

## Direct Marketing Association response to Ofcom's consultation on the Review of Regulation of Royal Mail

### Introduction

The Direct Marketing Association (DMA) represents around 1,000 companies that are involved with mail to a greater or lesser degree. These include advertisers, senders of transactional mail and suppliers of mailing services such as agencies, data companies, mailing and fulfilment houses and equipment manufacturers. Please see our website, [www.dma.org.uk](http://www.dma.org.uk) for more information

Not only does the DMA represent the biggest single group of Royal Mail (RM) customers, it is also the only industry body that represents the whole postal industry – users, suppliers, and postal operators.

In our response to Ofcom's consultation on the Review of the regulation of Royal Mail, <http://stakeholders.ofcom.org.uk/consultations/royal-mail-regulation-review/> in September 2015 we stated that although we believed that overall the current regulatory regime had worked well there were a number of areas that our members felt needed to be addressed and justified a review of the regulation of RM. These included:

- The absence of any real competitive or regulatory restraints on RM's pricing
- The potential to arbitrarily move costs between letters and parcels to justify price increases/decreases
- The apparent lack of incentives for RM to improve efficiency
- The ability of RM as a monopoly supplier to impose unfair or unreasonable changes on customers and mail producers

We are disappointed that the proposed changes in RM's regulation that Ofcom are proposing do not sufficiently address these specific concerns of our members and our response to the questions in the consultation, which are relevant to our members are shown below:

***Question 1: Do you agree that the evidence summarised in Section 4 and set out in more detail in the annexes to this consultation does not support the imposition of (i) further price controls on parts of Royal Mail's business or (ii) efficiency targets? Please state your reasons and provide evidence to support your view.***

No, we do not agree. Although, we do not have access to all of the data, since some has been redacted we believe that the evidence presented in the consultation itself and the relevant annexes actually supports some form of control for both price increases and/or efficiency targets.

In 2012 when Ofcom introduced the current regulatory regime that included removing nearly all of RM's price controls it said that the key test was if Royal Mail "shows a track record of consistently increasing prices and not improving efficiency, it is likely that more intrusive regulation will have to be considered". Many of our members believe that since 2012 RM has not met this "key test" because RM has consistently increased prices above inflation and not made enough improvement in efficiency.

We agree with Ofcom's analysis on pricing which concludes by stating : "*We therefore do not consider that there are significant competitive constraints on Royal Mail's pricing of bulk letter mail overall*" and believe that this justifies consideration of regulatory control. In the absence of competition, we believe that Ofcom should consider imposing conditions on RM's pricing. Ofcom stated that it was reluctant to impose price controls because of RM's financial situation and the threat to the continued provision of the Universal Service. This consultation

clearly shows that Ofcom no longer believes that these factors still apply and therefore Ofcom could impose price controls.

Although in the consultation paper it says that “Royal Mail has not exercised its ability to raise prices to the extent that it could have done”, over the last few years these price increases have consistently been above inflation. There is no guarantee that RM will not increase prices to the extent that it can under the current regulatory regime over the next few years.

It would be helpful if Ofcom could provide some clear guidelines as to what it considers to be “fair and reasonable” price increases. Such guidelines would:

- Provide reassurance and some certainty to all mail users that they weren't going to face significant increases (as in 2011/12 when some prices increased by 20%)
- Provide guidance to RM so that it would know that increasing prices above a certain level would result in regulatory intervention
- Provide an incentive to RM to improve efficiency to improve or maintain margins and profitability.

We believe that Ofcom could achieve this by setting an overall limit on price increases across all products backed up by a cap on the price increase on any individual product. This approach would still give RM considerable commercial freedom and flexibility but with some of the restraints on pricing that mail users would expect in a genuinely competitive market.

We also believe that the evidence in the consultation and the Deloitte and WIK analyses supports establishing an efficiency target. The consultation paper states that in Ofcom's view RM's 2015 Business Plan efficiency targets “to be at the lower end of a reasonable range for improvement” and the “minimum” that should be achieved. The evidence in the annexes to this consultation paper supports this view by demonstrating that there is scope for further efficiency gains above RM's targets. The consultation document, however, doesn't include any proposals as to what the implications are, if RM fails to achieve their efficiency targets. We believe that Ofcom should take advantage of this review to clearly state what it considers to be an acceptable performance in terms of efficiency improvements and what the consequences of failing to meet the targets will be.

Finally, we are pleased to see that Ofcom is considering how it might ensure that RM is appropriately allocating costs between parcels and letters. There are concerns both from letter users that price increases are subsidising lower prices for parcels and from parcel competitors that cost is being taken out of parcel services to justify lower prices for parcels. We would urge Ofcom to implement proposals in this area as a matter of urgency to ensure that RM is appropriately allocating costs and to provide reassurance to the postal market.

**Question 2:** *Do you agree that the regulatory framework should remain in place until March 2022 following the anticipated completion of Ofcom's review by the end of 2016-17? Please state your reasons and provide evidence to support your view.*

Yes – at least in theory! Ideally the industry needs a degree of certainty and to understand the parameters under which it is operating for as long as possible. In 2012 when the current Regulatory framework was introduced it was expected to last for 7 years but just over 3 years later it is being reviewed. We suspect that if Ofcom continues to monitor the market and RM that there will be changes needed before the end of 5 years.

**Question 3:** *Do you agree that the analysis summarised in Section 4 and set out in more detail in the annexes to this consultation accurately reflects the UK postal market? Please state your reasons and provide evidence to support your view.*

The analysis is very thorough and accurate at a high level however it doesn't address a major concern that was voiced by many respondents to Ofcom's initial consultation last year – controlling the behaviour of a monopoly supplier.

Although relations between RM and its customers have improved significantly over the last few years and RM does consult with its customers more, there are still instances - particularly in relation to mail production and presentation – where changes have been imposed on customers in a way that simply would not be possible in a genuinely competitive market.

Some Access customers have some redress directly through Ofcom as competitors and all access customers may be able to use their contracts with RM to sort things out but retail customers or suppliers don't. Suppliers such as mailing houses – who have a "third party relationship" with RM (ie they aren't customers in their own right) – are often the companies most affected by changes in requirements for mail presentation but feel powerless to prevent changes that they believe are unreasonably being imposed on them.

Ofcom's formal complaints process is seen as complex and potentially costly and we would like Ofcom to take advantage of this review to provide a simple, clear and inexpensive process to enable them to raise issues and protect the suppliers in the postal industry who are impacted by RM's changes.

**Question 4:** *Do you agree with our proposal not to amend the Universal Service Order or the DUSP conditions to include tracking as standard on First and Second Class single piece parcels? Please state your reasons and provide evidence to support your view.*

**Question 5:** *Do you agree with our proposal to retain the safeguard cap in its current form? Please state your reasons and provide evidence to support your view.*

**Question 6:** *Do you agree that we should amend the USPA Condition so that it is clear that access operators cannot be required to accept general terms and conditions that include shorter notification periods than those provided for under USPA 7?*

**Question 7:** *Do you agree with our proposal to amend the scope of Essential Condition 1 to cover untracked letter and large letter mail, and single piece universal service parcels, and to remove the remaining universal service products from the scope of the Essential Condition 1?*

**Question 8:** *Do you agree with the proposed streamlining revisions to Essential Condition 1, including the removal of the Mail Integrity Code of Practice, as drafted in Annex 13?*

**Question 9:** *Do you agree that the proposed drafting of Essential Condition 1 including relevant definitions accurately capture our intended objectives and the intended operators and mail types?*

**Question 10:** *Do you agree with the proposed revisions to Consumer Protection 2, including the removal of the PCOP code and agreement, as drafted in Annex 13?*

**Question 11:** *Do you agree that the proposed drafting of CP 2 including relevant definitions accurately capture our intended objectives and the intended operators and mail types?*

**Question 12:** *Do you agree with our proposal to amend the scope of Consumer Protection Condition 3 so that it retains a minimum requirement for all postal operators, and that additional requirements in relation to redress and reporting would apply to Royal Mail as the universal service provider only?*

**Question 13:** *Do you agree with our proposed drafting of Consumer Protection Condition 3 given our proposal to only apply the additional requirements set out in CP 3.3 in relation to redress and reporting to Royal Mail as the universal service provider?*

**Question 14:** *Do you agree with our proposal to revoke Consumer Protection Condition 5?*

**Question 15:** *Do you agree with our proposal to remove the one-month notification period for price decreases to Royal Mail's universal service products and services?*

Although we support a reduction in the notice period, price changes to USO products impact both suppliers and competitors. In both cases they will need to react to any RM price change whether by adjusting prices or giving their customers notice of RM's price increases. There may be contractual requirements that need to be amended following any change so we would suggest that there is still some notice required – maybe 1 or 2 weeks.

**Question 16:** *Do you agree with our proposal to reduce the advance notice period for specified collection times to one month (reduced from three months)?*

**Question 17:** *Do you agree with our proposal to remove the advance notice period for latest delivery times (currently at three months)?*

**Question 18:** *Do you agree with our proposed restructuring and drafting of Designated Universal Service Provider Conditions 1.10.1 and 1.10.2, and the removal of Designated Universal Service Provider Conditions 1.10.3?*