

23rd May 2018

Richard Orpin
Ofcom
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Dear Richard

OFCOM CONSULTATION ON BASIS FOR RECOVERY OF COSTS INCURRED BY
CABs IN RELATION TO POSTAL SERVICES

March 2018

Opening Comment:

In responding to Ofcom's July 2017 consultation on proposed changes to the recovery of Ofcom and CABs costs, the MCF made clear it did not agree with any changes to the existing methodology.

MCF said that the industry needs a strong and healthy Royal Mail and Ofcom was meeting its primary duty to preserve the USO. Ofcom could and should, therefore, be doing more under its Communications Act duties to further the interests of consumers, where necessary by promoting competition, and that the proposals would represent a regressive step and damage competition.

MCF believes that Royal Mail have been emboldened by the actions of the Regulator since 2012 and that the proposals were a manifestation of this, resulting from persistent lobbying by Royal Mail rather than regulatory need.

The subject of changes to regulatory and CABs cost recovery had been debated and rejected by the industry and Ofcom in 2014 and the MCF arguments set out in 2014 continue to be valid, probably more strongly given that material End to End competition is most unlikely to develop.

We believe that it is entirely appropriate for Royal Mail to cover the whole costs of Ofcom and CABs work on the postal market.

The charges levied by Royal Mail in its Retail, Wholesale and Parcels businesses already cover the costs arising from recovery of Ofcom and CABs costs, so the whole postal community is already paying for that recovery.

Upstream operators operate on very small margins and there would be minimal opportunity to recover the administrative charges from posting customers, many of whom trade on fixed term multiyear contracts. Consequently the proposals would further weaken upstream competition with the sole beneficiary being Royal Mail, through both improved profitability and weakened competition.

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The MCF is greatly concerned that Ofcom has ignored these very valid points and has decided to extend recovery of its costs to include upstream operators. This will only unnecessarily increase Royal Mail's profits at the expense of other operators and so weaken, rather than promote competition.

Responses to questions on revised proposals regarding recovery of CABs costs:

Question 1: ...

Do you agree that revenues from single piece end-to-end letter delivery services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons.

MCF response: Yes

Single piece end-to-end letter delivery services are services used by individual consumers and so are a type of postal service where any concerns would be likely to be raised with the CABs.

Question 2...

Do you agree that revenues from end-to-end bulk mail services should be taken into account for the purposes of recovering consumer advocacy costs on post, and that revenues from services provided under an access agreement should not be taken into account for the purposes of recovering consumer advocacy costs on post? Please give your reasons.

MCF response: Yes

Bulk mail services are used by businesses, rather than individual consumers, and will be on the basis of a contract between the customer and the supplier. Such contracts provide specific clauses to deal with any incidences of poor service quality, service failures and other issues to be resolved between the customer and supplier, and so would be very unlikely to involve one of the CABs.

Recipients are also concerned in the quality of bulk mail services (as consumers, though not as the paying customer), but have no contractual relationship with the supplier and so may raise concerns with one of the CABs.

Because of that, it would seem reasonable to include bulk mail services within the cost recovery mechanism.

However, any concerns by consumers would relate to their experience as recipients of the delivery of mail and so only those postal operators whose service included the final delivery of mail should be included for CABs' cost recovery. Postal operators using downstream access agreements do not provide the final delivery and so should not be included within the cost recovery.

Question 3...

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The views expressed in this letter represent the general views of the Mail Competition Forum and do not necessarily represent the particular position of any individual member organisation.



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Do you agree that turnover from parcel services should be taken into account for the purposes of recovering consumer advocacy costs on post? Please provide your reasons.

MCF response: Yes

It is clear from the information provided to Ofcom by the CABs and by the CABs' workplans for the future that a significant proportion of their costs relate to parcel services so it is proper that turnover from parcel services should be included.

Question 4...

Do you agree that consumer advocacy costs on post, in regard to work completed by the CABs on the Post Office, should be recovered from all relevant postal operators? Please explain why.

MCF response: NO

The information published by Ofcom in its consultation shows that nearly 30% of CABs costs relates to the Post Office network; given that some of the CABs' work on 'Consumer needs and future developments' will also relate to the Post Office network, it is clear that more than 1/3 of CABs costs are in this area.

Ideally, the cost of this work should be recovered from the Post Office, but that is not possible under the relevant legislation.

As Royal Mail has a contract with the Post Office under which only Royal Mail is able to use the Post Office network as part of providing postal services, the CABs' costs in relation to the Post Office network should be recovered only from Royal Mail.

We note and agree with Ofcom's statement (4.65) that:

"the exclusive nature of the commercial relationship between Royal Mail and the Post Office – which applies until at least 2022 – means that other postal operators cannot provide services via the Post Office network. We accept therefore that on the basis of cost-reflectiveness and fairness and equity in particular, there is an argument that postal operators who cannot access the Post Office network should not be required to contribute to costs incurred by the CABs in relation to the Post Office"

However, Ofcom has suggested this would be very difficult to achieve in practice and, given the principals for cost recovery, Ofcom hence proposes to cover these CABs' costs from all relevant postal operators (i.e. those postal operators already included within the methodology as providers according to questions 1, 2 and 3).

The MCF strongly objects to the Ofcom proposal that postal operators other than Royal Mail should contribute to the cost of the CABs' work on Post Offices (even when access operators are excluded).

Royal Mail should bear all these costs as it alone is able to use the Post Office network in provision of its postal services, in competition with other postal operators.

Ofcom's view that it would be too difficult for the CABs to allocate administrative costs incurred in relation to postal services to particular areas of work (i.e. to work relating to the Post Office) is incompatible with the regulatory principles of cost-reflectivity, fairness and equity, and seems to use a current weakness in the CABs' procedures as justification for not requiring them to change those procedures.

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It would, therefore, unjustifiably impose costs on private sector businesses instead of requiring public sector organisations to improve their procedures in a situation where a commercial contract held by Royal Mail (itself a private commercial business) gives it exclusivity of access to the Post Office network

The MCF strongly believes that Ofcom should instead require the CAB to establish ways of allocating their costs appropriately and so allow recovery of the costs relating to the Post Office to be recovered from the sole beneficiary of access to Post Offices.

Whilst this would add complexity to the CABs' current procedures, those procedures need to be changed and existing weakness cannot be justification for no change to be made.

Considering Ofcom's regulatory principles, it must be the case that a slight loss in simplicity and transparency is more important than a significant failure in cost-reflectivity, fairness and equity.

Question 5...

Do you agree that the minimum revenue threshold for relevant letters postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £10 million? Please explain why.

MCF response: Yes

A threshold of £10m is consistent with Royal Mail's current near-monopoly on final delivery of mail, while leaving open the potential for any other final delivery postal operator to make a proportionate contribution to the cost recovery if it achieved a meaningful presence in this market.

Question 6...

Do you agree that the minimum revenue threshold for relevant parcels postal services, for the purposes of recovering consumer advocacy costs on post, should be set at £350 million? Please explain why.

MCF response: Yes

We note that the threshold of £350m is based on analysis of the information Ofcom has on the parcels market and the levels of market share and revenues by parcel operators. We see no reason to argue against Ofcom's assessment of £350m as an appropriate threshold.

Question 7...

Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (CP1)? Please provide your reasons.

MCF response: No further comments



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Kind regards,

Yours sincerely

Steve Hibbert
MCF Administrator