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To whom it may concern

Ofcom's Review of Postal Regulation Consultation: Response from the Mail Competition Forum

Please find below our response to the above review.

1. <u>Introduction and Summary</u>

DX Network Services Limited ("DX") has provided the following response to the Consultation Document on Ofcom's Review of Postal Regulation (the Consultation, published by Ofcom on the 9th of December 2021)

In its regulation of the UK Postal Market, Ofcom's review of the current regulatory framework for postal services is a crucial item of work in the hope that Ofcom will seize the opportunity to make some much needed adjustments to the current regulatory regime, which has been in place, very little changed, since 2012.

The UK Postal Market has been experiencing an acceleration of the switch in postal volumes from mail to parcels (prompted by conditions during the Covid-19 pandemic). Although the current financial position of RM is consequently less precarious than in previous years, DX believes that this is very much due to the benefits of the surge in parcels volumes and greatly increased mail prices. This would not be due to either improved, underlying performance by RM or the efficacy of the current regulatory regime.

There has never been more reliance on the postal service sector than in the last two years, during which time parcel operators have seen volumes increase by 60% or more, while mail operators have seen a significant decline in volumes.

Parcel operators have invested heavily in their networks to ensure that the sustained increase in demand and volumes can be accommodated; mail operators have invested to continue services with Covid-19 security measures. Both have made great efforts to ensure quality and service performance for customers has been maintained. RM has failed to match this demand and appears to have prioritised parcels to the detriment of letters. Evidence of this can be seen in the abysmally low levels of quality of service provided by RM for letters throughout the period from March 2020 (with no improvement in sight) and anecdotal evidence from numerous sources.

Furthermore, operators other than RM have continued to honour their service level agreements with clients, providing compensation for any service delays, regardless of whether these have been caused by Covid-19.

Whilst the benefits to RM of increased revenue from unprecedented parcels volume have given RM a financial boost sufficient for it to report and predict high profits, and to make large-scale payments to shareholders, it is clear that RM's ability to finance provision of the Universal Service remains fragile – as evidenced by Ofcom's latest Annual Monitoring Review and data given in the Consultation.

For Ofcom to fulfil its principle statutory duties by ensuring that Universal Service provision be financially sustainable and efficient, and to further the interests of citizens and consumers, where appropriate by promoting competition, DX believes that important changes to the regulatory regime will need to be formulated.

DX's responses to previous consultations (e.g. on successive Ofcom Plans of Work and to the Call for Inputs in May 2021) have had a common theme - the need to revise the regulatory regime set by Ofcom in 2012. We continue to maintain that for the regime to be adjusted, especially into the constraint in the increases in postal service prices and ensuring RM efficiency improvement.

The DX calls on Ofcom to:

- Implement new regulatory measures in the letters market to constrain RM's ability to impose large price increases and to ensure RM makes good progress in efficiency/productivity improvement and focuses on maintaining high service performance
- Set parameters clarifying when and for how long RM can declare "emergency conditions", which allow it to unilaterally alter Universal Service provision and to suspend compliance with its contractual obligations
- Change the regulatory regime relating to Downstream Access so that Access prices are directly controlled, and 'ring-fencing' can be applied around RM Retail bulk mail
- Establish a new governance model for access to the Universal Service network so that it can be developed in a way that promotes competition, benefits customers and supports RM in receiving revenue towards sustainable provision of the Universal Service

(The comments below follow the structure of the Consultation and use that document's paragraph and question numbering.)

2. <u>The postal services market and Ofcom's proposed approach to regulation</u>

Question 2.1: Do you agree with Ofcom's proposed regulatory approach for regulating postal services over the next 5-year period (2022-2027)? If not, please explain the changes you think should be made, with supporting evidence.

For the letters market, DX does not believe the current, overall regulatory approach remains appropriate and argues that important changes are overdue.

Ofcom's regulatory regime has remained essentially unchanged since 2012 and continues to rely on the three "regulatory safeguards" that were established 10 years ago:

- Affordability: a cap on the price of Second-Class stamps for letters and parcels up to and including 2kg.
- Competition: requiring RM to continue to provide access to its network for bulk letter competitors; and
- Monitoring: an effective and on-going monitoring regime to track RM's performance in respect of the universal service, efficiency levels, pricing, and competition.

At the same time as establishing these safeguards, Ofcom allowed RM far greater commercial freedom than was the case previously under Postcomm. Direct price control on Access prices and a general requirement for RM to allow access to its network were removed.

Ofcom saw and had continued to see since 2012, the three safeguards, outlined below, as being sufficient to meet its statutory duties. DX believes that has not been the case.

Price control:

DX is concerned that Access prices for business mail have increased by an average of 5.9% in real terms each year between 2016 and 2021 and increased again well above the rate of inflation in January 2021.

Over the same period, mail volumes have seen an average annual reduction of c5%. Ofcom view the reduction due to the structural switching of communications from mail to other media, but DX firmly believes it is as a consequence of rapid increases in access mail prices.

Competition:

Despite Ofcom having a statutory duty to further the interests of citizens and consumers, where appropriate by promoting competition, DX would maintain that there is now less competition in the UK letters market than when Ofcom became the postal regulator in 2012. It is further reduced now than in 2017 when the last Regulatory Review was completed.

Competition for Access mail contracts remains vibrant with a wide range of service providers bidding for client work from originating customers, mailing houses, postal consultancies, and intermediaries. However, whilst several the service providers had previously organised their own collection and transport of mail to RM inward mail centres, several have since chosen to sub-contract to larger operators, with the three operators collectively handling more than 90% of Access mail. DX believe that this change should be seen as a reduction in competition.

There remains no competition to RM in the final delivery of mail (only 0.5% of mail is delivered by a company other than RM). Without change to regulatory regime, that position shows no prospect of changing and development of competition remains stifled.

While Ofcom has continued to rely on competition to mitigate the commercial freedoms it has allowed RM, Ofcom has recognised in 2017 that it was highly unlikely any nationwide end-to-end competition in the bulk letters market would emerge, and no such competition has emerged since.

Monitoring:

Ofcom has continued to monitor and report on RM's performance in respect of the universal service, efficiency levels, pricing, and competition, but in each of its reports since 2017, it has been evidenced that RM is failing to improve its efficiency, while letters prices have increased significantly in real terms and direct competition in letters has declined.

DX considers that Ofcom has been content to continue to believe that monitoring and reporting alone will achieve the required improvement in RM's performance when the evidence shows that has not been the case.

Ofcom has not set any service performance targets, other than for USO services, and performance has not improved Ofcom has not set any efficiency targets, and efficiency has not improved. Therefore, it seems evident to DX that the regulatory approach relied on by Ofcom for ten years has meant Ofcom's statutory duties have not been sufficiently fulfilled.

It is clear to DX that when Ofcom termed a "clear and stable regulatory environment", it is noticeable that since 2012, there has only been real increases in prices (and marked decline in mail volumes), no increase in mail competition, no improvement in service performance or efficiency and no improvement in the long-term financial sustainability of Universal Service provision.

DX believes the existing regulatory regime does not provide sufficient incentive for RM to improve efficiency, or sufficient constraint on its behaviour or its ability to exercise its market power and does not promote effective competition.

In several submissions to Ofcom since 2017, including to the Call for Inputs, DX has argued that there was a clear need for Ofcom to revise the regulatory regime and we have asked for implementation of regulatory measures on efficiency and access prices.

In this Consultation, Ofcom is proposing to make some changes to its regulation of RM, "to strengthen our approach to financial sustainability and efficiency and hold Royal Mail to account for the achievement of its planned efficiency savings".

DX welcomes and supports those changes, but we do not believe they are sufficiently robust or extensive to ensure change in RM's behaviour or to address all the aspects of regulation and DX maintains that these are necessary and justified.

DX does not believe the proposed changes are sufficient to fulfil Ofcom's statutory duty under the Postal Services Act 2011, to secure the provision of a universal postal service regarding 'the need for the provision of a universal postal service to be financially sustainable' (s29.3.a). In addition, for RM's provision of the universal service to 'be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times' (s29.3.b). It is clearly arguable that 10 years on from Ofcom becoming the postal regulator, RM is still not efficient in its provision of the universal service.

DX does not believe that current regulatory regime is fulfilling Ofcom's statutory duty under the Communications Act 2003 to "further the interests of consumers, where appropriate by promoting competition" within the market for mail and Ofcom makes no proposals that, in our view, will change that.

3. Financial sustainability

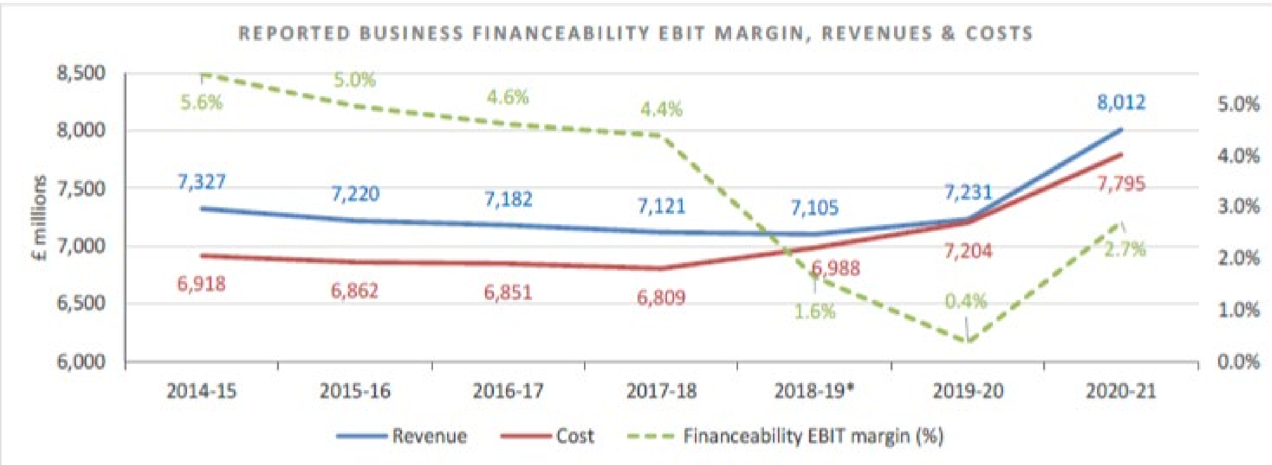
Question 3.1: Do you agree with our proposed approach to sustainability of the universal service? Please substantiate your response with reasons and evidence.

DX believes Ofcom's current approach to financial sustainability and efficiency needs to transform. We support the changes Ofcom proposes to create, but believe they need to be enhanced further.

We have noted above that Ofcom has a statutory duty to ensure that provision of the universal service is financially sustainable and for that provision to be efficient before the end of a reasonable period and to continue to be efficient at all subsequent times.

Since 2012, Ofcom has used EBIT as the measure to indicate financial sustainability, and it is appropriate for this to be in the 5%-10% range, as confirmed by Ofcom in 2017. In this Consultation Ofcom again says it believes EBIT continues to be the right measurement.

However, since 2015-16, not only has RM failed to have an EBIT in this range, as it has been below 5% and declining. There was an upturn in 2020/21 as a result of the large increase in parcel volumes.



Ofcom believes “the significant changes in the parcels market present Royal Mail with an opportunity to transform into a sustainable parcel-led business over the longer-term, which in turn would support a sustainable USO.”

DX does not share this optimism and in line with our response to the Call For Inputs, we stated:

> “DX sees a threat to the longer-term sustainability of Universal Service provision arising from the decline in mail volumes while parcels volume increases significantly.
>
> This is because as letter volume falls and RM increasingly becomes a parcels operator (as it has clearly stated it intends to), RM’s ability to leverage its letter delivery network capability to compete in the parcels market will also decline and competition in the parcels market will limit RM’s ability to increase parcel prices. This means the provision of the Universal Service for letters could no longer be subsidised from parcels, while letters volume and revenue continued to decline.
>
> Without regulatory intervention to ensure letters efficiency improvement and support letters volume and revenue, the Universal Service for letters could become unsustainable and/or unaffordable.”

Indeed, Ofcom itself says it has analysed RM’s latest business plan (2021/22-2023/24) and considered sensitivities around key assumptions and plausible longer-term trends. Ofcom sees RM’s strategy as being centred on being able to grow its share of the growing parcels market and on cost efficiencies being achieved. Ofcom has concluded that revenue growth alone is unlikely to be enough to secure a sustainable level of profit unless RM can also improve on its recent efficiency performance. Hence, Ofcom states that “significant risks remain”.

Given “the potential sustainability risk”, Ofcom proposes “to increase accountability and our understanding of Royal Mail’s outlook in the longer term… by requiring a five-year financial forecast from Royal Mail. Furthermore, given the relevance of efficiency to sustainability, we seek to also strengthen our monitoring regime on efficiency. To undertake this exercise, we will be consulting, in due course, on the necessary changes to our financial regulatory requirement, which are set out in the USP Accounting Condition and the Regulatory Accounting Guidelines.”

DX supports enhanced monitoring and changes to the Regulatory Accounting Guidelines to facilitate the requirement.

It is critical for Ofcom to ensure it can collect the necessary, relevant information and is able to demonstrate the effectiveness of ensuring sustainable universal service provision.

However, we do not agree with Ofcom stating: “we do not propose to hardwire specific regulatory actions to a given measure such as EBIT margin thresholds to maintain flexibility. EBIT margins, whether actual or forecast, which fall out of the 5 to 10% range do not necessarily mean that the financial sustainability of the universal service is threatened or that excessive profits are being earned. We will consider each case in its specific circumstances and in the wider context of Royal Mail’s financial performance and position.”

DX accepts EBIT margins, which fall out of the 5% to 10% range, does not necessarily mean that sustainability is threatened, or excessive profits being earned, but we urge Ofcom to modify its position.

Given the entrenched history of RM failing to achieve the EBIT performance, which Ofcom believes is necessary to show sustainability of universal service provision, we strongly believe that it would give postal market stakeholders appropriate and necessary reassurance if Ofcom were to change this position. For example, if, for any year, RM’s EBIT was outside the 5%-10% EBIT range, that would automatically trigger a regulatory assessment of the position to ensure that Ofcom is considering appropriate regulatory actions wherever there is a perceived risk to sustainability.

This would not be to “hardwire specific regulatory actions” but would demonstrate Ofcom was achieving more than just allowing the established approach to stumble forwards for yet another 5-year period until the next Regulatory Review.

4: Efficiency

Question 4.1: Do you agree with our proposal to maintain the historic approach but with the additional requirement on Royal Mail to set and report against a five-year expectation? Please substantiate your response with reasons and evidence.

Question 4.2: Do you agree with our proposals in relation to the monitoring and publication of the efficiency expectations prepared by Royal Mail? Please substantiate your response with reasons and evidence.

In its last Regulatory Review (March 2017), Ofcom decided not to apply any price control on RM other than for 2nd Class Stamped mail. In addition, it did not set any efficiency targets, despite having concerns that if RM relied on service degradation and/or price increases without efficiency improvement, that could undermine financial sustainability and undermine users' needs.

Ofcom's decision not to introduce regulatory measures was due to RM providing plans "which demonstrated greater ambition than its past performance and set targets within a reasonable range". Ofcom "also believed that there was potential for Royal Mail to make greater efficiency gains than those forecasted."

Since 2017, RM has abjectly failed to improve efficiency sufficiently, and has increased access mail prices well above the rate of inflation. It has failed its service performance obligations, leaving Ofcom to now admit that "overall progress since 2016-17 has been concerning".

The postal Services Act 2011 gives Ofcom a duty on" the need for the provision of a universal postal service to be efficient before the end of a reasonable period and for its provision to continue to be efficient at all subsequent times". That Legislation was passed ten years ago, yet Ofcom has made no statement not published any evidence to show that this duty had been met. Ofcom has not said whether it believes RM's provision of the universal services provisions will continue to be efficient.

Ten years is surely, the DX believes, more than a long enough a "reasonable period" for Ofcom to comment on whether it has met this statutory duty

Ofcom's Annual Monitoring Report for 2020/21 shows that RM's real costs have been increasing while efficiency improvement (PVEO analysis) has been minimal or nil.

Therefore, it is clear to DX that the mechanisms relied on by Ofcom so far (e.g., shareholder pressure and competition) have simply not worked, whilst Ofcom has removed itself from any proactive regulation.

We believe Ofcom's expectation that shareholder pressure creates incentives for RM to become more efficient is manifestly false.

Rather than improving efficiency, RM has simply compensated for its inefficiency by implementing above inflation price increases on access mail, using the resulting revenues to pay substantial shareholder dividends. In November 2021, RM paid shareholders £200m through a special dividend; £200m through a share buyback and an additional £67m interim dividend.

If RM's shareholders receive these dividends, there is no prospect of meaningful pressure to spur greater efficiency. It is entirely possible that these substantial dividends are set to continue, further supressing pressure for greater efficiency, because shareholder pressure will only be a factor where profitability is impacted by lack of cost control and ability to increase access prices is constrained.

DX sees the position as one where RM has repeatedly failed to achieve its own, modest targets for improved efficiency/productivity. Pressure to improve efficiency (and pressure to limit price increases) would be present in a normally competitive market. However, RM is not subject to such market pressures in relation to mail, where it has extreme market power through a monopoly in mail delivery, or (to a degree) in lightweight parcels, where it is able to gain market advantage through use of its universal service network for letters.

DX has consistently called for efficiency improvement targets to be set and for RM to be held to account for hitting these targets. Ofcom has consistently ignored such calls.

Meanwhile, RM have recognised the need for to improve efficiency and has outlined plans to achieve efficiencies and performance..

Recently, in its Annual Report for 2020-21, RM stated that "Royal Mail must become more efficient and flexible to compete effectively in the parcel and letter markets. The success of our strategy relies on the effective control of costs and delivery of efficiency and productivity benefits across all areas of the business. Failure to effectively control costs while at the same time delivering high-quality services could result in a loss of customers, market share and revenue."

Ofcom has continued to believe and rely on such aspirations, but RM has consistently failed to achieve its promises. With RM, it is always 'efficiency tomorrow'.

Against this background, Ofcom still does not believe that price controls or efficiency targets are warranted.

Ofcom asserts that price controls "could constrain Royal Mail's commercial flexibility and therefore its ability to respond to market changes effectively" and "commercial flexibility can also create a stronger incentive to generate efficiency gains than price controls", while structural changes in the market might mean price controls lead to unintended consequences. Ofcom believes efficiency targets, could be difficult to establish and distracting for RM.

It would be useful if Ofcom could explain the difficulties it sees in setting efficiency targets. Any market regulation by the sector regulator is 'difficult', but the challenges faced by the regulator in setting targets is not an adequate reason to not pursue such remedies.

Ofcom says, "we therefore do not consider that such targets would be beneficial at this stage", but the difficulties it could face in setting efficiency targets will remain and intervention may become even more 'difficult' to establish, monitor and enforce if the situation deteriorates further.

There is a danger that Ofcom could be seen to be averse to setting targets in the future even if it becomes clear that RM is not setting ambitious efficiency expectations and/or is failing to meet the expectations it does set. This outlook may not incentivise RM to make satisfactory progress against its efficiency expectations, even if it sets and reports against five-year expectations.

Ofcom also states that efficiency targets "may have little additional effect for an organisation that is already under pressure to cut costs". As DX has already articulated, RM is allowed to compensate for failing to meet efficiency targets by implementing above inflation price increases and is, therefore, able to pay substantial dividends, thus reducing any shareholder pressure for greater efficiency.

Given this background, DX firmly believes that Ofcom should seriously consider the need for efficiency targets and price controls, and the design of such measures. At the very least, Ofcom should be conducting the work needed to explore the design such a framework, to gain information on the feasibility and likely impact of such measures.

Instead, Ofcom proposes ensure that RM publish the efficiency gains it expects to make and its progress in achieving them. The first publication would be in May 2023, for the 5-year period from 2023/24 to 2027/28.

In the absence of other regulatory action by Ofcom, DX supports this proposal, which we see as an absolute minimum to monitor RM.

We believe Ofcom should review progress made against those targets with RM and benchmark the progress against international comparisons.

We believe Ofcom should report annually on how it views RM's progress against the 5-year plan and RM's achievement, and the efficiency targets in that plan.

If it would be difficult (as Ofcom claims) for Ofcom to establish targets with RM if Ofcom were to do that, it would be straightforward for Ofcom and not distracting for RM if Ofcom adopted RMs expectations as regulatory targets. That would, at least, be a form of active regulation, rather than Ofcom being little more than a passive observer.

Agreeing efficiency improvements expectations/targets and holding RM to account for achieving those targets (as it does with Quality of service), should be a key part of Ofcom's focus on the Regulatory Regime for the next five years.

In addition, whilst we accept that Ofcom cannot give a firm commitment of further action it will take if efficiency expectations are not met, Ofcom should at least give a clear indication of the action(s) it would consider. Otherwise, there is little prospect that the new requirement will prompt any meaningful change.

DX is also concerned that the proposal for RM to publish a 5-year plan from 2023/24 means that even this regulatory development will not be in place until that time. the next 12 months will be crucial to RM in making realistic progress as there are clear risks to RM being able to achieve efficiency improvement.

For example, RM's own Annual Report and Financial Statements for 2020-21 lists efficiency as a principal risk or uncertainty, with a 'high' 'relative severity' rating.

RM stated: 'The continuation of tighter COVID-19 restrictions, including changing standard ways of working to allow social distancing, has added costs and has impacted our processing and delivery operations. These arrangements may continue for some time. In turn, they may have an adverse impact on cost control and productivity'.

Additionally, RM's reduction in the working week for frontline workers, and at the same time implementing a pay rise, represents a very real challenge for sustainability.

Ofcom's Annual Monitoring Report 2019-20 noted: "Frontline pay increased due to the October 2019 pay rise of 5% and the impact of the shorter working week, and this was not fully offset by hours reductions." This may be compounded by wage inflation, with around half of RM's operating costs being staff costs.

As well as hours reduction and pay increases, the 2022 National Insurance increase is set to cost RM £50m p.a., every 1% of wage inflation increasing costs by a further £40m.

Hence, DX urges Ofcom to bring forward the application of its proposals relating to RM's efficiency plans, so that they some areas of the proposals are in place for 2022/23.

5: <u>USO letters regulation</u>

Question 5.1: Do you agree with our proposed approach of maintaining the current regulatory safeguards of the safeguard cap, high quality of services standards, and requirements on access to universal services? Please substantiate your response with reasons and evidence.

<u>Safeguard Cap:</u>

In our response to the Call For Inputs, DX said:

> "DX notes that there is clear inconsistency, in that RM prices are significantly below the cap for parcels, but not for letters (where prices are increased annually). For parcels, RM is pricing well below the second class safeguard cap, which may suggest that RM's prices are, therefore, not fully cost reflective.

> This is because RM is concerned about the level of competition in the parcels market and Ofcom's assertion is that there is insufficient competition to protect consumers.
>
> As there is such a large gap between RM's prices and the second class safeguard cap and may suggest that RM is in no rush to increase prices should the cap be removed."

Our view has not changed, and we believe Ofcom should actively investigate whether RM's prices for USO parcels are sufficiently cost reflective, especially, to ensure they are priced at a level that gives an appropriate commercial profit. If that is not the case, it would mean RM was cross-subsidising within the USO between letters and parcels and, therefore, prejudicing the continuing financial sustainability of USO provision.

Service Standards:

DX continues to be very concerned at the exceptionally poor Quality of Service RM is providing to customers (both on USO and an Access services), despite Ofcom having said that the Emergency Period ended on 31st August 2021.

Ofcom has confirmed that "Many stakeholders expressed concern about the poor quality of service experienced by users as a result of the impact of the Covid-19 pandemic….Some respondents suggested that we should review the procedures in place for future emergency periods. This included considering setting out criteria on how long such a period could go on for and deciding when the normal regulatory regime would be restored".

Despite the above, Ofcom states: "we do not agree that we should set out criteria on how the length of any future period should be decided. This is because this is a statutory exemption set by Parliament in the legislation, and we do not think it is appropriate for us to seek to prejudge how future emergency periods should be treated."

DX strongly disagrees with Ofcom's view that this is only a statutory issue and not also a regulatory one.

It is very difficult to reconcile Ofcom's view that the existing regime for Quality of Service targets is working well with Ofcom's January 2022 update on Royal Mail delivery days.

In the update, Ofcom stated: "As the regulator for Royal Mail, we're concerned about these delays and have made it clear to Royal Mail that it must take steps to improve its performance as the effects of the pandemic subside." Ofcom is aware of the large number of recent news reports of major delays in mail deliveries by RM and that, despite Ofcom having declared that the Emergency Period finished on 31st August 2021, significant delays have persisted for 6-months beyond that date.

DX, along with several other mail industry stakeholders, urges Ofcom to take appropriate action.

In our view, customers' experience during the Emergency Period clearly showed that Ofcom currently has limited regulatory ability as it allows RM to have a unilateral, unconstrained, and unchallenged ability to be exempt from providing the Universal Service if it decides there is an emergency.

The Emergency Period occurred for 18 months during 2020 and 2021 and it would have been the first time that it had been in place. The circumstances may have been "genuinely extraordinary", but any Emergency Period must only safeguard genuinely extraordinary circumstances. It is entirely justifiable for customers to expect that Ofcom should require RM to provide information on how its service provision has been affected, their actions to resolve the service issues and the timelines involved to bring the service back to "normal".

At the moment, Ofcom does not even have the ability formally to review the position after any set period.

DX is not calling for Ofcom to have regulatory ability to require RM to act in any way during an Emergency Period, or for RM to need Ofcom's formal authorisation to declare an Emergency Period, but Ofcom should have clear regulatory ability to monitor the actions of RM.

Ofcom may, in practice, have been undertaking regulatory actions during the Emergency Period, however, there was very little information being communicated by Ofcom to customers during that period. (We do not believe it is sufficient for Ofcom to report retrospectively as part of the Annual Monitoring Report).

In section 8 below (Access for Bulk Mail) ,the DX sets out its grave concerns with continuing, abysmally poor Q&S on access mail and the unreasonable Disruptive Event power held by RM .Given these issues and RMs monopoly in mail delivery ,plus the facts that Access mail and the USO mail use the same operational network from inward Mail centres to delivery , and that 65% of all addressed mail is Access , the DX argues Ofcom should include Access mail in its monitoring of QofS . We would welcome further discussions on how this could be done.

In its response to the Call For Inputs, DX pointed out that compliance conditions were not met in line with the existing Ofcom's Regulatory Conditions..

DUSP1.11.1 requires:

> "The universal service provider shall at all times maintain appropriate contingency plans, which set out the measures to be taken by the universal service provider to ensure as far as practicable the provision of the services required by DUSP 1.4 to 1.7 without interruption, suspension or restriction of any service in the event, locally, regionally or nationally, of industrial action, an emergency or a natural disaster, and implement those plans, as appropriate, where such events occur"

and DUSP1.11.2 requires:

> "At least once every two years from the appointed date, the universal service provider must review and where appropriate, update or amend its contingency plans."

DX has not been able to find any information on the Ofcom or RM websites to confirm that RM has achieved compliance with those Conditions, or confirmed its contingency plans, or if contingency plans have been implemented.

Ofcom has not commented on the above.

DX recognises that RM has experienced staff absences related to COVID-19 (which has been experienced with all postal operators), but we are extremely concerned that RM's monopoly in final delivery of mail has allowed it to prioritise parcel delivery, where it faces strong competition outside lighter-weight, letterboxable items. Such prioritisation has been reported many times in the media, based on information from within RM.

RM's own Chief Executive has also admitted that RM failed properly to prepare for the predictable spike in December mail volumes.

Ofcom will soon be preparing to review RM's service performance for the 2021/22 year: DX expects Ofcom will distinguish between the unavoidable impacts of COVID-19 and commercial decisions made by RM to favour its position in the parcels market.

In July 2020, after investigating RM's failure to achieve Quality of Service targets in 2018/19, Ofcom fined RM £1.5m because "Royal Mail didn't provide a satisfactory explanation for this and didn't take sufficient steps to get back on track during the year."

DX firmly believes RM has similarly failed in part of the 2021/22 outside the Emergency Period and awaits the outcome of Ofcom investigation with great interest.

Question 5.2: Do you agree with our proposal to not impose further regulatory requirements on Royal Mail in relation to Redirection pricing, following implementation of its improved Concession Redirection scheme? Please substantiate your response with reasons and evidence.

DX does not disagree with this proposal at this stage.

We note that Ofcom states it had "intended to propose a new targeted price cap on redirection services for financially vulnerable consumers", but as RM has announced several significant changes to the scope and scale of its discounted service, Ofcom's view now is that RM's "refreshed Concession Redirection largely addresses our affordability concerns". Therefore, Ofcom "do not propose to impose new regulatory requirements on Royal Mail at this time."

Clearly, Ofcom must keep this issue under close review and has expressed concern that prices might rise by above CPI inflation.

DX suggests that Ofcom should consider applying a safeguarding price cap, in the same it applies a cap for 2nd Class stamped mail.

Question 5.3: Do you have any further evidence on other issues raised in this section?

Meter Mail:

DX continues to believe Meter mail should not be part of the USO.

Part of our reason is that Meter mail is charged at a discounted rate. Ofcom recognise that payment by meter is at a discount from paying by stamp but state that the discount is not volume-related (which is acceptable by DX). Additionally, it is not based on "one of the other discounts which is specifically prohibited".

If that is the case, DX would like Ofcom to confirm the basis of the discount and how the discount is permissible.

Ofcom also reports that Access operators require a minimum daily volume of 250 items for unsorted mail (such as Meter mail). However, the picture is incomplete and therefore misleading.. Several mail operators competing with RM (including, but not limited to, Access operators) only require a minimum daily volume of 250 items for unsorted mail if the operator is not already collecting from the customer's premises. Where other Postal/Parcel courier product is already being collected, the 250 minimum daily volume will not be required.

DX recognises that the 250 minimum daily volume is a barrier to use, although Ofcom fails to recognise that Pitney Bowes & Quadient both require an upfront payment of up to £1k before any SME can use their Meter mail equipment. By having the payment in place, the customer can see a barrier to use as also it doesn't consider the cost of purchasing or leasing the actual equipment. In the access marketplace, the access providers have invested heavily in equipment to indica/Mailmark items for their customers as part of the service. DX view is that a monopoly situation exists, whereby Pitney Bowes, Quadient and Royal Mail only allow access to the service under their terms which is direct debit payment in advance of use. Additionally, it limits the choice of equipment as suppliers have a vested interest in securing the sale and maintenance of expensive equipment. DX believes that if Meter mail was opened to competition, the cost to SME would be reduced or eliminated allowing fair competition in the marketplace.

DX is willing to working with Pitney Bowes & Quadient if an SME wishes to continue with their heavily invested purchased equipment. Although the payment model utilised by Pitney Bowes and Quadient is exclusive to Royal Mail, it clearly demonstrates that a monopoly situation is in place.

DX has a web-based platform, which allows customers to enter the quantities and weight of mail they are sending on each collection and can produces a manifest (if required by the despatcher).

The invoicing is weekly in in arrears, on direct debit 14 days payment terms, and NO minimum volume.

DX believes Ofcom has failed to recognise that Royal benefit from the effect of the VAT exemption because Meter Mail is included in the USO.

Ofcom say “we do not think this is likely to have any significant adverse effect on competition between metered mail and other market services. This is because primary users of meter mail are SMEs sending low and variable volumes of mail, while access operators offering bulk mail services target businesses sending higher and stable volumes of mail.”

The assumption is that the only competition to RM for Meter mail is from access operators offering bulk mail services. The VAT exemption on Meter mail is hindering the development of competition for low volumes of mail. DX supply a DSA service to the legal profession and other customers with no minimum volume. Public Sector bodies are unable to claim VAT, which can be a barrier to using the DX DSA services.

Ofcom say: “Removing meter mail as a payment channel from the USO may instead encourage substitution to Royal Mail stamps and/or further e-substitution, rather than to alternative bulk mail providers”. The statement considers bulk mail providers as the only competitive alternative, where there are suppliers such as DX who can provide this service.

Ofcom acknowledges the availability of hybrid mail services, which are suitable for businesses with lower volumes of mail, but (when offered by companies other than RM) hybrid services are subject to VAT, thus preventing businesses with small volumes of mail from being able to use such services if they are unable to recover the VAT.

The inclusion of Meter mail in the USO and its consequent VAT-exempt status is a major factor hindering the growth of hybrid mail and does have significant adverse effect on competition between metred mail and other market services.

DX is very confident that RM would continue to offer postage franking to post mail, even if it was under no USO obligation to do so.

We strongly argue, therefore, that:

- there is no need for Meter mail to be part of the USO, thus, to ensuring it remains an option for all customers
- the requirement for Meter mail to carry a marking, which facilitates machine sortation, means the basis for the Meter mail discount is specifically prohibited in terms of the USO
- the VAT distortion arising from Meter mail being in the USO does have significant adverse effect on competition between Meter mail and other market services.

<u>User Needs:</u>

We stated in our Call For Inputs response that:

> “We believe it is crucially important for Ofcom to understand the importance of large-volume mail and parcel users in the sustainable provision of USO services. While such users are not using USO services, it is their use of other services which very largely provides RM with the funds needed to sustain provision of the Universal Service network. All services offered by RM use the Universal Service network to some extent (especially the delivery network) and the specification for non-USO services follows that for USO services.
>
> DX recognises that Ofcom has a statutory responsibility to review the needs of users of the Universal Service and has done that. However, we believe that as the revenue from large-volume users of non-USO services is so important for the financial sustainability of the Universal Service, the needs of such users should be properly understood.

We believe Ofcom should, as a matter of urgency, research the needs and opinions of large-volume users of mail and parcels - to ensure that the conclusions of the User Needs report meet their postal needs, particularly in relation to the impacts of a reduction in delivery frequency to five days for letters and the impacts of dropping Saturday deliveries"

DX believes the 2020 User Needs report did not provide a full picture of the needs of business customers. It is our understanding that, although close to 1,000 SME customers were interviewed as part of Ofcom's research, only a very small number of large-volume users were interviewed by Ofcom staff, and that the research was completed a short time before the report was written.

Although Ofcom's statutory duty is to review the needs of USO users, we ask for confirmation that Ofcom's future work on assessing User Needs will fully recognise the interaction between USO services and non-USO services, thorough research on the needs and opinions of large-volume users of mail and parcels. The impact on larger businesses of any reduction in the number of days for delivery of mail should have been considered due to the reductions, and the impact of ceasing Saturday deliveries.

6: Parcels market regulation

Question 6.1: Do you agree with our assessment of the parcels market, namely that it is generally working well for consumers, but improvements are needed in relation to complaints handling and meeting disabled consumers' needs? Please substantiate your response with reasons and evidence.

DX does not disagree with Ofcom's assessment of the parcels market.

Ofcom has arrived at this assessment based on using interviews with 2019 customer online at the height of the COVID-19 pandemic and when parcel operators were experiencing one of their highest demands for service. Ofcom has recognised that at the time of the research parcel operators were experiencing operational pressures over and above normal. We recognise that as a result of analysing the results, that guidelines will be proposed in how to handle complaints and how to meet with consumer's needs. We would emphasise, at this stage, that the consumer needs should not just meet disabled customers (definition of "disabled" to be defined by Ofcom but to those customers with other needs or personal circumstances. It should also be noted that DX and other parcel operators does not have the resource in place to undertake research to gather data. Ofcom has detailed information it obtains from Royal Mail, but the information has been redacted from the Consultation document.

DX and other parcel operators have processes in place to deal with the despatching organisations and consumer complaints. There are different methods of communication in place, which are negotiated with the account holding customer at the time of the implementation of the contract. For example, retailers wish to have control of the complaints process whereby their own customer services team take the calls directly from the consumer and manages this through the parcel operator. Sometimes, retailers allow the consumer to contact the parcel operator directly through different means, such as email; telephone; social media platforms. At the outset of any contract with the account holding customer, contact lists and communication lines are provided so that the correct process is followed, so that the query reaches the correct team within DX and reaches a resolution as swiftly as possible. The account holding customer (retailer) can share contact information with the consumer if the retailer does not wish to manage the query within their own customer services team.

We acknowledge that some of the feedback presented stated "parcels being left in inaccessible places" and "parcel operators not acting on delivery instructions". It must be noted that at the time of the order, and negotiated contract (held by the sender), there are several service options to be selected, which include where to leave the parcels, but parcel operators and their couriers will ensure that the place selected (if using a Leave Safe service) will be safe. DX

Question 6.2: Do you agree with our assessment of the consumer issues in relation to complaints handling and our proposed guidance? Please substantiate your response with reasons and evidence.

DX believes the generally competitive nature of the parcels market incentivises operators to provide good, reliable service and offer effective customer services to deal with and resolve enquiries when they arise.

Parcel operators have contracts with their customers (typically on-line retailers) and work with them on their desired process for how consumers (as the customers of the retailers) can contact the retailer or the parcel operator in respect of delivery queries.. Retailers can dictate how the consumers should communicate, which can either be through a) the Customer Services Team of the Retailer/Despatcher or b) directly with the parcel operator.

In the competitive parcels market, all operators strive to improve the customer experience with consumers, being mindful of the consumer's power to complain through social media and through out forms of communication. The complaints can be persuasive and can influence retailers to able to change contracts either to protect their own brand and because of the competitive nature of the parcels market, which gives them alternatives.

DX supports Ofcom's proposed guidance to parcel operators (including Royal Mail) on how complaints should be managed, and to ensure that the information is maintained to meet the necessary compliance on complaints handling.

We would welcome further feedback from Ofcom on the timelines of the proposed guidelines.

DX are already working to enhance their processes and procedures (which has been discussed in bi-lateral meetings with Ofcom), it's not clear if the new guidelines will apply from the date of Ofcom's decision following this Consultation or later. It is important for parcel operators to understand the timeline so that can plan and communicate the guidelines within their own organisation..

Ofcom has said "We will monitor operators' performance in these areas and may consider enforcement action or additional regulation, as appropriate, should it be necessary to protect consumers".

While the DX appreciates that Ofcom wishes to avoid any risk of fettering or prejudicing its future regulation in this respect, it would be useful to for Ofcom to explain: the monitoring measurements; how Ofcom will respond to any alleged failure to work within the guidelines and the process of applying enforcement actions. DX would require further bilateral discussions.

Question 6.3: Do you agree with our assessment of the issues faced by disabled consumers in relation to parcel services and our proposed new condition to better meet disabled consumers' needs? Please substantiate your response with reasons and evidence.

As with the general guidance on complaints handling and management, DX supports Ofcom's proposal to introduce a new Consumer Protection Condition (CPC) requiring parcel operators to have policies in place and procedures for the fair and appropriate treatment of disabled consumers. As Ofcom recognises, some operators have already signed-up to the Citizens Advice delivery charter.

However, DX are concerned that there are aspects of the proposal and the draft CPC, which need to be considered carefully by Ofcom

For example, DX note that while Ofcom's research found that "31% of disabled consumers who had a delivery issue experienced significant inconvenience, stress, or financial loss - compared with 21%

of consumers who did not identify as disabled", the main issues of per experience reported do not seem to be related to feedback from disabled consumers.

Issues such as "I was not given sufficient time to answer the door" may be relevant to consumers who would not consider themselves 'disabled' (e.g. those caring for babies and pre-school children, or where a consumer has their own personal situation).

We note that the draft of the new CPC refers to disabled consumers but does not define the term "disabled" and does not consider other situations for consumers not being able to reach the door in time to take in a delivery.

We have concerns about how retailers would be able to identify the consumer as having a disability or have restrictions that would affect their parcel delivery experience how this should be communicated to the delivery operator). The start of the process should be at the ordering phase where the consumer should have the facility set up by the retailer to obtain this "Special Data" as defined through GDPR. The declaration should be the choice of the consumer and if they chose to give permission for their "special data" to be used, this information can be shared with the parcel operator. Note that the means of sharing and how the messaging will be applied should be agreed between the Retailer and Parcel operator. If the decision is made, by the consumer that they do not wish their circumstances to be shared either to the Retail or the Parcel operator, due to personal safety and security (especially if such 'self-declaration' were public), Ofcom should consider those choices too and reflect this in the guidelines especially when no data is shared by the consumer at ordering and when they may raise a complaint.

Ofcom says, "We do not consider it appropriate at present for us to specify detailed requirements of what an operator must do, as the needs of consumers – and the capacity of operators to adapt to these needs – will vary and may evolve over time". DX believe that it will be effective to give flexibility to Retailers and Parcel operators by requiring them to establish clear and effective policies and procedures for fair and appropriate treatment of disabled and other consumers, who are unable to reach the door due to constraints."

Parcel delivery operators will welcome having a degree of flexibility, but there must be further dialogue in applying flexibility as there will be an inconsistent or inadequate implementation of the new CPC.

Parcel operators will wish to have some understanding of how Ofcom will monitor compliance with the new CPC; the issues on non-compliance by an operator and the actions to be taken by Ofcom.

DX supports Ofcom's intention that the requirements of the proposed new CPC will commence in April 2023, but we require Ofcom to allow discussion and provide further clarity on the above points

We would emphasise that in making these points, DX are seeking to ensure that the new CPC can work effectively and in tandem with the online retailers, and not to challenge it or the intentions behind it.

7: <u>USO parcels regulation</u>

Question 7.1: Do you agree with our proposal not to include tracking facilities within First and Second Class USO services? Please substantiate your response with reasons and evidence.

DX has stated, in its response to the Call For Inputs, that it was not persuaded that any change to bring tracking for First Class / Second Class services within the scope of the Universal Service Order (USO) was warranted and has already set out our case.

We stated that, by not making tracking a USO requirement and leaving DUSP1 unchanged, Ofcom would ensure that RM continues to offer non-tracked, standard First Class/Second Class services. Although we believed it is very likely that RM will continue to offer tracked First Class/Second Class services as a commercial decision, without being under regulatory obligation. Leaving the USO and DUSP1 in place as currently would mean customers will continue to have the choice of tracked and untracked services.

We also pointed out that there would be a clear impact on competition if tracking was added to the USO requirements and/or allowed for these services by DUSP1, because of the VAT-exemption which would apply.

We therefore support Ofcom's proposal not to include tracking facilities within First and Second Class USO services.

Since the Call For Inputs, Ofcom has conducted further consumer research and found "high levels of satisfaction with Royal Mail's existing services" and "people who use Royal Mail's First or Second Class services (which do not include tracking) said that these services have most of the features they were looking for." Further, Ofcom research found that adding tracking to the product design of the standard First or Second-Class service did not enhance the mean scores for customer satisfaction.

Ofcom has also closely examined the marketplace for tracked services, in which several operators compete with RM.

We believe that the assessment by Ofcom further supports Ofcom's conclusion that tracking should continue to be a required feature of the Special Delivery Guaranteed product, while retaining the requirement that the First and Second Class services should not include tracking facilities.

***Question 7.2 Do you have any further evidence or views on other issues relating to USO parcels regulation? Please substantiate your response with reasons and evidence*.**

DX has no other views to express at this stage.

8: Access for Bulk Mail

Question 8.1: Do you agree with our proposals on the scope of access regulation? Please substantiate your response with reasons and evidence.

In our response to the Call for Inputs, DX set out concerns with the operation of USPA5 (the 'ring-fencing' of Wholesale from Retail) and explained how USPA5 now hinders competitive development. Its requirements can be used by RM Wholesale to justify requiring separate systems for Wholesale service development in response to new Access service requests, even when there is already a directly comparable Retail service in operation.

By undertaking the above, the comparable new Wholesale service will be prohibitively expensive (as is evidenced by the failure of all new Access service requests since 2012).

In response, Ofcom has stated, in Annex 10 to the Consultation, that it considers USPA3 (regarding unfair terms) can be used to address the concerns raised by DX.

We believe that is unrealistic, as USPA3 is too generic to resolve the issue and the use of USPA3 would require a lengthy, complex, and very burdensome complaint to be raised for each instance in which a customer believed RM had used USPA5 to prevent introduction of a requested, new Access Service. Thus, meaning, USPA3 could only be used retroactively and would always depend on Ofcom taking up a complaint.

DX urges Ofcom to reconsider changing the 'ring-fencing' provisions of USPA5 (we have recommended that it should now apply to Retail bulk mail rather than around Wholesale) and set up a proactive framework that would support the development of competition to the benefit of users as well as benefit RM in receiving revenue towards sustainable provision of the Universal Service.

A change to USPA5 would also support the vital regulatory principle that RM Retail buys downstream activities on the same terms (both price and non-price), which is in place for Access customers.

Question 8.2: Do you agree with our proposals on access price regulation? Please substantiate your response with reasons and evidence.

As far as DX is aware the existing USPA Conditions on Access pricing have provided some protection for Access-based competition, through the 'price squeeze protections', and have generally prevented unfair competition from RM Retail.

However, as we have mentioned previously, in submissions to Ofcom, we do have concerns about the form of the Conditions and Ofcom's monitoring of RM's compliance to them.

USPA 6 requires that RM must "have a reasonable expectation that at the time of setting new prices including the time of offering prices for each new individual contract". it is meeting the price squeeze requirements and that each quarter RM provides forecast and actual information in general and specifically for any new contracts.

Our concern is that RM only must demonstrate "reasonable expectation" that new prices will comply with the requirements and subsequently provide information to Ofcom. It is not apparent to DX that Ofcom validates RM's "reasonable expectation" or that Ofcom assesses the information reported to verify that the requirements have not been breached.

There is no visibility to the market that the "reasonable expectations" are seen by Ofcom as reasonable, or that Ofcom have checked whether the expectations have been achieved, or that Ofcom has checked that RM has not breached the requirements in relation to any individual contract.

Ofcom have told DX, in that past, that it will (and does) investigate any complaint made if RM has not met the USAP6 requirements. However, it is not an appropriate use of Ofcom resources for Ofcom to carry out such checks on its own initiative.

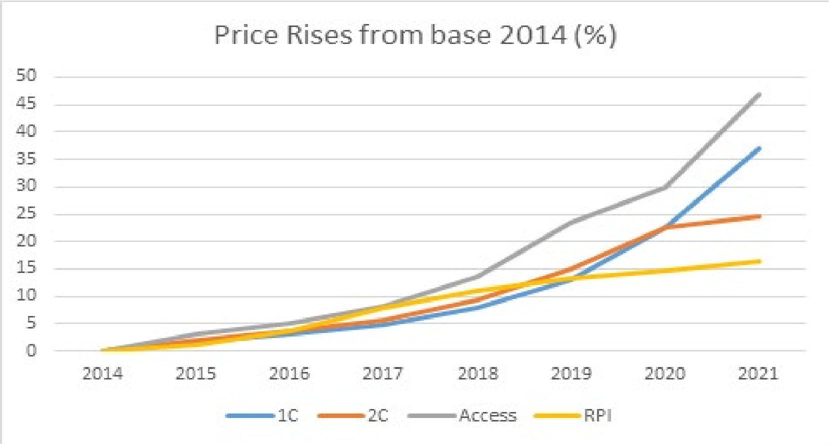
Neither DX or other MCF members have access to the information needed to substantiate a complaint (such information is only provided by RM to Ofcom and in confidence). Therefore, it is very difficult for any complaint to be made.

In the absence of any 'own initiative' checking and subsequent statement by Ofcom, the market cannot have good confidence that the USPA 6 Conditions are, in fact, being met.

DX believes that it is important that Ofcom carries out checks and reports the outcome. We understand that this does not have to be in place for every price change or every quarter but should be done at intervals and on a sample of individual contracts.

We firmly believe that in the absence of any competition to RM, in final mail delivery and the absence of direct regulatory control, RM have been allowed to repeatedly increase Access prices in real terms (with increases often several times the prevailing rate of inflation).

The graph below shows how Access prices [for Business Letter Mailmark, as the key Access service] have increased at a significantly greater rate than RPI (or 1st or 2nd Class USO stamped letters) since 2014.



The majority of bulk mail items despatched use Access and Access charges for business mail and have increased on average by 5.9% in real terms over the same period – with a further, considerable increase applied in January 2021.

DX believes that because of the majority of bulk contract mail being posted is through Access and the current USPA price regulations, those prices related to the price squeeze and in effect, apply to RM's Retail prices, rather than Access prices. Therefore, RM have the freedom to increase Access prices without any restriction and, given RM's monopoly in the final delivery of mail, the lack of regulation may be seen as a misuse of market dominance.

In addition, as current price regulations are based on RM's upstream revenues and upstream costs, it can be considered a reflection of the 'ring-fencing' of RM Wholesale. The competitive threat from RM Retail will be reduced significantly, with upstream margins now very low.

For the reasons highlighted above, DX continues to strongly believe that the existing regulations should be replaced with some form of direct control on Access prices. We have suggested such control could be linked to CPI inflation and to efficiency improvement, thus preventing large, real terms increases and giving a mechanism for the benefits to RM from efficiency gains to be shared with customers through price.

We note the analysis Ofcom provided in Annex 10 to the Consultation, however, much of the information used by Ofcom is redacted, and we are unable to make any substantive comment.

Question 8.3: Do you agree with our approach and proposals for the non-price terms of access regulation? Please substantiate your response with reasons and evidence.

DX believes current Access regulation does not sufficiently mitigate or counter RM's monopoly in final delivery of mail. The Access Contract gives RM a high degree of control over price and non-price terms and allows RM unfettered ability to impose contract changes opposed by contract holders. In DX's experience the current regulatory requirements do not work for the benefit of customers and the industry.

Access Contract Changes:

During 2020-2021, RM reviewed many terms of the Access Contract and proposed several changes. Despite common and strong objections from customers, RM decided to go ahead with the changes it proposed and, in November 2021, issued and formal Contract Change Notice for the changes to be effective from June 2022.

DX has analysed the contract changes being actioned by RM and we believe it is clear RM has in several instances undertaken the following:
- not provided sufficient notice by failing to consult as required by the Access Letters Contract:
- notified terms which are not fair and reasonable, contrary to the USPA Conditions

- misrepresented the nature of the contract changes.

DX is seeking resolution of the above inactions with RM, but we believe the situation may now exist where there as Access Dispute should be investigated by Ofcom.

Although the Access Contract includes provisions for dispute resolution, they do not encourage early resolution of issues and are onerous and expensive to pursue for contract holders. Short of terminating their contract, customers have no option but to accept changes made by RM without negotiation..

In theory, it is possible to escalate a contract dispute with RM to Ofcom, on grounds that RM is in breach of the USAP3 requirement for RM to provide access on "fair and reasonable terms, conditions and charges". However, it has been found that making a compliant to Ofcom in relation to USPA3 can be excessively onerous, slow, and expensive process.

To our knowledge, since 2012 only one complaint made to Ofcom has been accepted, with an investigation initiated. The complaint related to the Zonal Pricing changes announced by RM in April 2016 (which effectively ended Whistl's (then TNT Post UK) presence in final mail delivery). It took over 4 years for Ofcom to conclude the investigation (and RM is still seeking to appeal Ofcom's decision).

New Access Services and Contract Variation Requests:

When RM receive requests from customers for new Access services, RM has always refused to progress any request that fell outside the remit of the USPA Conditions. Where requests have been made within the USPA remit, RM has repeatedly frustrated such requests, despite an agreed process in place. The effect has been to supress the development of competition, protect RM's market position and prevent Access services from being able to adopt technological developments.

Problems associated with new Access Service requests were a key part of Ofcom's last Regulatory Review in 2017, but changes recommended have not yet come into effect and have not been pursued by Ofcom. For example, the 6-week time limit for RM to respond to a request where there was already an existing, directly comparable Retail service.

Despite USPA 4.1 requiring RM to publish a "Statement of Process" for requests for variations to existing Access Contracts, DX, during 2021, was only able to briefly locate the statement on RM Wholesale's website. A two-page form did appear on the website, unannounced and without communication to customers, but there were no details of the process to be followed after submission of the form and no mention of the timescale.

Through USPA 10.4, the "8-Stage Gateway Process" for new Access Service requests (published by RM after the consultation which followed Ofcom's last Regulatory Review in 2017) does not cover contract variation requests (RM decided this was 'out of scope' for the consultation).

RM has recently initiated a consultation on the Contract Variation Request and the MCF has responded to the request. We have stated that we find the proposed process unsatisfactory in several areas. For example, although the process has a timescale of one month for RM to respond to a request, RM gives itself unilateral power to impose an extended timescale. We await the response from RM.

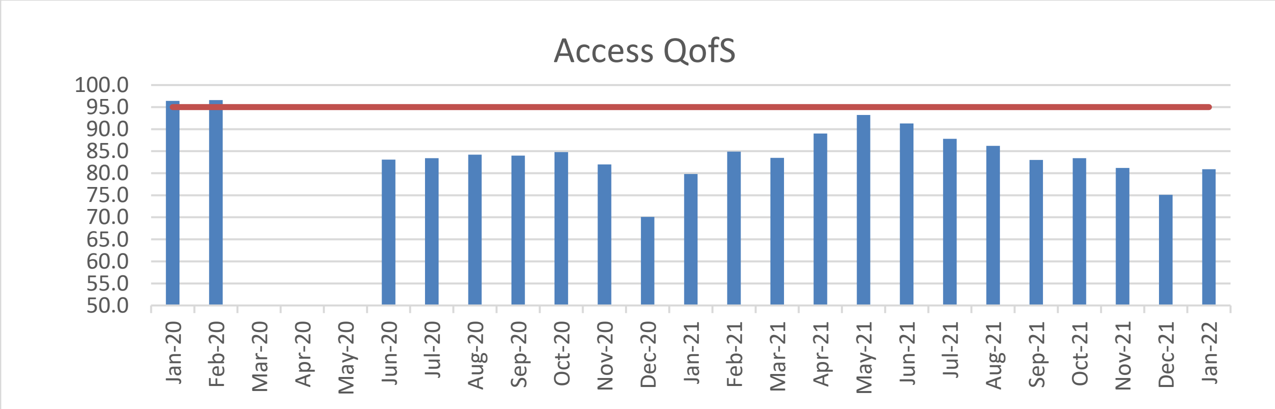
Quality of Service

There is another example of the current Access regulation failing Access users, which does not ensure fair and reasonable contract terms, which is the position of the Access Quality of Service (QofS).

Since April 2021, RM has unilaterally declared a Disruptive Event, meaning its contractual obligations on QofS, including paying compensation for poor service performance are suspended. Despite Ofcom declaring that the Emergency Period, which suspended RM's QofS obligations for

USO mail, ended on 31st August 2021, RM has refused to end the Disruptive Event for Access mail. This means that RM has suspended its Access QofS obligations for almost two years.

During this period, RM has failed to provide the 95% QofS standard specified in the Access Letters Contract.



	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22
Actual	96.4	96.6				83.1	83.4	84.2	84.0	84.8	82.0	70.1	79.8	84.9	83.5	89.0	93.2	91.3	87.8	86.2	83.0	83.4	81.2	75.1	80.9
Target	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95

Although DX strongly believes that the Disruptive Event clause of the Access Contract cannot apply other than for a limited period, contract holders have no ability to challenge RM Wholesale's actions, other than through the very onerous, lengthy, and expensive disputes procedure.

In DX's view, there is no effective redress for QofS failure within the Access market, and therefore no redress for more than 60% of the letters market. Whilst Ofcom has fined Royal Mail for QofS failures on USO services, RM has never paid compensation to Access customers for QofS failures.

For the reasons mentioned above, relating to RM having the control in the Access contract, customers have never been able to change the terms for QofS compensation, which include several caveats, where RM would not have to pay compensation for failures.

DX is seeking to pursue the limited opportunities provided by the Access Contract and the USPA Conditions and to achieve resolution of our grave concerns. We will consider a submission of an Access Dispute if no progress is made.

We trust the responses will be of assistance to Ofcom. DX would be happy to discuss any part of the response with Ofcom.