

Review of the regulation of Royal Mail: MCF response to proposals

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.

RM is now achieving and will continue to achieve the measure by which Ofcom believes it is appropriate to judge the financial sustainability of RM and provision of the USO is not threatened

Ofcom believes that RM could improve efficiency by more than it plans to, hence it seems incorrect for Ofcom to consider that the regulatory framework does appropriately incentivise RM to pursue efficiency improvement.

If RM could achieve better efficiency improvement, a regulatory regime which does not require that improvement to be made would be denying postal consumers the benefits available and it seems clear that Ofcom should introduce new regulatory measures that will require RM to achieve the potential efficiency gains.

The letters market does not in itself provide sufficient constraints on RM's pricing.

It would be reasonable to summarise the position regarding letter price increases as being one where the market does not provide sufficient constraint and under the existing regulatory regime RM has consistently increased prices by more than RPI (and by even more if the official inflation measure of CPI were used).

Ofcom does not propose to introduce any constraint on RM's future letter price increases, preferring (it seems) to continue to rely on whatever factors have so far meant RM has not increased prices by as much as it could and to accept further above RPI price rises.

Taken together, Ofcom's conclusion on efficiency and price control is not to introduce either a requirement for RM to achieve the efficiency improvements it could achieve, or a safeguard price control mechanism that would recognise the absence of market constraints and replace reliance on whatever factors have anyway resulted in above inflation increases.

As Ofcom's primary statutory duty under PSA 2011 (financially sustainable provision of the USO) has been achieved and is not at risk of being failed, Ofcom should therefore give prominence to its duty under CA 2003 to "further the interests of consumers in relevant markets, where appropriate by promoting competition".



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The current regulatory regime does not adequately achieve that duty, without some form of pricing control and/or efficiency targetry which would benefit consumers directly and indirectly by ensuring better pricing and efficiency.

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.

No.

The 2012 framework has not provided sufficient efficiency incentives and the benefits of a financially sustainable universal service have not been shared with customers. Instead, the position is that RM is not planning to make the efficiency improvements that it can and customers have suffered above inflation price increases, while RM has achieved the 5%-10% EBIT range.

In 2015, Ofcom decided it was appropriate to begin this Review of Royal Mail Regulation, because of RM's improved financial position, major changes in the market such that there was no realistic potential for EtE competition at a level that would apply effective constraints on RM and concerns about RM's pricing and non-pricing behaviour.

However, despite the several factors necessitating the fundamental review, Ofcom does not propose any major changes to the current regulatory regime and, in particular, does not propose to introduce efficiency targets or price constraints.

It is disappointing that despite the factors which Ofcom saw as significant enough to warrant a fundamental review and the representations made by customers and competitors, Ofcom has not proposed any major changes to the regulatory regime that would bring real benefit to consumers or promote competition.

Ofcom needs to be clear that it will review the regime before 2022 if any of the factors which it believes currently justify no major changes should alter, that is if:

- RM's EBIT increases significantly above the current level
- RM continues to achieve efficiency improvements that are below the level possible
- RM continues to increase prices above the level of inflation (using the official CPI measure)
- customer satisfaction does not continue to increase

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.

Ofcom's review and analysis is a fair reflection of the UK market for letters and parcels.



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However, as Ofcom proposes not to introduce any efficiency targetry for RM and to now continue this regulatory regime until 2022, it should seriously consider that, were RM to continue significantly to restrict its ability to increase efficiency through settlements with the CWU, Ofcom would consider that to be grounds to review the regulatory regime and introduce efficiency targets.

As well as concluding RM remains a near-monopolist in letters and subject to weaker constraints than in 2012, Ofcom also concludes that RM has a dominant volume share (60-80%) in the single piece parcels market and a similar dominant volume and revenue share (60-80%) of bulk parcels below 2kg.

These high market shares mean that Ofcom should consider new regulations for lightweight parcels to promote competition to the benefit of consumers, in particular to require RM to offer Access services that are equivalent to RM's Retail services in this market.

We also note that Royal Mail have put heavy price rises in without losing market share (p59).

We would suggest that as Royal Mail is a dominant supplier they should:

- Publish their rate structures including discount mechanisms
- They should not bundle services
- They should price above long run incremental cost
- They must not cross subsidise across services
- They must account in an open and transparent way

We very much support the suggestion that Ofcom will consider how they might ensure RM is appropriately allocating costs between parcels and letters. We suggest there is a need to have a real focus on sub 2kg delivered in letters network.

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.

Yes.

The reasons stated are fully supported.

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.

Yes. The factors which led Ofcom to introduce the safeguard cap in 2012 continue to apply, as competition is not sufficiently present in this part of the market to constrain RM's pricing behaviour and RM continues to benefit from the VAT exemption.



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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?

Yes, for the reasons Ofcom gives.

However, MCF strongly disagrees with the conclusions Ofcom has reached in other parts of Section 6 on the Access Framework.

RM does not take account of the needs of its customers, for example by changing, without any consultation, the timing its Access price increases in January 2015 such that customers faced two above inflation price increases within one 12-month budgetary period.

RM's stance on consultations is to propose several, unacceptable changes and withdraw some of them (to appear to be 'undertaking genuine consultation') while proceeding with others which were met with equal opposition. Indeed, in the January 2015 contract change proposals to which Ofcom refers, RM chose not to proceed with the proposal which had general customer support (altering the tolerances for Access Price Plans) but went ahead with others that did not have such support.

RM has used 'industry working groups' to manage or delay making changes that customers seek (for example by setting the Terms of Reference and membership and chairing the meetings) while citing such groups as genuine consultation.

Ofcom itself said, when setting the regulatory regime in 2012, that "it may be appropriate to provide guidance once the regulatory framework had time to become established".

However, Ofcom does not propose to provide the guidance stakeholders seek and it said may be appropriate. MCF is disappointed Ofcom does not propose to provide such guidance.

MCF is disappointed that Ofcom has not responded to the concerns of stakeholders by proposing a more explicit requirement on RM to ensure operational equivalence.

MCF is disappointed that Ofcom has not taken the opportunity of the stakeholder submissions to pro-actively assess how the existing USPA remit could be extended in ways that would benefit customers and promote competition.

It is the position now that RM has agreed to some Access services that are outside the existing USPA remit (for example, Access services for lightweight parcels). Given what Ofcom has said in the Consultation in not proposing to extend the USPA remit, MCF is concerned that RM may choose and be free to cease to offer these services.

MCF therefore believes Ofcom should now propose a regulatory change to include in the USPA Conditions a requirement that RM must continue to provide all existing Access services unless they are replaced with comparable services and with the agreement of Access contract holders.



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?

Yes.

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?

Yes.

The simplification and clearer definitions proposed are fully supported.

The rationale for the change appears to be a sensible approach allowing companies to adopt policies that meet their obligations towards mails integrity without prescribing requirements.

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?

Yes

The move from Regulated to Relevant operators is supported in that it facilitates a clearer more flexible and pragmatic approach.

The reporting threshold of 250k items in a year appears low if the intention is to exclude small relevant operators who may find the requirements burdensome.

We in particular support the decision not to extend any requirements into the parcels market, and agree with the rationale stated supporting this decision.

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?

To a degree.

In principle we agree to a move to a more flexible approach through the “relevant postal Service” definition and a more pragmatic approach to inter operator operational arrangements.

However, given that all our members have commented that the current system is not burdensome and in the main works. We are not clear as to exactly what the benefits of this change are, other than to reduce Ofcom’s reporting workload.

Some of our members are concerned that a move to what could be described as an industry scheme might introduce more uncertainty rather than less.

A move to a scheme based on Royal Mail offering fair and reasonable terms and conditions causes us concern. Although the proposals indicate that there is an expectation that charges should be based on costs fair and reasonably incurred, our experience in other areas with Royal Mail suggests that establishing a shared view of these costs could well be problematic. In addition we note Royal Mails stated motivation to charge a commercial rate for these items.



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Although Ofcom have rejected this request, it is worrying that this may remain the motivation behind future agreements. It is therefore somewhat reassuring that there is a proposal (7.70) to retain powers of intervention in this area. We support this proposal.

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?

Yes with the following observations.

Operators (other than RM) whose services include the delivery of mail have concerns that the existing CP and PCOP have not always worked as they should, with mail sometimes being delayed or surcharged by RM, rather than being returned under the PCOP Agreement. Those operators may feel it is appropriate for Ofcom to exercise greater regulatory oversight in respect of CP2 and PCOP arrangements for operators currently defined as Regulated Postal Operators.

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?

Yes

We strongly support this proposal as one that supports minimum industry standards for customer complaint handling, while recognising the reality of the mail market and replacing obligatory requirements with options to suit individual postal operator needs.

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?

Yes

MCF supports the Ofcom view that postal operators other than RM who undertake delivery of mail are doing so for bulk mail sent by businesses under commercial arrangements rather than individual customers and that RM has a particular duty to users of the USO services.

MCF therefore agrees that the additional requirements of CP3.3 need not apply to all operators previously defined as Regulated Postal Operators, but should continue to apply to RM as the universal service provider.

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

Yes



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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?

In principle we support a proposed reduction.

However, our view is that in this proposal Ofcom has failed to give sufficient weight to the fact that Royal Mail is the dominant incumbent in an extremely price sensitive market. We believe it is right for Royal Mail to give its emerging competitors time to prepare for and react to its price decreases.

The advent of such changes would require a range of responses from Royal Mail's competitors, all of which require time and resource. For example changes to web sites and marketing materials. This cannot happen overnight, and there is a real risk competitors will lose significant market share during the time it takes to react to any Royal Mail price reduction made without notice.

A 1 month notification period could be seen to be too long as it prevents consumers benefiting from the price reduction for this period, but removing the requirement altogether is disproportionate, and has to be weighed up against the detrimental effect it will have on Royal Mail's emerging competitors.

The MCF would support a proposal to reduce the notification period for price decreases to 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)?

Yes

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

Yes

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?

Yes to all, for the reasons Ofcom gives.