

### **Changing the Access Mandate to remove General Large Letters ('fulfilment large letters')**

The MCF did not comment on this aspect of the Consultation in its response, as we fully supported Ofcom's reasonable conclusion that "it would not be appropriate to remove FLLs from the scope of access regulation" [8.63]

The MCF fully concurs with and supports Ofcom's assessment, as set out in the Consultation document, in particular that "there is a real risk that the ability of access operators to compete for bulk letter users could be impaired, without access to a mandated FLL service" [8.58] and "we do not have evidence to suggest that a mandated FLL service is (or is likely to) harm parcels market competition in a material way" [8.63], when that parcels market competition includes RM.

*Note: "FLL" or "Fulfilment Large Letters" is a term Royal Mail (RM) has chosen to introduce to the discussion, it is not a term that Ofcom has used previously and, in particular, is not a term used in the Access Letters Contract or User Guide, where only General Large Letters (GLL) is used. The MCF finds it curious that RM has sought to bring into use this new term, in pursuit of its commercial aims.*

In its response to the Consultation, Royal Mail (RM) makes several (often repeated) assertions; in the comments below, the MCF offers its rebuttal of those assertions:

It is RM that calls these items GLL, not the access operators, and RM has specified them as such in the Access Letters Contract /User Guide

RM has chosen to create separate definitions for Business Mail, Advertising Mail and Subscription Mail [these can be grouped as "non-GLL items"] in order to be able to specifically categorise such mail in order to charge at a lower price, to support RM's competitive position because of the indirect competition to mail for such applications.

It is RM that has set the weight and dimension limits for Letters and Large Letters, not Ofcom; therefore it is disingenuous for RM to object to Ofcom using RM's own definitions when specifying the Access mandate.

If RM believes there is justification to change its use of weight and dimension to set limits for Letters and Large Letters, RM has the opportunity to do that (through the Access Letters Contract). RM has already used the Access Letters Contract to specify the requirements for non-GLL items (and so distinguish them from GLL), where it has chosen to.

Presumably, the lower prices RM charges for non-GLL items are properly reflective of the lower costs RM incurs in sortation and delivery of such items.

RM has quoted as examples how the charge for a GLL item is 78.2p when the charge for a BM LL item of comparable weight is 58.4p. That is a 34% price difference.

Therefore, RM is receiving fair revenue for its handling of non-GLL items, allowing for the costs incurred.

RM has picked up on Ofcom's comment that "There are also practicality issues and additional costs which could arise if FLLs are removed from the access condition. This is due to the difficulties involved in controlling the content included in the letters posted by access users", but has mistakenly taken this to relate only to how RM handles such items – rather than seeing this from the perspective of users, as it should do and Ofcom has done

RM's use of the term "fulfilment large letters" to refer to all GLL items is very misleading because it directs the focus to e-commerce usage.

Because of the detailed and complex specification requirements set by RM for non-GLL items, some customers chose not to post on non-GLL services, preferring to pay a known price than to have to incur additional mail production and preparation costs to ensure their items meet one of the non-GLL specifications and to face the risk of additional, unexpected costs if non-GLL are found by RM to be non-compliant and so surcharged or even rejected.

GLL is often seen as the 'default' Access service for LL-size items; just because e-commerce users have adopted this format it does not mean that all GLL traffic is fulfilment / goods. The format is used by customers who cannot meet the specifications for other, lower priced but tightly specified Access services.

Also, were Ofcom to allow removal of GLL from Access it could disproportionately impact the use of access services by SMEs and mailrooms. There is quite often a small proportion of this traffic mixed in with printed paper. If an access provider can't service this content then the customer has to either split their traffic across operators or switch back entirely to RM Retail. If a customer splits its traffic, the GLL volumes are such that they are unlikely to qualify for a free collection from RM Retail, so they have both this cost and the hassle of mixed indicia, double collections etc.

In those circumstances, it is quite likely the customer will just revert to RM Retail and cease use of Access. Hence, removing this one, small Access service enables RM may well have the effect of bringing back into RM Retail low volume, high price business mail as well as GLL traffic into RM Retail and potentially to close off parts of the market to use of Access.

RM has confirmed that "The content controls in access work well and successfully pick up where 'goods' are being sent rather than correspondence. The content control process starts by determining if the content of the letter meets the criteria for Business, Advertising or Magazine subscription. If not the default large letter product is a General Large Letter (GLL). The next step is whether or not the large letter is below or above 10mm, typically it will be in packaging which takes it over the 10mm. This will impact whether or not it is machineable through large letter automation or parcel automation and/or whether a Mailmark service can be chosen"

– i.e. RM is already able to differentiate between non-GLL and GLL items, and it charges appropriate prices to reflect handling differences.

While there is some direct end-to-end competition for GLL, that competition is limited and RM continues to enjoy a significant (perhaps dominant) market share.

RM's blunt assertion that "Removing fulfilment large letters from access regulation would not harm access competition" is very obviously false. The use of GLL Access services is a well-established (though, as Ofcom reports, a relative small) part of the current competitive market – removing GLL from Access manifestly cannot do other than harm access competition when it is already part of that competition.

In seeking to support its argument, RM has repeatedly used a bank sending a card reader as an example of a use of GLL. This is an important example, because Access services are VAT-exempt and financial services businesses are unable to recover VAT paid; removing GLL from Access would hence have a very significant cost impact on a bank sending card readers. RM also mentions similar use of Access GLL by "Government bodies", who face similar VAT issues.

RM also says "when Ofcom took over regulation from Postcomm in 2011/12, and removed parcels from the access regime, Royal Mail decided it was in its commercial interests to continue to voluntarily offer parcel services in access. Similarly, it may well be in Royal Mail's commercial interests to continue to offer access for fulfilment large letters even if Ofcom takes those items outside the scope of the access regulation".

It is true that RM does voluntarily offer Access parcel services. However, RM and Ofcom are both very well aware that the absence of an Access mandate for parcel services means that the

contractual terms for RM's "voluntarily offered" services are severely in favour of RM, because the Ofcom regulations (in particular that terms be fair and reasonable) do not apply. Even if RM were to offer Access GLL voluntarily, the terms are likely to similarly be severely in favour of RM and there would, in any case, be severe disruption to the established market while new contracts were agreed and implemented. Such voluntarily offered Access GLL services, would also be VATed.

RM further say that "It is short sighted to say that fulfilment large letters are currently only a small proportion of the total parcel market and not having a material impact on the development of E2E competition." Ofcom has already considered this, as part of its Consultation on a regulatory regime that will extend to 2027, and concluded that removal of access GLL is not warranted. Should RM genuinely believe market conditions have changed so radically before the next Ofcom regulatory review, RM can submit evidence sufficient for Ofcom to consider revisiting the regulatory regime before 2027. It would be inconsistent with its regulatory duties if Ofcom were to make such a radical and disruptive change now, just because RM thinks the market position might change significantly enough in the future for Ofcom to reach a different conclusion now.

Ceasing Access GLL would cause many Access operators to have to exit this market sector after making significant investment, meaning they were left with stranded costs while losing important revenue. That would bring great change to the market and would be likely to significantly alter established competition, with customers having to switch to other providers. Most importantly, it would create severe distortion by ending availability of the VAT-exempt Access services.

It is for RM to decide its pricing for non-GLL Large Letters; if it believes it is facing increasing competition in this sector, it can respond to that in a normal, commercial way – it cannot be allowed to radically improve its competitive position by eliminating an establish part of the market, just because it fears it faces increasing competition..

Access customers have requested additional Access services (within the mandate) to enable competition with RM Retail services (e.g. Proof of Delivery and Tracking), but RM has blocked all such requests, to unfairly defend its competitive position.

For RM to argue for GLL to be removed from the Access mandate at the same time as it is arguing for tracking to be allowed by the USO/DUSP (and so become VAT-exempt), and also while it blocks all requests for new Access services, is a wholly unjustifiable position that cannot be allowed by Ofcom.

RM has also sought to support its request by invoking the Postal Services Act tests for whether Ofcom can mandate Access.

Those tests are for Ofcom to add to the Access mandate and cannot be used to argue for a change to the existing mandate. Ofcom set the Access mandate with those tests in mind has periodically considered whether to extend the Access mandate and (as now in this Consultation) has not been convinced that the tests are met; it should not be the case that the tests can be retrospectively applied to remove something from the existing mandate.