

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 Branch Direct services offered 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 non-licensed services.
- (4) Paragraph 3 of 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 of Condition 7 not less than three months before any such changes come into effect.
- (5) Paragraph 4 of Condition 7 requires Royal Mail to publish the statements and notifications required to be submitted under paragraphs 2 and 3 of Condition 7 as soon as reasonably practicable after their submission and to ensure there is reasonable publicity for these statements and notifications. In addition, Royal Mail is required to a) not assert copyright for the statements and notifications, b) make copies available and c)

place the statement or notification on relevant websites controlled by Royal Mail.

- (6) 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.
- (7) 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.
- (8) Royal Mail applied to Postcomm for an exemption from the three month pre-notification requirements of paragraphs 2 and 3 of Condition 7 for its Branch Direct services on the 20 June 2007 and submitted a publishable version of this application on the 12 July 2007. Royal Mail considered that any such application if granted would also apply to paragraphs 4 and 5 of Condition 7. This application was made on the basis that these services are offered in a highly competitive market.
- (9) Royal Mail's Branch Direct service involves the conveyance of mail items within a scheduled closed-user network for both large and small businesses. The service is used for urgent mail items that are in

pouches, parcels or tote bags and Royal Mail generally has 'key holder' access to pick up and drop mail off outside standard working hours. Branch Direct is managed as a discrete operational network separate to the standard Royal Mail network, and this includes dedicated staff, vehicles and processing hubs. Royal Mail has stated that Branch Direct prices are based on a standard pricing model for all customers.

- (10) On the 28 September 2007, following discussions with Royal Mail, Postwatch and the Mail Competition Forum, 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"), regarding exempting Royal Mail from the three month pre-notification process set out paragraphs 2 and 3 of Condition 7 for its Branch Direct service.
- (11) In the Consultation Letter Postcomm –
- set out the main aspects of the Royal Mail application including that Royal Mail believes its Branch Direct service has a low share of the closed-user group sector;
 - reflected stakeholder views that there is strong competition in the closed-user group sector. However, some stakeholders had expressed concern that if the relevant market was defined too narrowly then Royal Mail would not be considered dominant, but if a wider definition of the market was adopted then it would be likely that Royal Mail would be regarded as the dominant player;
 - proposed to exempt Royal Mail from the three month pre-notification and publication requirements of paragraphs 2, 3 and 4 of Condition 7 for its Branch Direct services; and
 - did not propose to exempt Royal Mail from the publication requirements in paragraph 5 of Condition 7 for contracts won through competitive tenders.
- (12) In the four week period provided by the Consultation Letter for the submission of responses, Postcomm received representations from Postwatch, DX Network Services and Secure Mail Services ("DX Group"), the Communication Workers' Union ("CWU") and Royal Mail,

with one further response received on a confidential basis. Postcomm has placed the non-confidential responses to the Consultation Letter on its website.

- (13) The main points made in response to the Consultation Letter were –
- Postwatch, CWU and Royal Mail agreed with Postcomm’s minded-to position to exempt Branch Direct from the pre-notification and publication requirements in paragraphs 2, 3 and 4 of Condition 7;
 - Royal Mail considered that as Branch Direct operated in a highly competitive sector it was appropriate to exempt it from publishing details of contracts won through competitive tenders as set out in paragraph 5(b) of Condition 7. The CWU agreed with this view;
 - The DX Group did not think that Royal Mail should be exempt from the three month pre-notification and publication requirements of paragraphs 2, 3 and 4 of Condition 7 as Royal Mail enjoys benefits such as exemption from VAT, brand loyalty and shared sales channels that are barriers to entry for competitors in the market;
 - In addition the DX Group felt that it was inappropriate to exempt Royal Mail from the requirement to publish details of contracts won through competitive tenders due to the risk of anti-competitive activity (through bundling Branch Direct with other Royal Mail services). Postwatch also agreed with this view;
 - The DX Group considered that if Postcomm was to exempt Royal Mail from the notification and publication requirements of Condition 7 then it should require Royal Mail to provide separate accounts for Branch Direct. This will help to identify if there has been any anti-competitive activity.
- (14) Postcomm has reviewed its minded-to position set out in the Consultation Letter in the light of the points made by respondents. The majority of stakeholders who either responded to the Consultation Letter or with whom Postcomm have consulted have agreed that Branch Direct operates in a competitive sector. While Royal Mail’s VAT exempt status

and economies of scale are advantages they do not appear to be restricting competition as Royal Mail has a low share of the sector.

- (15) The concern expressed by competitors to Royal Mail and by Postwatch regarding exempting Royal Mail from the publication requirements for contracts won through competitive tenders is related to the transparency the requirement for publication gives to these contracts. If the publication requirements apply, the market is able to assess whether Royal Mail has acted in an anti-competitive manner (potentially through bundling Branch Direct with other Royal Mail products and services) and to ensure the conditions for the specific customer are reasonable. However, it is important to balance this concern with the detrimental impact on Royal Mail if they are required to publish details of these contracts.
- (16) Royal Mail has stated that the Branch Direct prices are based on a standard pricing model. Therefore if Royal Mail won a contract through a competitive tender for Branch Direct services and published its prices as required under paragraph 5(b) in Condition 7, then their competitors would gain an understanding of their pricing model and an advantage in the next competitive tendering situation.
- (17) If Royal Mail were exempt from the publication requirements for Branch Direct contracts won through competitive tenders, then it would still be required to provide Postcomm and Postwatch with a copy of this contract under paragraph 5(a) in Condition 7. This will give Postcomm sight of the contract terms to protect against any anti-competitive activity. Royal Mail has also agreed to provide separate accounts for Branch Direct as an additional safeguard against anti-competitive activity.
- (18) Postcomm, however, believes it is not appropriate to remove all Royal Mail's publication obligations in relation to Branch Direct services in respect of contracts won through competitive tenders for Branch Direct services combined with other mail services.
- (19) Therefore Postcomm has concluded that the underlying rationale for exempting Royal Mail's Branch Direct service from the pre-notification

requirements of paragraphs 2, 3 and 4 of Condition 7 is sound and it has confirmed its minded-to position outlined in the Consultation Letter.

- (20) In addition, as Branch Direct 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 of contracts won through a competitive tendering process if the tender was for closed-user group services alone, or closed-user group services combined with another service or 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 Branch Direct from the start of the 2008/09 financial year.

Now, therefore, pursuant to and for the purposes of paragraphs 2, 3, 4 and 5 of Condition 7 in Part 3 of Schedule 2 to the Licence, Postcomm by this direction hereby determines as follows.

1. In this Direction –
 - (a) Branch Direct services mean the conveyance of postal items that are in pouches, parcels or tote bags, within a scheduled closed-user group network; 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 provide Postcomm and Postwatch a statement setting out details of tariffs, standards of service and compensation arrangements under which it offers to provide, or any other information relating to, the provision of any Branch Direct service or product submitted under paragraph 2 of Condition 7.
3. Royal Mail is excepted from the requirement under paragraph 3 of Condition 7 to notify Postcomm and Postwatch three months in advance of any changes to any statement previously submitted pursuant to paragraph 2 of Condition 7 for Branch Direct services.
4. Therefore, Royal Mail is also excepted from the publication requirements of paragraph 4 of Condition 7 for statements and notifications required to be submitted under paragraphs 2 and 3.

5. Royal Mail is excepted from the publication requirement, set out in paragraph 5(b) of Condition 7, for details of Branch Direct contracts won through a competitive tendering process for closed-user group services alone, or closed-user group services combined with another service or services which Postcomm has directed in writing, as exempt from the publication requirement of paragraph 5(b) of Condition 7 provided that Royal Mail provides separate accounts for the Branch Direct service 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: 19 December 2007