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Dear Caroline,

End-to-end competition in the postal sector

Draft guidance on Ofcom's approach

DX appreciates the opportunity to contribute to Ofcom's consultation on this draft guidance.

In brief: This work should not have been a priority for Ofcom, which could have better used its resources in considering the effect of electronic substitution on the universal service and looking into complaints about Royal Mail's poor treatment of customers. Ofcom needs to respecify the universal service so that it meets user needs.

It is difficult to read the consultation without constantly wondering about its relevance to a market in which electronic substitution is the most significant factor. Electronic substitution must surely be the greatest, if not only, external threat to the universal service and yet this consultation concentrates entirely on the effect of end-to-end postal competition. Electronic substitution has already caused dramatic reductions in postal volumes and triggered a massive restructuring of Royal Mail's operations. This restructuring would have been necessary without any form of postal competition and will have to continue despite the presence or absence of postal competition in the future. Might not Ofcom better devote its resources to understanding the future structure of the mail market in the context of these substantial structural developments rather than having to design processes for scenarios that are much less probable and can only have much less substantial impacts?

It is completely paradoxical that Ofcom is proposing measures to curb the effects of postal competition whilst it does nothing to limit the negative impact of electronic substitution. It would be consistent with Ofcom's wider responsibilities in the communications sector for it to take a more holistic view of the interactions between media rather than consider one medium in isolation.

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The universal service itself creates the greatest distortions in the postal market and generates the need for sector-specific regulatory intervention. Whilst there was once a time when a highly specified universal service was justifiable because the postal service was the “universal” means of distant communication for most people, this is no longer the case, as evidenced by Ofcom’s recent research into users’ needs. The primary means of communication has long since been migrating in the direction of email and voice media and the current form of the universal postal service is fast becoming an unnecessary and unsustainable luxury.

The universal service stops Royal Mail responding to its changing environment by imposing upon it an obligation that increasingly lacks an economic justification. It is now time to redefine the universal service so that it meets the future needs of its users instead of perpetuating outdated practices.

We appreciate that Ofcom has to work within a legislative framework and that an important element of that framework is the universal service. However, as we submitted in our response to your user needs consultation, this does not mean that Ofcom has no latitude to specify a universal service that corresponds more closely to user needs. Ofcom has over-specified the universal service in regard to both user needs and UK legislation. Whilst this over-specification exists it will be very hard for Ofcom to justify any of the remedial measures detailed in the end-to-end consultation; indeed, anyone subjected to these measures would have a strong legal case that they were incorrectly applied because of the over-specification. It is therefore essential that Ofcom ensures that its specification of the universal service is correct before finalising the measures to be applied in the case of competition in the end-to-end sector.

The vital factor in protecting the future of the universal service at whatever level set by Ofcom will be Royal Mail’s ability to improve its efficiency. It is important that Ofcom does not disincentivise Royal Mail by giving the impression that its competitors will be required to fund the provision of the universal service. This would be intolerable because it might result in the perverse situation where an efficient competitor was subsidising an inefficient Royal Mail.

A further issue is that the measures proposed by Ofcom have the effect of making entry into the end-to-end sector more uncertain for new operators. The incumbent will almost certainly welcome the resultant quasi-monopoly but users will suffer from prices above the competitive rate. If Ofcom is not to regulate Royal Mail’s prices directly then it needs to encourage competitive price setting and provide more certainty to entrants than is evident in the consultation.

As previously stated, we understand the legislative constraints on Ofcom but we do not believe that this consultation on end-to-end competition should have



been a regulatory priority. It would be much better for Ofcom to direct resources to understanding the broader dynamics of the communications sector and to making good the shortfall in its attention to complaints from many stakeholders in the postal market about Royal Mail's unreasonable treatment of customers and other postal operators.

Yours sincerely,

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