

Our Ref: GS 10.0
09 September 2011

Chris Rowsell
Floor 4
Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Dear Mr Rowsell,

Postal regulation: Transition to the new regulatory framework consultation

I am writing to you on behalf of the Communication Workers Union (CWU) in response to the consultation Postal regulation: Transition to the new regulatory framework, published on 8th August. The CWU represents approximately 215,000 employees in the postal, telecoms and related industries and is the recognised union in Royal Mail for all non-management grades.

The CWU has been a strong critic of the current regulatory regime under Postcomm. We believe that regulation has been severely damaging for Royal Mail restricting it from competing and generating sufficient revenue to cover its costs. The downstream access regime has been particularly misguided, imposing losses on Royal Mail and forcing the business to subsidise rival operators' business models, while the service received by businesses and members of the public has suffered.

Our members in Royal Mail have faced increasing pressure and ever greater workloads, as it has sought to compete on an uneven playing field. We do not believe that the implications of regulation, or the way Royal Mail operates, were fully understood by Postcomm in the past. We therefore welcome the transition of responsibility for postal regulation to Ofcom and hope that this will help to bring about a new approach to regulating the market, which is urgently needed.

In 2009 Postcomm put any fundamental change to regulation on hold while the Postal Services Bill introduced by the previous government was before Parliament. This extended the duration of an excessively burdensome regime by a further two years. We have been encouraged that Postcomm and Ofcom have recognised the need for change and committed to working together to progress the 'Building Blocks' programme of reforms for spring 2012 during the passage of the new Postal Services Act.

Ofcom is currently consulting on transitional arrangements for the new regulatory regime. This includes transposing existing conditions from postal operators' licences into conditions under the general authorisation regime introduced by the Postal Services Act. During a transitional period - between Ofcom taking over regulatory responsibility in October 2011 to the introduction of a new regulatory framework in April 2012 - these conditions are intended to be substantially similar to those currently in place. Ofcom must put in place 'initial conditions' which are either 'transitory', which apply to regulatory conditions that are currently in place but that Ofcom will not, in the long term, have the power to implement, or are one of a further seven types of initial condition, including 'consumer protection conditions', which can continue beyond the transitional period.

In relation to the transitional arrangements, we believe Ofcom should ensure that its decisions on the classification of conditions in Royal Mail's licence reflect the fact that a number of the existing requirements: (i) are subject to change as part of the current consultations on regulatory reform to apply from spring 2012; and (ii) must meet new tests introduced in the Postal Services Act if they are to continue in force after the transitional period has ended (which is intended to be at the same date next spring). Ofcom needs to be clear and consistent regarding which conditions can and cannot continue and which will be subject to the outcome of consultation.

This is relevant with regard to a number of conditions which Ofcom is not proposing to classify as 'transitory'. For instance, conditions 7, 9, 10 and 15 are all included in the scope of the proposed reforms for 2012, and will be subject to new tests under the Postal Services Act in respect of Ofcom's new duties and specific criteria on the relevant type of condition. However, in the consultation these are provisionally classed as consumer protection or other initial conditions which could continue to have legal force at the end of the transitional period.

While we accept that Ofcom may have the legal power to maintain such conditions in Royal Mail's licence under the new regulatory regime, if Ofcom is to use this as the deciding factor in not designating these as transitory, we believe it should clearly state that their continuation in force at the end of the transitional period is subject to consultation and assessment under the new Act. We do not believe Ofcom is intending to prejudge its future assessment of these conditions, or the programme of consultations for reform in 2012, and we believe it would be beneficial to provide clarity and certainty on this for the market and consumers.

We believe there is a parallel here with the proposed treatment of condition 21, which Ofcom has provisionally designated as 'transitory', despite it having the power to maintain a price control on certain products in the new regulatory regime, citing the ongoing review into the price control as one factor in its decision. It is our understanding that Ofcom does not intend to decide

substantive regulatory issues through this consultation. However, this apparent inconsistent designation of initial regulatory conditions appears to prejudge the outcome of future consultations. Ofcom must make it clear that this is not the case.

In respect of the other issues raised in the consultation, we strongly support the designation of Royal Mail as the universal service provider; the CWU places a strong value on the public service provided by Royal Mail. It is clearly the only operator capable of delivering the universal service which, as we have argued above, must be reflected in the future regulatory regime.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W. Hayes', with a stylized flourish at the end.

W. Hayes
General Secretary