

A6. Decision on access regulation: supporting evidence and further detail

We have sought to understand whether Royal Mail is prioritising short term revenue gains through increased prices over sustainability. Our analysis concludes that Royal Mail has considered the impact that its price increases may have on long-term revenue. Furthermore, we have not found evidence suggesting that Royal Mail is under-estimating the impact of its pricing decisions on future volumes.

Having considered the issues raised by stakeholders in regard to non-price terms, we have concluded that our current approach and framework will remain effective over the next five years. We have not seen evidence to suggest that our regulatory framework is not fit for purpose or not effective.

- A6.1 In this annex, we set out further evidence and detail to support our decisions in Chapter 8.
- A6.2 Firstly, this annex sets out our analysis of Royal Mail’s access pricing decisions over recent years and supports our decisions. Specifically, we examine whether Royal Mail, when making its access pricing decisions, takes into account the long-term impact that price increases may have on volumes.
- A6.3 Secondly, this annex considers whether the current access framework regarding non-price terms is likely to remain effective and fit for purpose over the next five years, taking account of stakeholder comments to the consultation.

Our analysis regarding Royal Mail’s pricing decisions

- A6.4 As set out in Chapter 8, we have decided to not deviate from the current approach to access price regulation which allows Royal Mail to have commercial flexibility to support the financial sustainability of the universal service, subject to a margin squeeze control and an obligation to offer access prices which are fair and reasonable.
- A6.5 To inform our decision, we have carried out the following:
 - a) **Analysis of Royal Mail’s internal pricing documents** – to understand Royal Mail’s rationale underpinning its access pricing decisions and the extent to which these decisions consider the impact of price increases on long-term volumes and hence the sustainability of the USO.
 - b) **Our own quantitative analysis** – comparing actual volumes against Royal Mail’s own forecasts to examine whether there is systematic bias in Royal Mail’s forecasting. The presence of systematic bias could be an indicator of Royal Mail not properly factoring the impact of price increases on volumes in its pricing decision making.

Royal Mail internal pricing documents

- A6.6 We explained in our consultation that we have looked at Royal Mail’s access pricing decisions for business mail services which took effect in January of 2019, 2020 and 2021, and which capture the recent large access price increases.
- A6.7 To inform our analysis, Royal Mail provided to us internal documents informing its pricing decisions in these three years.¹ Since our consultation, we have also updated this analysis by seeking equivalent information from Royal Mail for its most recent tariff for 2022.²
- A6.8 Our analysis of these documents suggests that, when making its pricing decisions, Royal Mail aims to maximise revenue over a medium-long term horizon, bearing in mind constraints from e-substitution and alternative methods of advertising. Royal Mail informs these decisions by drawing on: i) its own econometric modelling, which estimates the price elasticity of demand for broad categories of mail³, and ii) its commercial insights gained from interaction with bulk mail customers.
- A6.9 Royal Mail uses this evidence to estimate the impact of potential price increases on revenue for the following year, while taking account for the potential impact over the next few years [X]. This assumes that the full effect of the price increase materialises within [X] years from the date when the price increase comes into effect.
- A6.10 Given the uncertainty around revenue impact estimates, Royal Mail has explained that it takes into account the risk and reward balance offered by each pricing option. [X]⁴
- A6.11 Based on these methodologies, Royal Mail reached the following pricing decisions.
- a) In 2018 (**‘2019 Tariff’**), [X]

¹ Royal Mail response to question 4 of our statutory information request, dated 8 June 2021.

² Royal Mail response to question 1 of our statutory information request, dated 21 February 2022.

³ To examine the robustness of Royal Mail’s econometric modelling we requested Royal Mail to provide the data underlying its analysis. We used this data to replicate Royal Mail’s analysis and results. We then applied a series of tests to assess the robustness of the analysis to a different choice of time period and model specification and found that the model results were robust to these tests.

⁴ [X]

- b) In 2019 ('**2020 Tariff**'), [§<]
- c) In 2020 ('**2021 Tariff**'), [§<]
- d) In 2021 ('**2022 Tariff**'), [§<]

A6.12 Overall, Royal Mail's internal pricing documents suggest that [§<] However, the documents also suggest that Royal Mail has been mindful of the impact that these price increases may have on long-term revenue and margin, and has factored this risk into its pricing decisions by way of considering the risk and reward balance offered by each pricing option.

Quantitative analysis

- A6.13 To complement our analysis of Royal Mail's pricing decisions, we carried out some quantitative analysis to compare outturn volumes against Royal Mail's own forecasts made at the time when the pricing decisions were made.
- A6.14 This analysis allowed us to assess whether there is systematic bias in Royal Mail's forecasts. The presence of systematic bias could be an indicator of Royal Mail failing to capture the impact that price increases may have on future volumes.
- A6.15 To carry out this analysis we used information from Royal Mail's regulatory accounts to inform outturn volumes and Royal Mail's business plans to inform Royal Mail's forecast volumes. We focused our analysis on business mail services, as these are the services to which Royal Mail applied the observed large price increases and make up the majority of access mail volumes.⁵
- A6.16 The results of our analysis are illustrated in Figure A6.1 and Table A6.2. They show that Royal Mail's forecasts follow actual volumes closely. Importantly, Royal Mail's forecasts are both over and under actual volumes across the study period, suggesting no systematic bias. We also note that the difference between actuals and forecasts is not substantial over the study period, with the largest difference observed in 2020/21 when volumes were impacted by the Covid-19 pandemic. These findings are consistent with Royal Mail's response to our March CFI, in which Royal Mail stated that it believes that "the impact of Access business mail price increases is in line with our business mail price elasticities and in line with historic relationships (see Cazals et al. 2020)".⁶

⁵ To inform Royal Mail's business mail forecast volumes, we used the business plan which is nearest to the pricing decision. This approach allowed us to control for changes in factors (other than prices) that could affect outturn volumes. The downside of this approach though is that the analysis allows us to assess the presence of systematic bias for only a short-term time frame between pricing decisions. This is because, for every analysed year, we looked at the most up to date Royal Mail forecast which should capture the latest market information available to Royal Mail, including any over/under prediction of service volumes in relation to previous forecasts. Therefore, as a cross-check, we also used Royal Mail's 2017 business plan to inform forecast volumes over the whole study period and get similar results.

⁶ Royal Mail response to our March 2021 CFI, para 7.37.

Figure A6.1: Business access mail volumes (Actuals vs. RM’s forecasts), 2017/18 – 2020/21 (Number of mail items) [REDACTED]

[REDACTED]

Source: Ofcom based on Royal Mail’s regulatory accounts and business plans.

Table A6.2: Percentage difference between business access mail volume actuals and Royal Mail’s forecasts, 2017/18 – 2020/21

	2017/18	2018/19	2019/20	2020/21
Percentage difference (%)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Ofcom based on Royal Mail’s regulatory accounts and business plans.

Our findings

A6.17 In summary, our analysis of Royal Mail’s internal pricing decisions suggests that Royal Mail has considered the impact that its price increases may have on long-term revenue in its recent access pricing decisions.

A6.18 Furthermore, our quantitative analysis indicates that there is no evidence of systematic bias in Royal Mail’s own forecasts, suggesting that Royal Mail is not under forecasting (at least in the short-term) the impact of its pricing decisions on volumes.

A6.19 Therefore, our view is that Royal Mail’s pricing behaviour in recent years has not been inconsistent with supporting the financial sustainability of the universal service.

Our consideration of the regulatory framework for non-price terms

Requirement for fair and reasonable terms, conditions and charges

Introduction

A6.20 Ofcom’s current access regulation recognises that commercial negotiations between Royal Mail and access operators should provide the basis for agreeing the terms and conditions of access. However, given Royal Mail’s position as the supplier of access services and competitor of access operators through its retail bulk services, we have imposed a number of safeguards to address possible imbalances in negotiating power between Royal Mail and access users. These include a general requirement, in USPA Condition 3, that Royal Mail provide access to its D+2 Letters and Large Letters and D+5 Letters services on fair and reasonable terms and conditions. We do not specify the detailed terms and conditions of access itself. However, Ofcom retains a power under USPA Condition 3 to direct Royal Mail as to its terms and conditions, and can issue guidance.

Our consultation proposals

A6.21 We proposed to retain the requirement for Royal Mail to have fair and reasonable terms, conditions and charges. We proposed that whilst we considered it was important for Royal Mail to have commercial flexibility to determine, in consultation and collaboration with industry and Access Letter Contract (ALC) holders, the terms and conditions of access, the requirement to have fair and reasonable terms, conditions and charges, remains an important safeguard for the wider industry when negotiating with Royal Mail given the latter's market position. However, we also rejected the need for an additional form of governance or body to deal with any disputes that arose between industry and Royal Mail on terms, conditions and charges.

Stakeholder responses to the consultation

- A6.22 Royal Mail supported our proposal for not introducing a governance body to deal with disputes, citing that access operators can raise disputes with Ofcom if they have exhausted the dispute procedure as set out in the ALC. Royal Mail also noted that both it and access operators are best placed to resolve disputes, and that it continues to work closely with ALC holders, as demonstrated by recent initiatives it has taken.⁷
- A6.23 The ACS supported the idea that Ofcom can intervene if Royal Mail is abusing its power or is in breach of the USPA Condition.⁸
- A6.24 Citipost suggested that Royal Mail have freedom to squeeze the profitability of access operators through changes to surcharges and contractual tolerances without any regulatory supervision.⁹
- A6.25 A number of stakeholders disagreed with our proposals, suggesting that the steps taken by Royal Mail to ensure compliance with USPA 5 (discussed later in this Annex) are hindering competitive development and resulting in unfair and unreasonable terms, conditions and charges. For example, Whistl and Citipost stated that Royal Mail use USPA 5 to frustrate any new service requests (NSRs) or new variation requests (NVRs) and, in particular, to load additional costs and delay into any requests.^{10 11}
- A6.26 Whistl stated that greater clarity is needed on NVRs and NSRs in regard to what Ofcom would consider to be fair and reasonable charges, and that Ofcom's proposal that any dispute in this regard could be addressed by USPA Condition 3 would shortly be tested.¹²
- A6.27 The MCF and DX stated Ofcom's proposal to rely on USPA 3 (fair and reasonable requirement) for issues regarding NVRs and NSRs is unrealistic, noting this would require a lengthy, complex complaint to be raised each time and that Ofcom would then also retain the discretion to open a

⁷ Royal Mail response, paragraphs 3.41 and 3.43.

⁸ ACS response, page 9.

⁹ Citipost response, paragraph 3.

¹⁰ Whistl response, page 2; Citipost response, paragraph 3.

¹¹ We discuss USPA 5, its meaning and our proposals on USPA 5 below.

¹² Whistl response, pages 2, 7-8.

complaint or not. As such, the MCF and DX argued that Ofcom should consider changing the ‘ring fencing provisions’ of USPA 5 to apply to Royal Mail Retail bulk mail, not Royal Mail Wholesale.¹³

Our decision

We will continue to require that Royal Mail offer fair and reasonable terms, conditions and charges

A6.28 Our decision is that Royal Mail should continue to:

- a) have commercial flexibility to determine, in consultation with access market participants where appropriate, the terms and conditions of access; and
- b) be required to offer access on terms, conditions and charges that are fair and reasonable (and comply with other regulatory conditions, such as the requirement to not unduly discriminate).

A6.29 Since our last review in 2017, we have observed Royal Mail conducting a number of consultations with access users with the aim of making changes to terms, conditions or charges. While we have been made aware of access operators’ objections to some of the proposals and/or decisions Royal Mail has made, as well as about its process of consultation in some cases, this is not evidence that the regulatory rules need to change and that, in particular, the USPA Condition requiring that access terms, conditions and charges are fair and reasonable is no longer appropriate.

A6.30 Further, we note from our observations that, in the past, Royal Mail has frequently consulted with industry prior to the implementation of any changes, and has on occasion reversed changes it proposed and/or listened to and followed access operators’ feedback (for instance, its proposed reduction in the number of access price plans, and its proposal to change the notice periods for ‘any other changes’ in the access contract).

A6.31 Should Royal Mail seek to introduce changes to terms, conditions and charges that access users believe are unfair or unreasonable, including the examples cited by Citipost, our view is that the existing requirements on Royal Mail under the USPA Condition would allow us to consider and address any issues as appropriate. We also note that Ofcom has in the past provided guidance to industry where helpful (for example, on surcharging, zonal pricing and alternative dispute resolution mechanisms).¹⁴

A6.32 In regard to stakeholders’ comments about the impact of USPA 5 on the terms, conditions and charges offered by Royal Mail, we consider these comments when discussing USPA 5 below.

A6.33 In light of the above, we are satisfied that it remains appropriate and proportionate to retain the requirement for Royal Mail’s charges, terms and conditions to be fair and reasonable.

¹³ MCF response, pages 16-17; DX response, page 16.

¹⁴ Ofcom, Review of Royal Mail Regulation- Statement, 2012; paragraphs 10.66-10.67 (regarding surcharging and reversions), paragraphs 10.82-10.84 (regarding quality of service), paragraph 10.153 (regarding zonal access) and paragraphs 10.189-10.193 (regarding alternative dispute resolution mechanisms).

Requirement to have a statement of process for new service requests (NSRs) and new variation requests (NVRs)

Introduction

- A6.34 Royal Mail is currently required by USPA 4 to publish a statement of the processes that will apply to requests for D+2 Letters and Large Letters or D+5 Letters access (or variations to existing access contracts). This is known as Royal Mail's 'Statement of Process', and it is required to include, amongst other things:
- a) the information that is reasonably required from an access seeker to allow Royal Mail to progress a new service or variation request; and
 - b) the reasonable timescales in which such requests will be handled by Royal Mail.
- A6.35 Royal Mail is required to consider all new service or variation requests in accordance with its Statement of Process. Moreover, Ofcom retains a power to direct Royal Mail as to the terms of the Statement of Process or the manner in which it is applied.

Our consultation proposals

- A6.36 We proposed to continue to require Royal Mail to have a Statement of Process. We proposed that Royal Mail, through consultation with the industry, is best placed to develop the specific details of this process.

Stakeholder responses to the consultation

- A6.37 A number of stakeholders expressed concerns about Royal Mail's compliance with USPA 4. The MCF, DX and Whistl all noted that up until recently, Royal Mail did not have a statement of process for NVRs. The MCF and DX also stated that Royal Mail's recent consultation proposals on the timescales applicable to NVRs are unsatisfactory given Royal Mail would retain a unilateral power to impose an extended timescale.¹⁵
- A6.38 The MCF and Whistl referred to the NVR submitted to Royal Mail in January 2022 regarding quality of service (and, in particular, the definition of 'Disruptive Event' in the ALC) and suggested that Royal Mail's proposed timetable to respond (by August 2022) is neither fair nor reasonable.¹⁶

Our decision

We will continue to require that Royal Mail publish a Statement of Process on NSRs and NVRs

- A6.39 We have decided to continue to require Royal Mail to have a reasonable Statement of Process setting out the process for requesting access contracts or variations to existing contracts. We believe that Royal Mail, through consultation with the industry, is well placed to develop the specific details of this process, subject to the high-level obligations that are currently in USPA 4 and

¹⁵ MCF response, page 19; DX response, page 19; Whistl response, page 7.

¹⁶ MCF response, page 20; Whistl response, page 7.

Ofcom's power to direct Royal Mail to change the terms of the Statement of Process or the manner in which they are to be applied.

- A6.40 We note stakeholders' concerns about Royal Mail's approach to both NSRs and to NVRs (in particular on NVRs, that the timescales Royal Mail are proposing to respond to NVRs are neither fair nor reasonable). We consider these concerns in further detail below. We note however that we have not received any evidence to suggest that the regulatory framework itself is no longer sufficient, and our view remains that USPA 4 remains appropriate and proportionate, and that further regulation is not currently necessary.

Royal Mail's speed in progressing NSRs and NVRs

- A6.41 USPA 4.1A provides Royal Mail with flexibility on the timescales by which NSRs and NVRs must be handled by Royal Mail but, as noted above, requires that those timescales must be reasonable.
- A6.42 Since the last review in 2017, a small number of both NSRs and NVRs have been submitted to Royal Mail and, in March 2019, Royal Mail published a document on its website, outlining the processes and (eight) stages, as well as timescales, that it will follow when considering a NSR. It explained that Royal Mail will continue to handle NSRs within 13 weeks.¹⁷ More recently, Royal Mail has provided similar information on its website regarding how to submit a NVR, and the timescales in which it expects to handle such requests. In January 2022, Royal Mail published a consultation regarding the length of time it takes to handle NVRs, and proposed the introduction of a one month timescale for Royal Mail to respond to such requests, unless the request is more complex in nature.¹⁸ In June 2022, Royal Mail issued its decision for the timescales for handling new variation requests, with a range of timescales to respond depending on the complexity of the individual request.^{19 20}
- A6.43 We have not received any formal complaints, or identified material concerns, regarding the reasonableness of the timescale applicable to NSRs (or, indeed, Royal Mail's performance in meeting this timescale in specific cases).
- A6.44 However, in regard to NVRs, we note a number of stakeholders in their responses stated that Royal Mail's consultation proposals were unsatisfactory, given that Royal Mail would retain an overarching unilateral power to extend the timescales to respond.
- A6.45 We recognise stakeholders' concerns that Royal Mail's Statement of Process has been vague to date on the timescales that will apply to a NVR. We understand that until mid-2021, no NVR had been submitted to Royal Mail. Nonetheless, it is important in our view that it does have a Statement of Process which sets out the reasonable timescales in which Royal Mail expects to handle NVRs. This is required by USPA Condition 4.1.

¹⁷ Royal Mail, 20 June 2019, [Decision on changes to the Access Service Request Process](#), paragraph 4.33.

¹⁸ <https://www.royalmailwholesale.com/mint-project/uploads/395282162.pdf>

¹⁹ Namely, for low level complexity NVRs - 4 weeks; for medium level complexity NVRs – 6 weeks; for high level complexity NVRs – 8 weeks.

²⁰ <https://www.royalmailwholesale.com/news/access-communication-launching-the-revised-access-letters-contract-variation-process>

- A6.46 Therefore, we welcome Royal Mail’s decision to specify timescales in its Statement of Process and think that this is important to provide potential applicants with clarity over the process, and to ensure that Royal Mail responds to NVRs in a timely and efficient manner.
- A6.47 We recognise that in particularly complex cases, Royal Mail may need longer to respond (and provide access operators with a clear decision) to a NVR – including where it may be appropriate to consult with industry. However, we would be concerned if Royal Mail rarely complied with the timeframe specified in its Statement of Process and it did not therefore set out the actual timescales within which it would realistically expect to handle the majority of NVRs (from acknowledgment of receipt to final decision).
- A6.48 More widely, whilst we are satisfied to see access operators and ALC holders making more use of the NVR and NSR process, the number of both submitted to Royal Mail remains low, so there is not sufficient evidence to suggest there is a problem at this time. We note that, under USPA 4.2, Royal Mail is required to keep its Statement of Process under review. However, if future evidence suggests that the process is not working well, we will reassess the need for more or alternative regulations under our next post review. In the meantime, we note that the current regime allows access operators to raise a complaint with Ofcom if they are not satisfied that Royal Mail is complying with its regulatory obligations.

The duplication and allocation of new service request costs

- A6.49 We note stakeholders’ concerns that, in some cases, Royal Mail has proposed charges in response to a NSR which they consider to be too high (and which reflect, in their view, a duplication by Royal Mail of some costs in order to comply with the restriction on information sharing in USPA 5).
- A6.50 Our view is that any concerns regarding unfair or unreasonable allocation of costs can be addressed through the existing requirements that we propose to retain that access charges must be fair and reasonable, and not unduly discriminatory. In June 2019, Royal Mail issued its decision, following industry engagement and consultation, to change its approach to NSRs. Amongst other things, Royal Mail set out (and modified) its cost recovery principles for NSRs.²¹ We understand that Royal Mail’s cost recovery principles were designed to be largely based on Ofcom’s cost recovery principles when considering pricing decisions for wholesale access and requests made by BT in telecoms.²²
- A6.51 While we have not considered how, in practice, Royal Mail has applied these principles (and therefore cannot comment on whether any of the specific charges it has offered, when based on these principles, have been fair and reasonable), we note that Royal Mail’s interpretation of the “competition” principle is not clear and appears to differ from Ofcom’s own cost recovery principles. Specifically, Royal Mail refers to its cost recovery principle of competition by stating it should “not unfairly hinder effective competition”. We note that we would be concerned if the application of the cost recovery principles had the effect of limiting the ability of access operators

²¹ Royal Mail, [*Decision on changes to the Access Service Request Process*](#).

²² With the exception of reciprocity, which Royal Mail has not included on the basis it considers it is not relevant for the postal sector, and the inclusion of risk.

to compete effectively in the bulk letters market, either because this prevented access operators from accessing a service and/or access operators were put at a competitive disadvantage against Royal Mail Retail in the provision of bulk letter services. If access operators have evidence of this, we would invite them to bring it to Ofcom to consider under our enforcement processes.

No undue discrimination obligation

Introduction

A6.52 USPA 5.1 currently requires Royal Mail to not unduly discriminate in the provision of access services. This is intended to protect access seekers from the risk of Royal Mail treating its retail business (or particular access operators) more favourably in a way that hinders effective access competition.

Our consultation proposals

A6.53 We proposed to retain the no undue discrimination obligation on Royal Mail, as we considered this a key safeguard for access operators against the risk of discriminatory conduct by Royal Mail. We explained that we were not persuaded that a stricter form of obligation, such as equivalence of inputs, ring-fencing and/or functional separation would be appropriate or proportionate given the general trends of the bulk letters market, and the likely costs of imposing such regulation.

Stakeholder responses to the consultation

A6.54 Royal Mail agreed that there is no need to separate Royal Mail Wholesale and Royal Mail Retail, and noted that Royal Mail already has strict separation which stops Royal Mail Wholesale discriminating in favour of Royal Mail Retail, and noted that access operators' strong market position substantiates that this is working.²³ Whistl agreed with our view that ringfencing in the manner that Royal Mail has adopted is not a requirement of USPA 5, and suggested that a more pragmatic approach to USPA 5 may be to contractually restrict access to information to DSA customers and volumes from the few remaining Royal Mail Retail's sales team.²⁴

A6.55 Citipost argued that Royal Mail's own services benefit from a lack of equivalence between what Royal Mail offers access customers and what Royal Mail offers to its own retail business; Citipost stated that Ofcom should consider whether the current USPA Condition guarantees a sufficient degree of equivalence to ensure Royal Mail compete fairly, and if further safeguards are needed to prevent Royal Mail from being able to disadvantage access operators.²⁵

²³ Royal Mail response, paragraph 3.41.

²⁴ Whistl response, page 8.

²⁵ Citipost response, paragraphs 3-4.

Our decision

We will continue to require that a no undue discrimination obligation applies to Royal Mail

- A6.56 The concept of no undue discrimination recognises that there may be examples of differences between the way in which access operators, on the one hand, and Royal Mail Retail, on the other, access Royal Mail's network which are justifiable. It also recognises that there may be times when the differences are immaterial so far as access operators' ability to compete against Royal Mail. Our view is that this remains the case, and that a no undue discrimination obligation remains an appropriate and proportionate safeguard for access operators against the risk of discriminatory conduct by Royal Mail. We are not persuaded that the adoption of a stricter obligation, such as equivalence of inputs, ring-fencing and/or functional separation, is necessary, or would be proportionate (particularly given the general trends of the bulk letters market, and the likely costs of imposing such regulation).
- A6.57 In regard to the comments raised by Citipost, as we outlined in our consultation,²⁶ we have not seen, and stakeholders have not presented, evidence to suggest that Royal Mail is presently acting in an unduly discriminatory manner or in a way so as to undermine access operators' ability to compete as a result. We note that access competition remains strong; as noted above, access operators' market share remains over 70%, and Royal Mail Retail's market share has been declining up until the most recent financial year considered (2020/21), so we see no evidence that the current access regime is failing to promote competition in the retail bulk letters market, to Royal Mail Retail's advantage. On this basis, and for the reasons outlined above, we are satisfied that currently, no further safeguards are required.
- A6.58 In the event there was evidence that non-equivalence in Royal Mail's operational practices was causing harm to effective competition, our view is that this could be addressed by existing regulation. Namely, were this occurring, we would encourage access operators to bring this evidence to Ofcom for its consideration under its enforcement processes.

Prohibition on Royal Mail using information gained from giving access to its postal network

Introduction

- A6.59 USPA 5.3 requires Royal Mail to use all reasonable endeavours to secure that no information it possesses as a result of providing access is disclosed to, or used by, any trading business of Royal Mail or person associated with Royal Mail.
- A6.60 Related to this, USPA 5.4 contains a number of exemptions to USPA 5.3. These include where Ofcom consents in writing to the disclosure or use of information, or where the person to whom the information relates has consented in writing to disclosure or use.

²⁶ See paragraphs A5.50 of the December 2021 Consultation in regard to timed access slots, mis sort charges, profile requirements and adherence to health and safety rules.

Our consultation proposals

A6.61 We proposed to continue retaining a restriction on Royal Mail's use of access-related information obtained by giving access to its postal network, given that we continued to believe that there was a risk that Royal Mail might use such information in order to give it an unfair advantage, to the detriment of access operators and the wider industry.

Stakeholder responses to the consultation

A6.62 Whistl, whilst not disagreeing with our proposal, expressed concerns about Royal Mail's implementation of USPA 5, stating that Royal Mail has been going beyond what our regulations require, adding unnecessary and costly parallel systems developments to NSRs.

A6.63 We note a number of other stakeholders commented on this area in relation to its impact on NSRs and NVRs, the comments of which we have set out above.

Our decision

It remains appropriate to retain a restriction on Royal Mail's disclosure and use of access-related information

A6.64 Royal Mail Group, including its Wholesale and Retail divisions, has a unique position as both the wholesaler and a competitor to access operators (via its retail divisions). We remain alert to the risk that Royal Mail might use access-related information in order to give it an unfair commercial advantage (and that this could harm effective competition in the bulk letters market). Therefore, we have decided to retain a restriction on Royal Mail's disclosure and use of access-related information.

A6.65 We would, however, be concerned if any regulation imposed by Ofcom were a barrier to innovation. To the extent that stakeholders, in particular by reference to either NSRs or NVRs, remain concerned that USPA 5 is a barrier to innovation because it allows Royal Mail to inflate costs (and therefore access charges) for new services, we note that any concerns about unfair or unreasonable pricing could be considered by Ofcom pursuant to USPA 3. We also note that there are a number of carve-outs from the restriction in USPA 5.4, including the ability of access operators to give consent to disclosure/use of information, or for Ofcom to give consent.

Publication and notification of access terms, conditions and charges

Introduction

A6.66 USPA Condition 7 sets out the minimum publication and notification requirements which Royal Mail is currently required to satisfy before introducing changes to its standard terms and conditions (including charges) for access.

A6.67 In particular, USPA 7 requires Royal Mail to:

- a) provide written notice of, and publish, amendments to its charges for D+2 and D+5 access at least 10 weeks before the date on which those charges are due to take effect.

- b) in respect of amendments to its standard terms and conditions (other than to its charges) for D+2 and D+5 access:
 - i) publish those amendments at least 10 weeks before they take effect, where those amendments are being made with the prior consent of access operators; or
 - ii) provide sufficient notice in writing as meets the reasonable needs of access users where those amendments do not require the prior consent of access operators (and publish those amendments at least 10 weeks before they take effect).

A6.68 USPA 7 recognises that shorter periods of notice may be agreed between Royal Mail and the access operators in certain circumstances (or if Ofcom grants consent).

Our consultation proposals

A6.69 We proposed to retain the existing requirements under USPA 7 regarding publication and notification by Royal Mail of changes to its standard terms and conditions (including charges) for access services.

Stakeholder responses to the consultation

A6.70 Royal Mail agreed with our proposal, stating it was important that Royal Mail retains commercial flexibility to negotiate terms and conditions of access so that it can respond in an agile market and support the sustainability of the USO.²⁷

A6.71 The MCF and DX, whilst not disagreeing with our proposals regarding notification periods for access terms, conditions and charges, did comment on Royal Mail's recent notification of changes to the ALC, which, at the time of stakeholder consultation submissions, were due to come into force from June 2022.²⁸ Both stakeholders stated that Royal Mail had failed to provide sufficient notice by failing to consult as required by the ALC (as well as proposing modified terms which they were concerned may be neither fair nor reasonable). Whilst highlighting that this may become an access dispute for Ofcom to investigate in the future, both the MCF and DX stated that escalating complaints to Ofcom on the basis of breaching the fair and reasonable USPA Condition is onerous, slow and expensive.²⁹

Our decision

Current regulations allow Ofcom to consider complaints and disputes

A6.72 As noted above, while we understand that some access operators may have had some concerns about the way in which Royal Mail notified them of the changes it was planning to adopt to the ALC, no stakeholder suggested that the existing requirements in USPA 7 regarding notification and publication are no longer effective or fit for purpose. We believe that these remain appropriate

²⁷ Royal Mail response, paragraph 3.40.

²⁸ Since publication of our consultation and consultation responses, and as we refer to below, we understand Royal Mail has now delayed implementation of these changes until October 2022.

²⁹ MCF response, pages 18-19; DX response, page 18.

and proportionate, and note that the concerns raised by access operators (regarding some of Royal Mail's recent contract change notifications) underline the importance of this regulatory obligation. Therefore, we have decided to retain a publication and notification requirement on Royal Mail for changes to its standard terms, conditions and charges.

- A6.73 To the extent that access operators are concerned that Royal Mail is providing insufficient notice for changes to the ALC, they could bring these concerns to Ofcom who could, if appropriate, take action under the current regulations. If in the form of a complaint, we would expect any complainant to explain clearly, and with supporting evidence, why it considers that the requirements of USPA 7 are not being satisfied. For example, for unilateral changes to terms and conditions which do not require prior consent, why the notification period that Royal Mail is proposing in the specific circumstances is not sufficient to meet the reasonable needs of access users.

Quality of Service (QoS)

Introduction

- A6.74 The regulatory framework for access QoS currently relies on access users being able to monitor the service that Royal Mail provides in delivering access items following injection into its network (rather than more prescriptive regulation). Since 2012, our view has been that, for the access regime to work effectively under this model, it is important that Royal Mail provides access users with sufficient QoS information.
- A6.75 Our view has been that transparency allows customers to make informed decisions about whether to buy a particular access service. It should also allow Royal Mail and the industry to discuss and reach appropriate decisions in relation to the QoS level, design and compensation (which are not regulated by the USPA Condition), as all parties will have access to the relevant information.
- A6.76 USPA 8 therefore currently requires Royal Mail to publish all such information as is reasonably necessary for the purposes of securing transparency as to the quality of service it provides in relation to D+2 and D+5 access. In respect of its D+5 access services, Royal Mail is also required to report publicly on the performance of the D+5 service by specific delivery day (the proportion of mail that is delivered on D+2, D+3, D+4 and D+5).³⁰

Our consultation proposals

- A6.77 We proposed not to prescribe QoS levels, as we considered that Royal Mail does face strong incentives to maintain good quality of service, and that broadly, over the longer term and excluding exceptional events, Royal Mail's quality of service has been above the contractual level of 95% for D+2 letter services. Therefore, we considered that our current regulation remains appropriate and proportionate for the next review period.

³⁰ This was recently decided in our statement regarding the mandation of some D+5 access services, see paragraphs 5.96-5.103, Ofcom, 2021, [Modifications of the USP Access Condition for regulating access to Royal Mail's postal network](#).

- A6.78 We proposed not to prescribe QoS compensation levels, as we did not consider that the creation of another compensation scheme would be appropriate or proportionate; moreover, we noted that recourse did exist in the current ALC for access operators to seek compensation.
- A6.79 Finally, we proposed to maintain QoS reporting obligations on Royal Mail, as we considered that this is a key part of the regulatory framework in providing transparency regarding access QoS for both Ofcom, access operators and industry, allowing customers to make informed decisions about which access products to purchase.

Stakeholder responses to consultation

- A6.80 Several stakeholders commented on the performance of QoS since March 2020, citing it as poor, and stating that there is no effective redress for QoS failure within the access market, citing that Royal Mail, to the best of its knowledge, has never paid out compensation to ALC holders.³¹
- A6.81 UK Mail and Whistl argued that Ofcom should be doing more to monitor and support access QoS, noting it does not provide the same level of protection for access QoS as it does for USO QoS. UK Mail stated it was insufficient for Ofcom to say it is best left as a commercial matter between Royal Mail and access operators. UK Mail stated that as access volumes make up the majority of letter volumes, allowing access QoS to degrade will ultimately degrade USO QoS too, and noted that savings Royal Mail would make from degrading QoS for all market users could exceed any financial penalties Ofcom might impose on Royal Mail for USO QoS.³²
- A6.82 Several stakeholders also argued that the 'disruptive event' clause of the ALC should not apply for other than a limited period, with DX and the MCF stating that ALC holders have no ability to challenge Royal Mail other than through lengthy, complex disputes.³³ UK Mail noted Ofcom should have regulation within the DUSP Condition to limit Royal Mail's ability to invoke a disruptive event.³⁴

Our decision

We do not think it is appropriate or proportionate to prescribe QoS levels or QoS compensation

- A6.83 Having considered stakeholders responses, our decision is that the regulatory framework in respect of QoS for access services remains appropriate and proportionate. We are not therefore prescribing QoS levels or the terms on which compensation be provided, and consider that the existing safeguards³⁵ will remain sufficient for the next review period. We consider this to be consistent with our general approach to provide Royal Mail with commercial and operational flexibility in the next review period, and that it is best left for industry and Royal Mail to prescribe QoS levels, but with regulatory backstops to provide appropriate protections. In the event that

³¹ Whistl response, page 5.

³² UK Mail response, page 3; Whistl response, page 4.

³³ MCF response, pages 20-21; DX response, pages 19-20; UK Mail, page 3.

³⁴ UK Mail response, page 3.

³⁵ Namely, as set out above, the requirements that Royal Mail's terms and conditions be fair and reasonable, that it does not unduly discriminate, and that it is transparent about its QoS performance.

Ofcom were to receive any evidence that Royal Mail is failing to comply with any of these regulatory backstops, we consider the current USPA Condition would provide us with sufficient regulatory tools to intervene.

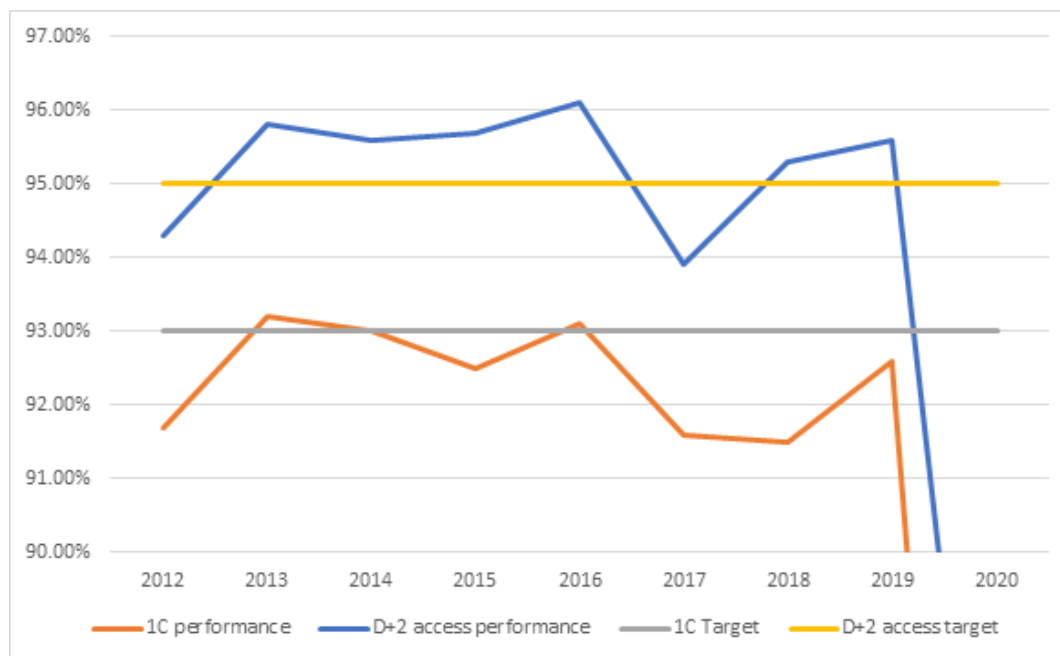
- A6.84 Our view remains that Royal Mail faces a strong incentive to offer and maintain levels of quality of service that meet customers' requirements, to avoid bulk mail volumes disappearing from the letters market and moving to other channels permanently (e.g. online). In this regard, and as we observed in our December consultation, QoS performance since 2016/17 for D+2 access services³⁶ has been, for the most part, consistently above the 95% contractual service level for D+2 access services. Since before the Covid-19 pandemic, the only other time D+2 access QoS has fallen below 95% for a sustained period is during the final two quarters in 2017/18, which was when the UK experienced severe weather conditions (i.e. 2018 Beast from the East).³⁷
- A6.85 We have also not seen compelling evidence to suggest that Ofcom should prescribe a QoS standard in respect of D+2 access services (and that it be higher than the 95% service standard agreed between Royal Mail and access operators). We also note that, prior to the Covid-19 pandemic, Ofcom conducted a series of workshops directly with bulk mail customers to understand their views and needs in respect of the bulk letters market; there was broad satisfaction expressed in regard to the levels of quality of service received. More widely, in Ofcom's regular engagement with industry and access operators prior to Covid-19, we were not made aware of QoS as an issue on a consistent basis.
- A6.86 We have noted the concerns of some stakeholders about Royal Mail's access QoS performance during the Covid-19 pandemic. This review is however intended to consider whether the regulatory framework remains fit for purpose in normal circumstances. It is not clear to us that the existence of QoS standards prescribed by Ofcom would have necessarily had any impact on Royal Mail's access QoS performance during the pandemic nor that changes are required to the regulatory framework in response to Royal Mail's actions as a result of the Covid-19 pandemic.
- A6.87 We note stakeholders' comments about the possible effects of our regulatory approach on access QoS and its implications for USO QoS. Bulk mail makes up c.65% of total letter volumes annually, and they are delivered through the same network, so we recognise that the performance of one should reflect performance in the other. This is demonstrated in Figure A6.3 below, which shows that access QoS for D+2 letter services broadly matches and follows that of USO QoS for D+1 (First Class) services.³⁸

³⁶ As D+5 access services were only mandated and regulated in April 2021.

³⁷ <https://www.theguardian.com/uk-news/2018/mar/01/beast-from-east-storm-emma-uk-worst-weather-years>

³⁸ Royal Mail Wholesale, Quality of Service, <https://www.royalmailwholesale.com/our-qos-measures>

Figure A6.3: Graph showing Royal Mail’s average annual quality of service performance for access (D+2) and USO (D+1) letter services since 2012



Source: Royal Mail Wholesale - Quality of Service

- A6.88 Notwithstanding the above, since our consultation, we have announced our decision to open an investigation into Royal Mail’s USO QoS performance for 2021/22.³⁹ As USO QoS and access QoS both share the same (postal) network, we are not persuaded by some stakeholders’ suggestions that USO QoS could be prioritised over access QoS; indeed, we have received no evidence to support this. Finally, we would expect any benefits to Royal Mail’s QoS performance (from its recent investment of c.£340 million for extra resource to improve QoS) to be shared amongst both access and USO customers.⁴⁰
- A6.89 Regarding compensation, we note that recourse does already exist in the ALC for access operators to claim compensation for QoS failures, via the Performance Rebate Mechanism.⁴¹ Our view remains that the creation of another compensation scheme, overseen by Ofcom, would not be appropriate or proportionate. Since our consultation, we understand that a number of access operators and bulk letter users have submitted a NVR seeking changes to a number of areas regarding both compensation and the application of force majeure (‘disruptive events’) on QoS, and that Royal Mail has since issued an industry consultation focusing on changing the compensation targets and methodology, and the requirement to prove financial loss.⁴² We welcome this level of industry collaboration.

³⁹ https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01260

⁴⁰ Royal Mail, Transformation and Trading Update, 25 January 2022, <https://investegate.co.uk/royal-mail-plc/rns/replacement---transformation-and-trading-update/202201250837385491Z/>

⁴¹ The Performance Rebate Mechanism (PRM) is a mechanism set out in the ALC that determines how compensation is paid to ALC holders in the event Royal Mail fails to meet its Compensation Target.

⁴² [Royal Mail Wholesale - ACCESS COMMUNICATION: Launch of Royal Mail Consultation on the ALC Compensation Measures](#)

A6.90 To the extent that stakeholders' concerns are about Royal Mail's application of the contractual provisions on performance rebates (rather than the underlying terms themselves), we would reiterate that this is best resolved by the parties themselves (with recourse, ultimately, to the Courts).

We continue to believe that QoS reporting is a key part of the regulatory framework

A6.91 While we are not prescribing access QoS standards or the terms on which compensation should be payable, we continue to recognise the importance of transparency regarding access QoS. Transparency of the service provided by Royal Mail allows customers to make informed decisions about whether to buy a particular access service, and assists in determining whether Royal Mail has met its contractual service standards. It also allows Royal Mail and the industry to discuss and reach appropriate decisions in relation to the QoS level, design and compensation, as all parties will have access to the relevant information. It also helps Ofcom and access users to assess whether Royal Mail is providing access on terms which are fair, reasonable and not unduly discriminatory.

A6.92 Therefore, in light of the above, we have decided to retain our existing USPA requirement in regard to QoS reporting, namely on D+2 and D+5 access services.