

Title:

Mr

Forename:

Michael

Surname:

Macclancy

Representing:

Organisation

Organisation (if applicable):

DX (Group) plc

What additional details do you want to keep confidential?:

No

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Additional comments:

Question 1:Do you agree with Ofcom's analysis of the case for intervening as proposed in this section:

It is unfortunate that Royal Mail's behaviour has demonstrated that it cannot be relied upon to avoid anti-competitive actions and that Ofcom therefore needs to intervene. However, Ofcom's proposals place excessive constraints on Royal Mail's commercial flexibility and will harm the development of the market.

Question 2:Do you think the options of doing nothing and of imposing a price control on the level of Royal Mail's prices are not appropriate or proportionate:

Ofcom is over-estimating the effectiveness of competitive pressure on Royal Mail's wholesale operations. The market needs measures such as price controls in addition to or instead of Ofcom's proposals in order to protect stakeholders and bring about efficiency improvements.

Question 3: Do you agree with our approach to focus on existing Royal Mail zones to develop our response to the threats to end-to-end competition? If not please set out your reasons:

It is understandable that Ofcom should focus on Royal Mail's existing pricing structure but this is unlikely to be fit for purpose as competition develops. In any case, it is already unduly complicated and, arguably, unnecessary. Zonal pricing is only necessary in circumstances where mailers fail to post all their product with Royal Mail. In this case there needs to be a mechanism that computes the fair price to be paid. Anyone posting their entire volume with Royal Mail should be able to avail themselves of a national price, free of penalties for profile mismatches. Zonal pricing should therefore only apply to operators with their own delivery operations and to their customers who use those operations. There is currently discrimination between Royal Mail's access customers, who are subject to profile requirements and surcharging, and their retail customers, who are not.

Question 4: Is our proposed approach to the definition of Zones appropriate:

Yes, subject to the reservations in Question 4.

Question 5: Do you agree with our proposals regarding Zonal charges address our competition concerns? If not, please explain why:

Ofcom's proposals exceed what is needed to address competition concerns and place unwarranted constraints on Royal Mail's ability to respond to market developments. Royal Mail would only be able to react to local entry by reducing its costs or by reducing its margin everywhere. In the case of entry in London Royal Mail could reduce its costs in London and thereby reduce its prices there. However, in the event of entry into a predominantly urban area such as Manchester Royal Mail would need to reduce its costs in all urban areas or reduce its margins in all urban areas. It is unfair and unsustainable to leverage local competition in such a disproportionate manner.

Question 6: Do you agree with the proposed weighted average rule? If not, please explain why.:

It is reasonable that the charges for the national contracts should be the same as the weighted average price.

Question 7: Do you agree with our assessment of and proposed approach towards tolerances and profile surcharges on national contracts? If not what alternative would you propose:

Tolerances and profile surcharges are unnecessary on national contracts and should be removed. These contracts contain a clause that obliges contract holders to make reasonable efforts to comply with the national profile. Royal Mail has previously interpreted this as

meaning that if a contract holder posts all its mail with Royal Mail then they are complying with the obligation. This interpretation is correct because if one contract holder is under profile in an area or zone then another must be over profile in order to make up the total profile. However, Royal Mail has recently adopted a more stringent interpretation of the clause. The unfairness of the current system is exacerbated by surcharges that are applied when a contract holder is overweight in a costly delivery area but are not balanced by credits when overweight in low cost delivery areas. This is blatant exploitation by Royal Mail that Ofcom needs to address.

Question 8: Do you agree that it is appropriate to prohibit non-Zonal sub-national pricing plans at this time? If not please state your reasons.:

It would be unreasonable to prohibit non-Zonal sub-national pricing plans when these are transparently based on underlying zonal costs.

Question 9: Do you agree that the appropriate measure of cost in relation to our proposals is Zonal FAC by format? If not please state your reasons:

Ofcom needs to verify that the Zonal FAC ratio across the Zones does not vary significantly across services.

Question 10: Do you agree with our proposal to use historic cost data rather than forecast data? If not please state your reasons.:

This appears to be reasonable.

Question 11: Do you agree that we should require Royal Mail to use the 2012/13 ZCM, subject to a power for Ofcom to specify by direction that a different model be used? If not please give your reasons.:

This appears to be reasonable.

Question 12: Do you have a view on the appropriate volumes to use as weights in the weighted average rule? Please provide reasons for your view.:

There is a strong case that the total market volumes (Royal Mail + Whistl) are the correct weights to use.

Question 13: Do you agree that it is appropriate to use format level volumes as the weights in the 'weighted average rule'? If not please give your reasons.:

This appears to be reasonable.

Question 14: Do you agree with our proposal that the legal instrument implementing our proposed regulatory changes will come into force six months after the publication of the final Statement on this review? If not please give your reasons.:

This depends on the timing of the final statement in relation to the usual cycle of price and service notifications.

Question 15: Do you agree with the proposed scope of our review of the Zonal costing methodology to take place following the publication of our Statement? Are there any other issues that it would be appropriate to consider as part of the review?:

Ofcom should have performed the review of the zonal pricing methodology together with the review of Royal Mail access pricing, delaying publication if necessary.

Question 16: Do you consider that there is a need for a structured compliance process with respect to the proposed remedies? If so, why and what would be the value of such a process, if not why not?:

Ofcom is responsible for measures that ensure Royal Mail's compliance. Stakeholders are unlikely to have the resources to perform compliance checks.

Question 17: If we were to establish a compliance process what form should it take? :

Ofcom is best placed to design a compliance process.

Question 18: Do you consider there are reasons we should extend the access obligation to the crown dependencies? If so please state your reasons. :

This appears to be a technical matter concerning the extent of Ofcom's powers. Royal Mail should give an undertaking that it will continue to provide access services to the crown dependencies. If it fails to do so Ofcom should oblige it to do so.

Question 19: Do you agree that our proposals are likely to address the concerns we have identified? Are there ways that Royal Mail could take action which would undermine the effectiveness of our proposals? :

Ofcom is placing undue emphasis on the need to protect delivery competition and has neglected the need to allow Royal Mail flexibility to respond to market conditions. The result is a rigid regulatory structure that limits Royal Mail's ability to respond to entry and is likely to lead to unintended consequences (such as captive customers being exploited or undefended large volume losses from Royal Mail's network).

Question 20: Do you agree with our assessment of the impact of our proposals? If not, please explain why. :

Ofcom appears to underestimate the negative impact of its proposals on Royal Mail's commercial flexibility and its ability to meet customer requirements. The proposals are unduly restrictive and have the potential to damage Royal Mail's business in the same way as Postcomm's access regulation.

Question 21: Do you agree with our proposals, if not please explain why?:

As discussed in the forgoing answers, Ofcom's proposals exceed what is needed to curb Royal Mail's anti-competitive behaviour in relation to competitive entry whilst failing to address exploitative behaviour in respect to Royal Mail's treatment of its customers. The proposals appear to tip the competitive landscape towards one entrant excessively. Ofcom needs to reconsider these proposals, study both the wider scope and greater depth of the access market and its retail counterpart, and return with a more comprehensive set of proposals that better balance the conflicting requirements of mail market stakeholders.

Question 22: does the way in which we have drafted the proposed modified access condition appropriately reflect the proposals and in particular do you find it sufficiently clear? In your response, you should suggest alternative wording if you have drafting concerns.:

Question 23: Which of our proposed two alternative definitions of 'Relevant Postal Services' discussed above do you prefer and what are your reasons for your preference:

Relevant postal services should include items posted with operators other than Royal Mail.

Question 24: Do you agree with our proposal to base the concepts related to the concept and definition of 'Zones' on Royal Mail's own methodology (as referred to above)? If not, please explain in detail why.:

Royal mail's zonal pricing structure is unnecessarily complicated and merits urgent review and replacement with something simpler.

Question 25: Do you have any comments on our proposed new concepts and their definitions discussed in this Annex:

Question 26: Do you have any comments on our proposed corrections to the USPA Condition discussed in this Annex that are unrelated to our proposed new remedies in USPA 2.1A, USPA 6A and USPA 6B (and their associated new expressions):

Question 27: Do you agree with our thinking and proposals for the rounding (decimal places) to assess compliance with our proposed new remedies in USPA 6A and USPA 6B? If not, please explain in detail why.: