



## MAIL COMPETITION FORUM

Ofcom, Riverside House  
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London  
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### Statement of Charging Principles

Dear ,

The Mail Competition Forum (MCF) would like to thank Ofcom for the opportunity to comment on its Statement of Charging Principles, published on 13 December 2011. The MCF has serious concerns about this Statement in that (as drafted) it appears to allow a substantial, unnecessary and unjustified extension of the services that will be subject to regulatory charges. We would be greatly surprised if it were truly Ofcom's intention to allow such an extension, particularly as these services have not been subject to regulation in the past.

In its current form the Statement creates considerable uncertainty about who would be subject to these charges and no indication whatsoever about their level. This is extremely unsatisfactory because many postal operators are currently budgeting for the 2012/13 financial year and are unable to make provision for what might be high regulatory charges.

We request Ofcom to reconsider its proposals and, in particular, to clarify which services will be within the scope of the universal service and, therefore, subject to regulatory charges.

#### Background

As Ofcom has described in its Statement, the Postal Services Act 2011 allows it to impose an administrative charge on postal operators providing services within the scope of the universal postal service to meet costs incurred by it in carrying out its functions in relation to postal services. On 29 September 2011 Ofcom published the Statement of Charging Principles for Postal Services applying in relation to the period from 1 October 2011 to 31 March 2012, and any subsequent period of twelve months beginning on 1 April. This Statement of Charging Principles refers to: "those postal operators which provide services in relation to which, had those services been carried out prior to 1 October 2011, it would have been required to hold a licence under the Postal Services Act 2000".

In the new Statement of Charging Principles Ofcom expresses the opinion that it is necessary to substitute the above reference with a reference to, "those postal operators which provide Letter Services that are provided as services within the scope of the postal universal services as defined in section 40 of the Act". Ofcom gives no further justification for this substitution.

Under the Postal Services Act 2000 (PSA2000) operators needed licences to provide services within what had been a market segment in which Royal Mail had been protected by a statutory monopoly (the reserved area). This meant that they needed licences to provide services where the item:

1. Was conveyed for less than £1 AND
2. Weighed less than 350g AND
3. Where the service was not subject to one of the large number of exemptions in 7.2 of the Act

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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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The exemptions reflected the fact that, in the period before the PSA2000, it had been permissible to provide a number of services without breaching Royal Mail's monopoly. This was enabled by a system of class licences and statute. In essence, the exemptions recognised that the services were not within the scope of the universal service and that their provision could not conceivably harm the provision of the USO.

In some instances the distinction between universal services and other services was explicit in legislation. For example, the First Postal Directive (97/67/EC) says that there is an "essential difference between express mail and universal postal services"<sup>1</sup>. Further on, the Directive states:

*Whereas new services (services quite distinct from conventional services) and document exchange do not form part of the universal service and consequently there is no justification for their being reserved to the universal service providers; whereas this applies equally to self-provision (provision of postal services by the natural or legal person who is the originator of the mail, or collection and routing of these items by a third party acting solely on behalf of that person), which does not fall within the category of services;*<sup>2</sup>

In at least one other case Postcomm provided clarification about whether a service was covered by one of the PSA2000 exemptions<sup>3</sup>. On 6<sup>th</sup> June 2007 Postcomm published an "Open letter regarding the exemption from the requirement for a licence of 'pre-paid' mail conveyed to a licence holder". In this letter Postcomm wrote:

*A person whose business is only the conveyance and delivery of letters to Royal Mail for onward conveyance and delivery by Royal Mail, pursuant an access agreement under which the letters are regarded as pre-paid, does not require a licence for that business.*

This in turn implies that such a person was not deemed to be at risk of harming the universal service, the remedy for which was the requirement to hold a licence and be subject to the requirements of that licence. Postcomm's letter implicitly recognised the fact that if DSA contract holders are paying a price that allows Royal Mail to recover its downstream costs, including those attributable to the universal service, then they are not harming the universal service.

Taking the above discussion into consideration, the MCF would like to suggest that Ofcom should provide the same clarity as the PSA2000 and Postcomm about the services that are in the scope of the universal service and therefore subject to regulatory charges. To do this it is possible to refer to the PSA2000 in the manner used in the current Statement of Charging Principles, by adding at the end of the definition of "Letter Services" in 3.5.3 the words "which, had it been carried out prior to 1 October 2011, would have required a licence under the Postal Services Act 2000". Alternatively, it is possible to refer to services within the scope of the universal service, as is currently the case in 3.4 of the draft statement, and to refer to an annex in which is reproduced the list of services in sections 7.1 and 7.2 of PSA2000, stating, for the avoidance of doubt, that these are not within the scope of the universal service.

Further to these key observations about the scope of the universal service the MCF sees other weaknesses and inconsistencies in Ofcom's proposals:

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<sup>1</sup> DIRECTIVE 97/67/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (18)

<sup>2</sup> DIRECTIVE 97/67/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (21)

<sup>3</sup> Section 7(2)(h) Postal Services Act 2000



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1. Ofcom is proposing that only “Letter Services” should be subject to regulatory charges. This includes large letter items and represents an extension of regulation from items weighing up to 350g to those weighing up to 750g. This is unjustified and undesirable but it also appears to discriminate against operators providing small packet services. The universal service obligation extends to items weighing up to 20kg and it therefore seems wrong to extend regulation to only a restricted part of the market. If Ofcom intends to extend regulation beyond the “regulated postal services” it must justify this discrimination and establish that it is necessary or else modify its proposal but this would involve extending the obligation to pay for Ofcom’s costs to parcel operators on which extensive consultation would be needed.
2. The MCF does not understand the logic of a single £10m revenue threshold for the liability to pay regulatory charges. Although Ofcom has not provided an indication of the likely level of charges it is our belief, based on our knowledge of Postcomm’s costs, that an operator would become liable for charge exceeding £25,000 when its revenue exceeded the threshold. The possibility of such a sudden burden would incentivise avoidance strategies, deter business expansion and, possibly, bring some operators into trading difficulties. We would encourage Ofcom to reconsider its proposal, paying particular attention to the possibility of introducing some form of sliding scale of charges that would reduce the impact of their imposition.
3. We welcome Ofcom’s proposal to allow monthly payments of the regulatory charges. However, we believe that this should apply to all operators, regardless of the level of the charge. Smaller operators will incur considerable cashflow problems if they have to pay the whole amount in one go.
4. We believe that it is unreasonable of Ofcom to specify that payment is due on receipt of the notice of the amount served. This is because the operator will not be able to make provision for the cash required to make the payment. We request Ofcom to allow 30 day payment terms, as is usual in commerce.

We also note and would draw your attention to the consultation principles included as Annex 2.

These state that Ofcom “will hold informal talks with people and organisations ..... If we do not have time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation”. Given the breadth of potential application of these charging principles (as commented on above) we believe this approach should have been followed. But, to the MCF’s knowledge, Ofcom has held neither informal talks nor an open meeting on these proposals.

It is also a general principle of regulatory consultations that they include an impact assessment in order that those who may be affected by the proposals are able to understand how they might be impacted.

This consultation gives no information on the expected cost of Ofcom carrying out its postal services functions, nor on the likely amount of “total turnover generated by all operators identified in 3.4”.



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It is hence impossible for any postal operator to estimate the financial implication of the proposed charging principles and to respond in a properly informed way.

Kind regards,

Yours sincerely