

POSTAL SERVICES ACT 2000

Sections 11 and 13

Licence granted to Royal Mail Group Ltd

Schedule 2 Part 3 Condition 7

Direction in relation to trials conducted by Royal Mail

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 2 of Condition 7 in Part 3 of Schedule 2 to the Licence ("Condition 7") requires Royal Mail, except as Postcomm after consultation may by direction determine, to submit to Postcomm and to the Consumer Council for Postal Services ("Postwatch") a statement setting out details of the tariffs under which Royal Mail offers to provide, and other information relating to, licensed and unlicensed services.
- (4) Paragraph 3 in Condition 7 further requires Royal Mail, except as Postcomm after consultation may by direction determine, to notify Postcomm and the Council promptly in writing of any changes to the matters referred to in any statement submitted pursuant to paragraph 2 not less than three months before any such changes come into effect.
- (5) On 31 January 2007, following discussions with Royal Mail, Postcomm issued a consultation letter to Royal Mail, other holders of licences granted under the Act, Postwatch, Trade Associations and other interested parties ("the Consultation Letter"), concerning a new process for the notification by Royal Mail to Postcomm of arrangements for trials which is quicker than the approach set out in Condition 7.

(6) In the Consultation Letter Postcomm –

- re-stated its view that product innovation should not be hampered by unduly restrictive licence obligations,
- recognised that trials are often necessary steps towards the introduction of new products and services, and
- noted that the existing three month notification requirement under Condition 7 may in some cases result in an unnecessary waiting period for the start of some trials, thus delaying tests of new services and, in turn, slowing innovation.

(7) The Consultation Letter made the following proposals for notification of trials by Royal Mail –

- the notification to Postcomm would include information such as a description of the trial, the selection criteria for participating customers, operational aspects of the trial, timing, key performance indicators and success factors, terms and conditions;
- a list of all participating customers when relevant and known would be furnished to Postcomm as soon as possible and, in any event, no later than a week before the trial is due to commence;
- trials would be notified to the market at least one month ahead of their commencement and this notification to the market would include a description of the trial, its duration and details of the tariffs and general conditions;
- any changes to the trialled product during the trial would be limited to minor operational modifications;
- trials would last for a maximum of six months and generate revenue no greater than £1million per month per trial at current prices;
- if a trial is successful and Royal Mail wishes to launch a new product, Royal Mail would notify the launch of the new product to the wider market three months before its commencement in accordance with C7 requirements; and

- where trialists are recruited in advance, those continuing to participate in the trial at its termination would be permitted to continue receiving the service or product up until it is available to all other users of postal services.
- (8) In the six week period provided by the Consultation Letter for the submission of responses, Postcomm received representations from Mail Users' Association, the Catalogue Exchange, Postwatch, Otto UK, the Mail Competition Forum, and Royal Mail, with two further responses received from customers on a confidential basis. Postcomm has placed the non confidential responses to the Consultation Letter on its website.
- (9) The main points made in response to the Consultation Paper were –
- Broadly, respondents viewed the idea of conducting a trial, as part of Royal Mail's approach to product development, as being in customers' interests. This was strongly supported and encouraged by customers, and accepted by MCF. Therefore, the idea of giving Royal Mail more flexibility to conduct trials was supported, as was the reduction in notice period from three months to one month.
 - A key concern, primarily raised by the MCF, was that there was some difficulty in defining exactly what is meant by a trial. One approach could be to define a trial more tightly. However, this would be very difficult to do and relying on it alone would then require monitoring, meaning Postcomm would simply have to devote greater resources to the issue. In recognition of this issue, the proposals set out some parameters that should also apply, such as a time limit and a revenue cap. In its response, Royal Mail has also suggested it would accept being restricted to as few as 10 trials per year. Postcomm has therefore tightened the definition slightly, and will limit the number trials conducted by Royal Mail in any given year to ten.
 - .The issue of whether participants could continue to receive the product in between the trial ending and the new product being launched also raised concerns. Postcomm proposed that trialists

signed up before the trial began would be able to continue to receive the product between the end of the trial and the launch of the new product. However, trialists signed up after the trial began would not. This mitigates against the risk of a trial being used to launch a new product but without the need for a three-month notice period. Postwatch and MUA were concerned that allowing some trialists to continue the service could give some customers a competitive advantage over others in the same market.

However, not allowing pre-selected trialists to continue reduces the incentive on customers to engage in the trial in the first place. Any delay to a new product launch (e.g. if, at the end of a trial, a new product was notified two years in advance) could, however, prolong a period in which a specific group of customers only were taking advantage of the trial. Therefore, pre-selected trialists will only be able to continue the service notification is for a prompt commencement of the new product or service after the three month period.

- Some respondents wanted Royal Mail to be required to publish (to the market) and disclose (to Postcomm and Postwatch) more information that was originally proposed. The more information made available, the greater monitoring there can be of Royal Mail's behaviour by the market, and the quicker Postcomm can investigate a trial (if necessary). However, this must be balanced with ensuring that the information requirement does not become a burden. Postcomm has therefore reviewed the information that Royal Mail must provide when notifying a trial.

(10) Postcomm has therefore reviewed the proposal set out in the Consultation Paper in the light of the points made in response to it and has concluded that the underlying rationale for a new process for the notification by Royal Mail to Postcomm of arrangements for trials is sound but that some minor modifications should be made to the proposed process as compared with the proposal made in the Consultation Letter.

- (11) The modifications as compared with the proposal made in the Consultation Letter are –
- to the definition of “trial”, to provide greater clarity,
 - ensuring that the notification of a new product is for a prompt commencement, such that the trial is not extended for pre-selected trialists for a unnecessarily long period of time,
 - restrict the number of trials to a maximum of 10 each year, following Royal Mail’s suggestion, and
 - increase (slightly) the information Royal Mail is required to supply at the time of notification.
- (12) The Direction hereinafter appearing gives effect to Postcomm’s conclusions on the issue of a new process for the notification by Royal Mail to Postcomm of arrangements for trials.
- (13) The effect of this Direction is that Royal Mail will be able to undertake up to ten limited trials each year, after giving one month’s notice in line with the requirements set out in paragraph 2(c) of this direction.

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

1. In this Direction –
- (a) a “trial” means the testing of the operational and commercial viability of a new service or product (or of a change to an existing service or product), in a manner which involves a restricted number of customers participating in the test by posting mail items for conveyance for consideration by the service or product for a restricted period of time, before a decision is taken by Royal Mail on whether to provide the service or product without restriction, and cognate terms shall be construed accordingly, and
 - (b) unless the context requires otherwise, words and expressions which are defined in the Licence shall have the same meaning as in the Licence.

2. Royal Mail is excepted from the requirement to include, in any statements submitted under paragraphs 2 or 3 of Condition 7, any details of the tariffs, standards of service and compensation arrangements under which it offers to provide, or any other information relating to, the provision of any service or product on a trial basis, provided that –
- (a) in the period of twelve months preceding the commencement of the provision of the service or product as a trial no more than nine services or products have begun to be provided as trials pursuant to this direction,
 - (b) the period for which the service or product is provided as a trial does not exceed –
 - (i) six months from the date of Royal Mail first providing of the service or product as a trial, and
 - (ii) in respect of persons participating in the trial at the end of that period only, where before the expiry of that period Royal Mail has given notice in accordance with paragraph (2) or (3) of Condition 7 of its intention to provide a service or product substantially similar to the service or product provided as a trial, a further period of not more than four months;
 - (c) the revenue from trial does not exceed £1 million in any month,
 - (d) not less than one month prior to the commencement of provision of the service or product as a trial Royal Mail has provided to Postcomm and Postwatch, a statement in writing containing the following information –
 - (i) a description of the nature and purpose of the trial, including geographic location),
 - (ii) the selection criteria for participants in the trial,
 - (iii) any particular operational aspects of the trial that Royal Mail is specifically testing,

- (iv) the proposed commencement date and duration of the trial,
- (v) the tariffs (including discounts and credit facilities), standards of service and compensation arrangements applicable to participation in the trial, and
- (vi) a summary of the likely impact on customers
- (vii) a summary of the key performance indicators and factors that are critical to the success of the trial and by which the trial will eventually be assessed,
- (viii) the names and contact details of the selected trialists)in advance of the trial),

and has placed on its website in a visible and accessible manner and has not removed a statement comprising the information referred to in sub paragraphs (i), (ii), (iii), (iv), (v) and (vi) of this paragraph;

- (e) a list of all customers participating in the trial is furnished to Postcomm in writing as soon as possible and, in any event (and so far as then known), no later than a week before the trial is due to commence;
- (f) no changes to the specification of the service or product being provided as a trial are made, other than minor operational modifications not involving changes in prices or tariffs or changes to contractual terms and conditions.

The seal of Postcomm hereunto
affixed is authenticated by –

Authorised for that purpose by
Postcomm

Date: 16 August 2007