

## Consultation response form

Please complete this form in full and return to [postal.regulation@ofcom.org.uk](mailto:postal.regulation@ofcom.org.uk)

<b>Consultation title</b>	Consultation: Modifications of the USP Access Condition for regulating access to Royal Mail's postal network
<b>Full name</b>	[X]
<b>Contact phone number</b>	[X]
<b>Representing (delete as appropriate)</b>	Organisation
<b>Organisation name</b>	Whistl UK Ltd
<b>Email address</b>	[X]

## Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom's General Privacy Statement](#).

<b>Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.</b>	Nothing
<b>Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.</b>	None
<b>For confidential responses, can Ofcom publish a reference to the contents of your response?</b>	Yes

## Your response

<b>Question</b>	<b>Your response</b>
<b>Question 1: Do you agree with our proposal to extend the USPA condition to the new D+5 Letters access services?</b>	<p>Confidential? – No</p> <p>Yes we agree.</p> <p>Whistl believes that it is appropriate to extend the USP condition to include the new D+5 service.</p>

Looking at the three statutory tests:

**Promoting efficiency.** This is the *raison d'être* of the product and whilst the figure is redacted in the consultation document it is believed to enable significant cost to be taken out of the network if product take-up happens in sufficient quantity. Whilst are keen for these efficiency benefits to be harvested by Royal Mail and the benefits shared with users of these services through lower prices.

**Promoting competition.** The D+5 service is a downstream initiative in which Royal Mail enjoy a monopoly. There is no material scope for improvements in efficiencies or product portfolio upstream, where the market is already fiercely competitive.

However the extension would play a vital role in maintaining the levels of competition upstream by continuing to keep the D+5 volumes under regulatory control. Access customers have had little joy with Access requests for non mandated services (or changes to the terms of the couple of non mandated services that do exist) since 2012 .To remove these (potentially significant) volumes from the mandate would remove the regulatory protection currently enjoyed by Access customers and would weaken the competitive landscape.

**Benefiting users.** The reduced pricing associated with the D+5 offering will benefit posting customers. Whilst most obviously benefiting customers who use the D+5 services with lower prices it must be borne in mind that the D+2 customers provide many of the core items for delivery that the D+5 item proposals depend on symbiotically. D+2 prices going forward should also reflect this.

Whilst does have a view (expressed more fully below) on the methodology used to calculate the price decrement and whilst the proposals are acceptable at launch believe an alternative option should be explored to ensure that the benefits to users are transparent and objectively justified in the 2022 review.

**Question 2: Do you agree with our proposal to include Royal Mail's new retail economy Mailmark Letter services and their access equivalent services in the margin squeeze control?**

Confidential? – No

Yes Whistl agrees with the proposals to include the new retail economy product in the margin squeeze tests at launch.

Whistl does not wish to delay the introduction of the new Economy products to the market so is supportive of the regulatory approach as proposed.

However with the 2022 review of the market imminent Whistl would like to suggest Ofcom considers alternative regulatory approaches, one possible approach is outlined below for consideration.

The economy product is not considered likely to deliver any benefits or efficiencies upstream, its total focus is to deliver cost benefits downstream as described fully in the consultation document. The handover requirements and for both D+2 and D+5 services are identical and so upstream efficiencies are not possible without change.

Margin squeeze protection of course relates to upstream revenue with the presumption that the downstream revenues are equivalent for both Wholesale customers and Royal Mails own retail business.

Whistl has concerns that the pricing mechanisms deployed by Royal Mail in arriving at the c3% discount are not sufficiently objective or transparent and need further clarity. Whistl and their posting customers would like Ofcom to set a cost justified pricing decrement to the D+2 price where the cost savings envisioned by Royal Mail are shared by both shareholders and users of postal services in suitable proportions. The paying customers are sacrificing speed of delivery to enable Royal Mail to make significant cost savings in its delivery network and it seems justified that they should expect to see a proportion of these savings flow through into a price decrease for this accommodation.

The idea of a cost reflective decrement is by no means new in regulation. Similar proposals

	<p>were made (but not adopted) on zonal pricing and Royal Mail itself offers a range of price decreases and adjustments based on cost avoidance or cost incurred to a standard service; examples include many of the Mailmark adjustments, discounts around sortation levels and tray incentives.</p> <p>The idea would then be that the D+5 price would be linked to the D+2 price within an agreed cost justified framework that regulates the quantum of the decrement.</p> <p>This approach would also allay fears that Royal Mail would, over time, seek to exploit the more inelastic D+2 customers whilst favouring the more elastic D+5 customers by progressively widening the differential between the two services unjustifiably. “Tethering” the two price points and agreeing the criterion on which the decrement is set will remove this issue.</p>
<p><b>Question 3: Do you agree that, if adopted, the proposed changes to the USPA condition should become effective from the date of Ofcom’s statement? For example, do you foresee any practical issues, or otherwise, with making the changes effective on the date of Ofcom’s statement?</b></p>	<p>Confidential? – No</p> <p>Whilst I would like Ofcom to proceed with all haste, there is a demand for the service within the customer base, largely driven by significant tariff increase coming into play from January 2020 and customers looking to mitigate the impact of this increase.</p> <p>However the VAT situation does complicate matters with both Royal Mail and the supply chain needing time to embed the change in VAT treatment into their billing engines.</p> <p>Perhaps a pragmatic suggestion, should Ofcom proceed as proposed following the consultation, is for Ofcom to make the changes effective from the start of the new tax year. Royal Mail and the industry will already be needing to make changes to their billing engines to accommodate aspects of Royal Mail’s tariff that change in April so incorporating this change at the same time would seem sensible</p>
<p><b>Question 4: Do you have any other comments on our proposals as set out above or our proposed amendments to our legal instrument (USPA condition)? Please provide your reasons.</b></p>	<p>Confidential? – No</p> <p>Users will have bought into the proposals having seen the projected splits by day of delivery with an expectation of the majority of</p>

their mail arriving D+2 (estimated 65%) and then a tail of delivery.

Ofcom have proposed to extend the USP condition on Quality of Service (QoS) but have not been prescriptive in what the information could contain. It would be most useful to have an average measure by each day of delivery so that the true delivery performance can be measured. It would be least useful if the measure aped the current D+2 measure of a single score for the overall D+5 performance.

Royal Mail have on 9/12/20 issued a contract change notice setting a single measure for QoS and associated compensation payment changes. This would enable RM to claim service has been delivered even if all of the mail was always delivered on the last day which is clearly not the clients expectations.

Royal Mail should be encouraged to both set a QoS target and for the D+5 services on a delivery day basis and compensation where this this service is missed at more appropriate levels than currently exist in the D+2 Access Letters contract.