

Introduction

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 - as well as mail users themselves.

All our members use postal services for some aspect of their business and for many it represents a significant part of their business. How the postal market evolves will have a direct impact on both whether their business survives and on the number of people they employ.

When considering the impact of OFCOM's proposals for the future regulation of the postal services market it is important to remember that it is not only Royal Mail's profitability and employees that will be affected. The future of hundreds of other companies – many of them SMEs – and thousands of jobs outside Royal Mail are at stake as well.

Review of Regulatory Conditions consultation response

Reading through these proposals in conjunction with the consultation that closed at the beginning of January (Securing the Universal Postal Service) we are disappointed that OFCOM appear to have abdicated all responsibility for protecting a significant part of the market from potential abuse by a monopoly. In Richard Hooper's second report (Saving the Royal Mail's Universal Postal Service in the digital age) his recommendations were "*focussing regulation where there is a monopoly and removing regulation much more quickly from the competitive parts of the market*".

In evidence to the Parliamentary Committee he also said "*decide where the monopoly is....make sure that is very clearly and well regulated, then reduce regulation outside that monopoly where competition is beginning to bite. That is the philosophy in the report and I think that philosophy is in Part 3 of the Bill too.*"

OFCOM's proposals in these two consultations do not focus on where there is a monopoly - Royal Mail still controls 99% of deliveries but it is being proposed that they will have complete freedom to charge and impose whatever conditions they like. We accept that users can resort to Competition law but that is an unrealistic and disproportionate option for many businesses. We also believe that OFCOM's dispute referral process - 3 pages listing all the documentary evidence including the legal basis for the complaint – isn't appropriate and that an independent adjudicator or commission that is able to resolve most complaints quickly and simply is the minimum safeguard that is required. If this was in place then it would help to address our concerns in the responses to questions 4.4, 5.2, 5.6 and 11.1.

It is being proposed that consumers (approximately 10% of Royal Mail's volume) will be protected and there will be safeguards for Downstream Access competitors (approximately 50% of the volume) and we believe that there should be equivalent protection to ensure the business users making up the remaining 40% are treated "fairly and reasonably".

These proposals have also highlighted significant changes that will take place from April where there has been no consultation or impact assessment. OFCOM is asking for responses as to whether a free "return to sender" service should continue to be required as part of the Universal Service. Currently a return to sender service is a requirement for regulated products - which included bulk mail. If these products are no longer regulated then there is no longer any requirement to provide this service free of charge which would have a significant negative impact on the use of Direct Mail. We have, therefore commented on this in our response to Question 4.4.

The continued use of post by many businesses is in the balance. Significant price increases last year (that if they had been in other sectors such as energy or transport would have caused public uproar) the impact of VAT on some users, and the pressure to find ways to reduce cost mean that businesses either have to reduce their volumes or find alternatives. Business users need some stability to allow them to budget and plan. Adding more uncertainty, for instance, by allowing Royal Mail more commercial freedom in terms of notifications of price or specification changes may make many businesses decide to give up on using mail because it is simply too unpredictable. Equally removing the requirements for Quality of Service reporting, for instance, won't encourage businesses to carry on using mail. In a competitive environment there would be an incentive to continue to provide this but why should a monopoly bother? Even if the Quality of Service reporting is sometimes treated with

scepticism at least the business customer has some reassurance that they are getting what they are paying for and might provide some basis for negotiating compensation. We understand OFCOM's desire for "light touch" regulation but it has to be convinced that in spite of the risks it is appropriate to move from the current status straight to some of the proposals outlined in this consultation. "Proportional" regulation should also take into account the track record of how the monopoly supplier has behaved in the recent past. We don't believe that either Royal Mail or OFCOM understand the complexity of the processes and systems that are involved in the production and use of bulk mail. What might appear to be a simple change can add significant additional cost to users. Additional costs or making it more complex to use post could prove to be straw that breaks the camel's back and drive many users away from using post with a consequent impact on the provision of an affordable Universal Service. A more gradual approach that included safeguards or parameters would not only allow Royal Mail time to adapt to its new commercial freedom – and the responsibilities that come with it –but provide some stability and reassurance to bulk mail users.

Our responses to specific consultation questions are listed below.

Q4.1 Do you agree that we have identified the correct characteristics of universal service in order to ensure that the universal service remains essentially the same? If not please identify those characteristics that should or should not be specified in the Order, and provide reasons

We do not understand why tracking has been included as a characteristic of the universal service. The requirements are for a registered service and for an insured service and the characteristics should be as broad as possible to allow flexibility.

Q4.3 Do you agree redelivery and return to sender are part of the characteristics of a universal service and should be specified in the order? Please also provide the reasons for your view.

We do believe that return to sender is a characteristic of the universal service and may be the only way that a consumer is aware that an address is inaccurate or that someone has moved. It also provides reassurance if the mail piece has confidential or valuable contents.

Re-delivery does not need to be a characteristic of the universal service because most of the time Royal Mail is operating in a competitive environment. If they don't provide a competitive service – and that includes attempting to achieve a successful delivery – then customers will simply stop using them.

Q4.4: Do you agree return to sender should not continue to be required to be provided free of charge? If not please provide your reasons.

No – it should still be provided free of charge for both universal service products and for bulk mail – provided there is a return address. Since Royal Mail currently provides this service we assume that the cost is taken into account in the price of the product. Removing this service effectively is a price increase and in the case of price controlled products needs to be taken into account. We do accept however that for mail without a return address that there are significant costs involved in Royal Mail handling and returning the item and we believe that a reasonable compromise is that it is only free if there is a clear return address on the envelope.

For bulk mail users a free return to sender service is an essential requirement since it

- Allows users to keep databases accurate and up to date. This is not only good practice but a requirement under Data Protection legislation
- Reduces waste and the production of unnecessary mail (a key element of the Direct Marketing industry's environmental agreement with Government). This also has the benefit of improving the return on investment and keeping advertisers using Direct Mail
- Ensures that confidential or personal information e.g. financial information is kept secure and helps to prevent fraud

DMA members would be happy to supply OFCOM with details of the benefits and cost savings derived from the returns service if required. Removing the free service would mean significant extra cost to users and reduce the attractiveness of mail for advertisers.

Removing this service is an example of a "non-beneficial" change to product specification that would have been subject to consultation, however if the proposals in this consultation are introduced then Royal Mail could implement this without notice.

Q5.2 Do you agree with our proposed condition which specifies universal postal service performance standards? If not, please explain why.

No. We strongly believe that there should still be a regulatory requirement for Quality of Service reporting of some retail products that are outside the Universal Service. Contrary to OFCOM's views that there will be commercial incentives for Royal Mail to continue to measure and report on Quality of Service for non-USO products we don't believe they will – or at least not free of charge. In a competitive environment there is an incentive to provide this information but why would a monopoly bother? Even if Royal Mail does continue to monitor its Quality of Service there is no reason why it should make this information public unless there was a regulatory condition. It might choose to share the information with selected customers as part of a contractual agreement or make it available at cost but not necessarily provide it free of charge. There is also the danger that without the need to publicly report on performance that standards will be allowed to slip – particularly when there is pressure to reduce costs.

QoS information is important to postal users. Whether you are running an advertising campaign and deciding when your contact centre needs to become operational or sending out invoices you need to have confidence that mail is dropping when you expect it.

It is also likely that as a result of the new regulatory regime there will be more commercial contracts and we would hope that these would include performance standards – and compensation if these aren't met.

We recommend that there should still be a regulatory requirement to report QoS performance for some products outside the Universal Service, including a number of bulk mail products.

Q5.4 Do you agree with our proposal to reduce the notice period for price and non-price changes to universal services to one month? If not, please provide evidence to support your view.

Some of the issues that we raise in our response to question 5.6 apply here as well but SMEs are more likely to be using universal service products. We would question whether one month's notice of price changes is long enough for many small businesses but of more concern are the "non price" changes. A "non price" change covers something minor to a fundamentally different way a product has to be treated or processed. It might mean software changes or even buying or upgrading equipment such as a franking machine. Because this covers such a wide range of possible changes we believe that you have to allow for the worst case and that there should be 3 months notice for both price and non-price changes.

Q5.6 Do you agree with our proposal not to impose any notification and publication requirements on Royal Mail in respect of retail non-universal services? If not, please provide evidence to support your view.

No. Although OFCOM believe that Royal Mail would provide "reasonable" notification of changes we believe that they do not understand the complexity of the processes and systems that are involved in the production and use of bulk mail. The "delivered by Royal Mail" proposal is just the latest in a series of proposed changes from Royal Mail that prove that they do not understand or appreciate how their customers use mail or how their businesses operate.

Our members are adamant that for both notification of price and non-price changes there needs to be a statutory minimum of 3 months. We don't intend to provide detailed evidence in this response but DMA members would be happy to provide specific details of what is involved when implementing a price change or changes to product specifications. Examples of some of the reasons why DMA members need a 3 month notice period are shown below:

Price notification

- For suppliers existing contractual arrangements e.g. Government contracts require 3 months notice of price changes. While it will be possible to renegotiate terms to reflect a different regulatory regime this will take up to a year to take effect
- Campaign planning and budgeting. A Direct Mail campaign can easily take more than 3 months to implement and a price change would mean revising volumes to suit the budget. In some cases print (or paper) would have been ordered and there could be additional data costs as well (new data extracts and revised targeting to match lower volumes – that can also then impact timings). The whole return on investment could change and make the campaign unprofitable. With this kind of uncertainty there is a real risk that users would move away from using Direct Mail. (NB price increases could also impact response handling too).
- A "price change" isn't simple – often a product has multiple variations that mean that you are in reality talking about many price changes that need to be worked through and to recalculate how the new prices compare with other products and products from other suppliers. This also involves IT changes that in large organisations often need to be scheduled.

Many members felt that without some price stability – and 3 months was considered the minimum – advertisers would be wary of committing to Direct Mail campaigns.

Non price rises

- As with the notification for price increases the timescale in producing Direct Mail campaigns is a real issue. Changes to product specifications could affect the design format, the weight of paper being used, the data (e.g. is a DPS suffix required?), existing pre-print material etc. If an advertiser had to scrap material (or even re-run data) because a specification change was implemented with short notice they might decide to use media where that were more predictable!
- Changes to IT systems and how the data is presented – a real issue for companies with large databases and an issue if you have ordered data from a supplier in a particular format. Some large organisations simply may not be capable of implementing a major IT at short notice without incurring significant additional cost.
- Additional cost. Sometimes product specification changes mean that the mailer has to do more (some of Royal Mail's "cost savings" have been achieved by passing on the cost to the customer!) or a change in specification may mean that they no longer qualify for the same level of discounts which impacts the whole profitability of the campaign.
- Putting in place new processes and training staff. For many DMA members that are mail "factories" a "simple" specification change can have a major impact on how they produce the mail and mean re-training staff.

A "non-price" change ranges from a minor specification change through to a fundamental re-specification and there is no longer any filtering (e.g. with "non-beneficial" changes in the current regime). Although some changes could be implemented sooner we have to cater for the worst case scenario and recommend a minimum of a statutory 3 months notice.

Q11.1 Do you agree with our approach to the cessation of the transitory conditions – and if not, for which specific transitory conditions do you disagree and why?

As outlined in our response above we disagree that all of T4 should be deleted. Although most of T4 refers to price control we believe that those elements that provide protection to users against the imposition of non-beneficial non-price changes should remain to provide protection against potential abuse by Royal Mail of its monopoly position.