b) of Condition 7. This will give Postcomm sight of the contract and main terms to protect against any anti-competitive activity. Royal Mail has also agreed to provide separate accounts for Sameday as an additional safeguard against anti-competitive activity.

- (10) Postcomm, however, believes it is not appropriate to remove all Royal Mail's publication obligations in relation to its Sameday Service in respect of contracts won through competitive tenders for its Sameday Service combined with other mail services.
- (11) As Sameday appears to be operating in a developed sector of the market, Postcomm has determined that it is proportionate to exempt Royal Mail from the publication requirements for contracts won through a competitive tendering process if the tender was for its Sameday Service only or for its Sameday Service combined with another service or other services which Postcomm has directed, in writing, as exempt from the publication requirement of paragraph 5 (b) of Condition 7. Royal Mail has also agreed to provide separate accounts for Sameday from the start of the 2008/09 financial year.

Now, therefore, pursuant to and for the purposes of paragraph 5(b) of Condition 7 in Part 3 of Schedule 2 to the Licence, Postcomm by this direction hereby determines as follows.

1. This Direction shall be interpreted in the same manner as the Licence.
2. Royal Mail is excepted from the publication requirement, set out in paragraph 5(b) of Condition 7, for contracts won through a competitive tendering process if the tender was for its Sameday Service only or for its Sameday Service combined with another service or other services which Postcomm has directed, in writing, as excepted from the publication requirement of paragraph 5 (b) of Condition 7, provided that Royal Mail reports the Sameday Service separately in its regulated accounts from the start of the 2008/09 financial year.

The seal of Postcomm hereunto
affixed is authenticated by –

Authorised for that purpose by
Postcomm

Date: 10 April 2008