

Recovering postal regulation and consumer advocacy costs

Whistl Response to consultation on consumer advocacy costs

Whistl has had the opportunity to review the Mail Competition Forum (**MCF**) submission to this consultation and supports the views expressed. Whistl wishes to make the following additional representations:

General: in the longer term, the costs of regulation should be met from the public purse and from fines imposed by regulators for breach of regulations. Whistl notes that this would require a change in legislation and would support moves to make such amendments to the current law. Whistl also deplores the lack of accountability for, and extent of, the costs incurred by the Consumer Advocacy Bodies in relation to postal services and regrets that OFCOM has not exercised its discretion not to pass these costs on to the industry.

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.

Given the chosen means of funding the Consumer Advice Bodies (CABs), we consider this to be appropriate, subject to the threshold, below which contributions are not made, being set at a reasonably high level. Please see our answer to Q5 below.

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.

Whistl strongly supports the exclusion of revenues from upstream access services from the relevant revenues since there is no consumer contact between access operators and consumers and, thus, no role for CABs in relation to that upstream postal activity. However, as consumer complaints are linked to delivery, in the context of bulk mail, the revenues that Royal Mail derives from delivering access letters and large letters should also be taken into consideration. In the eyes of the consumer, there is no difference between retail and wholesale bulk mail services, as all are delivered by Royal Mail. It is, therefore, incorrect to suggest that Royal Mail only has an interaction with consumers when it provides an end-to-end bulk mail service (paragraph 4.55). It has an identical interaction when it delivers access mail. The access operator, on the other hand, has no contact at all. Thus, it is to be expected that consumers' issues (as recipients of mail) would apply equally to both end-to-end bulk and access mail flows. To reflect this, the definition of excluded services in paragraph (7) of the definition of "relevant letters postal service" should be amended – perhaps by replacing the words 'including' with 'but not those provided' - to clarify that it excludes only those access mail services provided by postal operators other than Royal Mail. If Royal Mail's access revenues were to be excluded, this would result in a disproportionate portion of CABs' costs being picked up by parcel operators (unless OFCOM accepts the proposal that parcels operators should be responsible only for the parcels-related activities of the CABs – see our response to question 6 below) or other letter delivery companies (if any should exceed the proposed £10m threshold). To exclude Royal Mail's significant downstream access revenues would be neither equitable nor reflective of the costs incurred by CABs in relation to Royal Mail's delivery activities.

Question 3... 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.

Subject to the general point about the extremely high level of CABs costs, Whistl agrees that, if CABs are devoting time to addressing consumer issues in relation to parcel delivery services, those services should be taken into account. It is important, though, that parcels companies bear only a reasonable proportion of relevant costs and, either, that all Royal Mail revenues (including access services) should be taken into account to ensure that this is the case or, preferably, they should be responsible only for their share of parcels-related activities within the CABs.

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.

Given the exclusivity arrangements in place between the Post Office and Royal Mail, it is wholly inappropriate for other operators to have to bear any costs in relation to CABs' activities in connection with the Post Office network. If the CABs are currently incapable of allocating costs, then they could easily set up a system where their staff record their time spent on matters relating to the Post Office. In the absence of such a system, a proxy for actual cost allocation could be used e.g. as OFCOM have done in this consultation, taking the proportion of total external postal services research spend that relates to Post Office matters and applying that to total CAB costs. That proportion of the CABs' spend should then, for so long as it has an exclusive arrangement with POL, be borne by Royal Mail. That would be simple, cost-reflective, transparent, equitable and fair. This position could be reviewed if and when exclusivity falls away at some time in the future.

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.

Whistl does not have a strong view on the threshold, only that the threshold should be set sufficiently high that, in practice, only Royal Mail bears the costs relating to relevant letters postal services. The elimination by Royal Mail of significant letter-delivery competition from Whistl means that Royal Mail alone is likely to remain the only material letter delivery business in perpetuity and, as such, should bear the entire costs of CAB activity in relation to letters services.

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.

There is a preliminary point that parcels operators should only be responsible for the consumer-related parcels activities of CABs. Using a proxy cost-allocation method (based, for example, on the proportion of spend on external research on parcels) in the absence of an actual cost allocation method, these CAB parcel-related costs could be identified. They should then be shared according to the relative revenues of all relevant parcels operators. In the case of Royal Mail, it would exclude its letters and large letters revenues. This would be cost-reflective, fair and equitable sharing of the CABs' relevant costs.

As to the threshold, OFCOM has identified those parcels operators who are most likely to attract the attention of the CABs. Whistl has no particular reason to disagree with the proposal that it be set at £350m. For the avoidance of doubt, though, it should use revenues relating to those who deliver parcels and, thus, (a) exclude any revenues derived by upstream or broker services in relation to

parcels and (b) include revenues of Royal Mail from (currently, non-mandated) downstream access parcels.

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.

We have suggested some drafting changes to ensure that Royal Mail's downstream access revenues are taken into account (question 2). In addition, changes would be needed if OFCOM decides to allocate and distribute CABs' costs more equitably (namely, allocating Post Office related costs only to Royal Mail and ensuring that parcels operators are responsible only for their relevant share of the costs of the CABs' parcels activities).

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