

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.

Many of our members are also actively involved in other communications media and so we are uniquely placed to understand the implications and impact of changes in the postal market that will trigger or accelerate a move away from using post.

Business postal users provide the volumes of mail that make the Universal Service possible. In a monopoly environment OFCOM have to ensure that business users – not just “consumers” – are not subject to unfair or unreasonable pricing and terms driving them away from postal services and threatening the provision of the Universal Service.

Response to the consultation

The DMA understands that the Postal Services Act 2011 requires OFCOM to make changes to the existing regulatory regime and we also note that you state in the summary:

“We are not seeking to make any substantial changes to the regulatory regime. Most of the changes we are proposing are required by law.”

And in the main consultation document *“We are not seeking to make any substantial changes to the regulatory regime.”*

You also state that *“a proposal is “important” if its implementation is likely to involve a major change in the activities carried on by Ofcom or have a significant impact on persons carrying on business in the markets we regulate, or the general public. We do not consider that any of the proposals in this consultation paper are “important” in this sense”*. We believe, however, that one of your proposals is a substantial change to the regulatory regime and is “important” since it will have a significant impact to many postal users.

We are also concerned that there is insufficient protection for a very important group of postal users – business and contract users. Although there is a section of the proposed terms that covers Consumer Protection – CP7 onwards – this only applies to “relevant consumers” ie *“a consumer of regulated postal services or of a service provided as part of the universal postal service, who is not a contract customer”* and there is no equivalent for contract customers.

Under normal market conditions there is usually no need to provide this protection – market forces through choice of supplier and commercial contractual terms ensure that suppliers have to behave in a reasonable manner towards their customers if they are to stay in business. The postal market within the UK, however, is a monopoly where market forces and normal commercial pressures don't apply. Royal Mail may express the view that they operate in a competitive communications market but the simple fact

is that over 99% of mail is delivered by them. Irrespective of who a postal user uses upstream to collect and sort their mail they are all reliant on one provider to deliver it. All postal users are direct or indirect customers of Royal Mail.

While this monopoly exists we strongly believe that there is still a need for regulation and controls to prevent potential abuse of its position and power by the monopoly supplier and we are therefore particularly concerned by OFCOM's proposals around Condition 21 of the current licence. In the main consultation document you state:

"we are consulting on our view that it will be to substantially the same effect if we expressly provide for the whole condition to cease to apply on 31 March 2012. Our review of the need for a price control for the period beyond 31 March 2012 is ongoing." The comments in Appendix 4 that Condition 21 *"will cease to apply on 31st March 2012"*, and that you do not intend to redraft it *"given that the Condition as a whole will fall away on 31 March 2012, it does not appear to us necessary to carry out this work"* however, seems to suggest that you have already arrived at your decision in advance of any consultation.

Although we appreciate that many aspects of the price control will no longer apply after 31st March 2012 we believe that protection is still required to protect Consumers – including contract business users - while a monopoly continues to exist. Any future regulatory regime must include specific controls in the following areas:

Pricing

We appreciate that OFCOM's primary duty is to protect the Universal Service but there still needs to be scrutiny of proposed pricing to ensure that it is not excessive and disproportionate. In the absence of normal commercial sanctions there needs to be regulatory protection for "captive markets" and against pricing structures that are designed to make upstream competition more difficult.

OFCOM will also need to consider the overall impact of proposed pricing in terms of business users who provide the volume that underpins the Universal Service. The price increases introduced earlier this year will have an impact on business use of mail in the medium term. It isn't possible for most businesses to switch to other media immediately – there are logistical, financial and legal implications that take time to work through but the price increases have prompted many businesses to start that process. There is a need for the Regulator to review pricing proposals and provide an independent perspective on their short, medium and long term impacts on the Universal Service. Royal Mail, as with any business facing immediate problems, cannot be relied on to come up with proposals that do anything but provide a short term benefit to their business and possibly threatening the Universal Service in the medium term.

Finally there is a duty on the Regulator within the Postal Directive to ensure that prices should *"be cost-oriented and give incentives for an efficient universal service provision"* and we do not see how this can be achieved without some form of price control.

Non Price terms and conditions

Conditions 21.2,3 and 4 have been extremely helpful over the last few years to prevent proposed changes in terms and conditions that would have incurred cost for users and were subsequently shown to be unnecessary. Royal Mail often does not fully understand the implications of proposed changes either because it doesn't consult widely enough about them in advance or because it doesn't understand how its customers use the products and services. It is absolutely essential that there is a mechanism that means that users have a chance to review proposals and, where appropriate, make Royal Mail reconsider or even withdraw a change that might damage the market and impact volumes.

As has been covered earlier this type of protection would not be required in a fully competitive market but in a monopoly (and with a monopoly mindset) Royal Mail does not have to listen to its customers or – in the short term at least – worry about losing business.

Royal Mail's proposal to overprint customers' mail with a "Delivered by Royal Mail" mark is an example of both a monopoly mindset and abuse of a monopoly position. This proposal was presented to postal users with little or no consultation and represented a significant change to the terms and conditions that had existed for many years.

It meant that a "free space" on the envelope that had been available for users to use to promote their own organisations by printing logos or advertising messages was no longer available to them. It would mean having to redesign their existing envelopes because Royal Mail wanted to use that space to print its own message. If Royal Mail's mark was required for more efficient or reliable processing of mail postal users might have complained but understood. But the mark that Royal Mail was proposing to print had no operational purpose and appeared to be designed to appeal to its own employees at customers' expense and without their permission. If Royal Mail only printed the mark with the customer's agreement (as applies to their Door to Door customers) there wouldn't have been any issue.

In a competitive environment Royal Mail would not be proposing to impose something that would disadvantage many of its customers (in fact they wouldn't have proposed it in the first place after consulting with them!) and certainly wouldn't be persisting with it after a big customer backlash. The reality is that Royal Mail can impose this because it knows that users have no choice – and this is precisely the type of abuse of a monopoly position that users need to be protected from through terms similar to the existing Condition 21.2,3 and 4.

Fair and prompt settlement of disputes

We also believe that there needs to be an equivalent to CP 7 for business users with a transparent, simple and inexpensive procedure to deal with complaints and a formal reporting on action taken. The model that assumes that "business can look after itself" doesn't work with a monopoly and the Universal Service is under threat if the views and needs of business users are not given more weight.

In both "Saving the Royal Mail's universal postal service in the digital age" and in "Modernise or Decline" there was reference to the need for Royal Mail to be more customer focused. Since Royal Mail seem to be unwilling to do this on

their own accord we believe that it is in OFCOM's interests to require Royal Mail to interact more with its business customers – either individually or through representative groups such as the Postal Trade Association Forum (POSTAF) or Trade Associations.

There are many postal users who are becoming increasingly frustrated because they cannot have a normal commercial relationship with a supplier that is taking full advantage of its monopoly position. This frustration and other changes that have weakened the position of business customers (eg the fact that there is no longer any compensation for contract customers if Royal Mail fails to meet agreed levels of service) means that they feel they have no option but to move their communications away from post.

If OFCOM wants to protect the Universal Service they need to reassure business users that they aren't just "cash cows" with no power or influence by putting in place mechanisms that offer protection and the power to force Royal Mail to listen. We understand that this might be difficult for OFCOM and that it might be seen to go against the principle of "lighter touch regulation" (which we support in most areas) but without reassurance the migration to other communications channels by business users will accelerate and the Universal Service will become impossible to maintain.