

Cover sheet for response to an Ofcom call for inputs

BASIC DETAILS

Consultation title:

Review: Mail Integrity and Postal Common Operational Procedures
Call for inputs

To (Ofcom contact): Sean O'Hara

Name of respondent: Angus Russell, Director of Legal and Corporate Affairs

Representing (self or organisation/s): TNT Post UK Limited

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Part of the response – the Annexes (business confidential / related to security); part of the answer to Q2.2, Q2.6 (commercially sensitive);

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)? Yes

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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Name

Signed (if hard copy)

TNT Post response to call for inputs

Prior to OFCOM's statement of 27th March 2012 (the "2012 Statement"), TNT Post provided a detailed cost analysis of the impact of extending the Mail Integrity and Common Operational Procedures provisions to access mail.

TNT Post does not accept that these requirements should automatically be extended to access mail, given the impact on TNT Post's business and the absence, in a number of cases, of any evidence of a need for regulatory intervention.

The detailed analysis is attached in two confidential Annexes to this response.

In response to the specific questions raised in this call for inputs, we would respond as follows:

MAIL INTEGRITY

Q2.1 Should MICOP remain part of Essential Condition 1 as set by Ofcom, or should it be owned and managed by the industry subject to Ofcom supervision?

We strongly believe that MICOP should continue to be set by Ofcom. Perhaps unfortunately, the industry has no track record in successfully managing self-regulatory processes which apply to the whole industry. Indeed, the industry has not sought to reach a common position on this call for inputs. The dominant position of Royal Mail, who also have certain unique rights e.g. access to the Police National Computer, creates a concern that any such process might not give other operators an adequate voice or may create a competitive advantage in Royal Mail's favour. We are, therefore, not convinced that the conditions of competition are such that Ofcom should remove these regulatory obligations. Furthermore, as delivery competition is in its infancy, there is an important role for Ofcom to play in assuring the market, customers and recipients that mail integrity will remain an important feature of regulation.

Q2.2 Should MICOP be extended to cover all postal operators or specific types of postal operator, in addition to access operators and regulated postal operators? If so, please set out your reasons for this proposed extension.

The extension of the MICOP requirements to access mail would impose an additional obligation on access operators. We are not aware of any evidence of particular concerns. We consider that this is the type of activity a responsible business should undertake and, given the crimes which exist under ss 83 and 84 Postal Services Act 2000, companies have a direct interest in taking measures to minimise the risk of prosecution of employees, officers and/or the company itself. The costs of extending MICOP to other types of operator could be significant and would need to be weighed against the need for regulatory intervention. As a general rule, we would suggest that the direction of travel should be towards reducing, not increasing, regulation and this would simply add costs where there is no evidence of a need for regulation.

[CONFIDENTIAL MATERIAL REDACTED]

Q2.3 Do you think that the current reporting requirements are appropriate? If not, what do you suggest should be included and/or deleted? Please set out your reasons.

We do not see that reporting these figures is useful. The reports do not appear to be acted upon, they are not policed by Ofcom, the percentage figure to trigger ad hoc reporting for criminal activity purposes is very arbitrary (a serious incident is “10% of the total volume of Code Postal Packets conveyed, received, collected, sorted, delivered or otherwise handled by a Relevant Employee that day”) and we see no need to report those numbers. We think it is appropriate to require incidents to be logged and Ofcom can, using its general information powers, request this information. In short, we would recommend retaining sections 7.1, 7.2, 7.5 and 7.8. On the other hand, the requirement for the production and submission of annual reports and reporting of “serious incidents” could be usefully removed, but without limiting Ofcom’s ability to keep an oversight, if it should ever have concerns.

Q2.4 Do you think that the publication of certain reported information would provide a benefit to postal users? If so, what data would you consider it appropriate to make public? Please set out your reasons.

We have serious reservations about this proposal as it could serve as an invitation to the dishonest or criminal. It could also be damaging for post as an industry if figures of “regulated postal operators” are published but not those of others. This may lead to false comparisons being made between operators who do not have to compile or publish this data or between operators who carry fewer parcels with those who carry (much higher volumes of) letters. Relatively high levels of impacted “letters” could negatively impact mail generally. It is not clear how customers would benefit as they will have their own service level arrangements with their operators and, where agreed, appropriate compensation mechanisms for lost, stolen or damaged goods.

Q 2.5 Should Ofcom impose obligations on regulated postal operators to meet certain identified standards in relation to mail integrity rather than imposing operational requirements in MICOP? Please set out your reasons.

Our view is that there should not be standards but that specific requirements should be maintained. Anything other than a 100% aspiration for mail integrity compliance could send a very dangerous message. The MI Objectives set out the overriding requirement. The current MICOP requirements relating to recruitment, training and disciplinary action are well understood and are clear. The use of standards may introduce a more subjective element which would create uncertainty about compliance.

Q2.6 Do you think the current level of detail in the requirements of MICOP is appropriate? Please set out your reasons.

Our general view is that the current requirements are not too prescriptive and that a dilution could be counter-productive. The current MICOP rules provide clarity. [CONFIDENTIAL MATERIAL REDACTED]

Q2.7 Do you think the costs of complying with MICOP are proportionate? Please set out your reasons.

We believe that the costs are proportionate. The only significant cost differential for a private operator is the cost of a CRB disclosure, since Royal Mail has access to criminal records at a much reduced cost, through its access to the Police National Computer.

Q2.8 Are there any issues relating to MICOP on which you believe we should consult, that are not set out in this document? Please set out your reasons.

We do not believe there are other areas other than whether other operators should be given access to the Police National Computer.

COMMON OPERATIONAL PROCEDURES

Q3.1 Should the PCOP Code remain part of CP2 as set by Ofcom or should it be owned and managed by the industry subject to Ofcom supervision?

Our view is that OFCOM needs to remain in charge. Although the Common Operational Procedures were developed a long time ago, they were developed in the contemplation of emerging delivery competition, after full market opening from January 2006. It has taken much longer than many had expected for significant delivery competition to emerge and so the rules are becoming relevant for the first time. As stated above, the industry has no significant track record in reaching agreement on self-regulation and, so, to ensure that customers do not suffer as delivery competition grows, we would strongly urge OFCOM to remain in control of the PCOP and to keep the Code as part of the regulatory framework. Given Royal Mail's size and its unique pillar box network, it is crucial that rules requiring Royal Mail to repatriate mail on fair and reasonable terms remain in place. Parties are free to reach alternative arrangements. To our knowledge, no such arrangements have been reached with Royal Mail.

Q3.2 Should the PCOP Code be extended to cover all postal operators or specific types of postal operator (in addition to or instead of access operators and regulated postal operators)? If so, please set out your reasons for this proposed extension.

The key need for Common Operational Procedures is for letter mail and we do not see any evidence for a need for an extension to other operators. The costs of extending the provisions to access mail outweigh any possible benefit. We have set out those costs in the attached Annex. We are not aware of any evidence which justifies the extension of regulation to access mail.

Q3.3 Do you think the current scope of the PCOP Code (in relation to the type of items to which it applies) is appropriate? Please set out your reasons.

As stated above, the key need for the PCOP is for letter mail. For TNT Post, this process has now been operational, in practice, for just over a year. It is important in the context of a multi-operator environment for letter mail but we do not see any evidence for a need for an extension to other types of items. The unique characteristics of letter mail and the fact it can more readily find its way into the Royal Mail pillar box network means that a system needs to remain for letter mail. On the other hand, so far as we are aware, in the sectors where competition has matured (e.g. express and parcels), the operators find means by which to repatriate items.

Q3.4 Do you think the costs of complying with the PCOP Code are proportionate? Please set out your reasons.

The purpose of the PCOP Code is to ensure that mail gets delivered in a timely manner in a multi-operator postal market. The costs of compliance are, to our mind, proportionate.

Q3.5 Are the current requirements in CP2 and the PCOP Code appropriate? Please set out your reasons.

Generally, the terms are appropriate. However, we believe that operators should be free to use one or more markings which identifies the operator ("Code Identifier" 2.1.2(e)). This must be notified to (and approved by) Ofcom but it should not be dictated by Ofcom and it should not need to involve the use of a CL XXX indicator since this has no meaning to consumers. This may allow postal operators to be more innovative in the marks they use to identify the mail they deliver.

Q3.6 Should the modification process for the PCOP Agreement remain part of CP2 or should it be managed by the industry? Please set out your reasons.

As stated above, the common operational procedures (including the agreement) was conceived after a great deal of consultation, taking into account the experiences in other countries where there was a multi-operator market, and OFCOM certainly needs to stay involved and keep a fall-back agreement in place. The agreement already anticipates bilateral agreements but without the fall-back there would be no negotiating position with RM. For that reason, where a change to the default agreement is needed, it remains appropriate for OFCOM to remain involved.

Q3.7 Are there any issues relating to the PCOP Code or the PCOP Agreement on which you believe we should consult, that are not set out in this document? Please set out your reasons.

There should, as stated above, be greater flexibility on the Code Identifier.