

8 January 2013

Caroline Longman
Ofcom
Riverside House
2A Southwark Bridge Road
London
SE1 9HA

Dear Caroline,

End-to-End competition in the postal sector

The Mail Competition Forum (MCF) would like to thank Ofcom for the opportunity to comment on its “End-to-End competition in the postal sector” consultation, published on 31 October 2012.

Principle of regulation delivery competition: In principle, we do not accept that it would be either appropriate or permissible to regulate End-to-End competition if the objective or impact of that regulation is to limit such competition. Reserved areas were finally abolished throughout the entire EU on 1 January 2013. Restrictions on competition should not now be re-established through regulation. It is our concern that a number of the possible regulatory measures described in the guidance could have that effect.

Regulatory certainty: Subject to our general reservation, we welcome OFCOM’s intention to create greater market certainty in relation to potential regulation of End-to-End delivery competition. While we recognize that relevant facts will need to be considered in any assessment of the perceived need to regulate End-to-End competition, we are concerned that the guidance fails to provide sufficient clarity. Our concern is that an excessive amount of risk is being placed on existing and potential End-to-End competitors. For example, it is suggested that matters outside Royal Mail’s control (such as a greater than expected level of e-substitution) may increase the likelihood of intervention. It is our view that Royal Mail should build precisely these types of sensitivities into its business plan. The more regulatory-risk is placed on competitors, the greater the dampening effect on investment, innovation and choice.

Efficiency or perverse incentive: We are of the firm view that there can be no greater incentive for delivery efficiency than exposing Royal Mail to delivery competition. Every proposal for the regulation and restriction of delivery competition provides, to varying degrees, a perverse incentive for Royal Mail not to strive for optimum efficiency. The guidance should make it clear that (a) measures will not be implemented unless Royal Mail has demonstrated that it has taken all reasonable steps to optimize its efficiency and (b) the presumption in every case will be against any form of regulation: an approach which is consistent with OFCOM’s duties to further the interest of consumers by promoting competition and desist from imposing unnecessary regulatory burdens.

Unintended consequences: the possible measures could all have the effect of decreasing the volume of mail in Royal Mail’s own network. In the context of imposing regulations designed to assist Royal Mail, this seems inappropriate. Removing or reducing Royal Mail’s mandate to provide downstream access services; requiring competitors to offer access to their networks; or requiring more frequent or widespread delivery by competitors are all likely to encourage the use of competing operators or, perhaps, other media. The suggestion that these obligations may be imposed creates an unwelcome and unnecessary level of uncertainty. If any of these proposals in the consultation can be removed as a result of their unintended consequences, we would urge OFCOM to do so now.



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Compensation fund: as with other regulatory measures which are designed to have a positive impact on Royal Mail, it must never be the case that Royal Mail is entitled to benefit from payments from a compensation fund if any such payment might cover sub-optimal efficiency. If, for example, Royal Mail is unable or unwilling to reduce its labour costs, that is not a matter which should properly be compensated by imposing a financial constraint on competitors. OFCOM should clarify how it will calculate the benefit of providing the USO. Should OFCOM conclude that there was a net burden on Royal Mail and that such burden was not due to RM's own actions (or inactions) and was hence unfair, and that the funds from a compensation fund would be insufficient, OFCOM should clarify that other measures would need to be considered and that a fund would not be set up. Finally, in light of the "one time – last time" State Aid granted to Royal Mail, the legal position in relation to the establishment of aid through a compensation fund should be clarified. If it is not permissible to set up a fund, this should be clarified at the outset in the final guidance.

Review of the USO: insufficient attention is paid in this consultation to the role of reviewing the mandatory services contained in the universal service obligation, within the parameters set by UK legislation. It would not be acceptable to use a compensation fund or other measures targeting non-USO operators to maintain a universal service obligation which goes beyond the reasonable needs of users. The guidance would benefit from greater clarity on this point.

Parcel delivery competitors: it is generally recognised that letter mail is in structural decline and parcels in structural increase and that Royal Mail's stated strategy takes both factors into account. However, the guidance does not identify if and under what conditions parcels operators might be affected. The guidance should address this specific point.

Timing: any form of regulation of delivery competition will affect future investment decisions and may impact existing operations. It is crucial that competitors have the maximum possible time to review, consider and, if needs be, challenge any proposals for regulation. The Guidance could usefully give more detail on the most likely timescales.