

**MODIFICATION TO LICENCES GRANTED TO
HAYS COMMERCIAL SERVICES LIMITED AND
TNT UK LIMITED**

DECISION DOCUMENT

JULY 2002

Summary

On 24 May 2002, the Postal Services Commission (“Postcomm”) issued consultation notices on the proposal to modify the licences held by Hays Commercial Services Limited and TNT UK Limited. Representations on the granting of that licence were requested by 24 June 2002. Postcomm having considered the representations decided to make the modifications.

This document summarises the main points of the responses to the consultation and sets out the reasons for the decision to make the modifications.

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List of those who responded to the consultation notice on the proposal to modify the licences held by Hays Commercial Services Limited and TNT UK Limited.

1. Introduction

Purpose of this document

- 1.1 This document explains the outcome of the consultation process undertaken on the proposal to modify the licences held by Hays Commercial Services Limited (“Hays”) and TNT UK Limited (“TNT”) and outlines the background to the decision taken to modify the licences. The two modifications are dealt with in one decision document as none of the responses received distinguished between the two modifications.

Background

- 1.2 On 26 March 2001 the new regulatory regime for postal services established by the Postal Services Act 2000 came into force. In May 2002 Hays and TNT made proposals to Postcomm for modifications to their licences.
- 1.3 On 24 May 2002 Postcomm issued consultation notices on the proposal to modify the Hays and TNT licences under Section 14 of the Act. This sought views on Postcomm’s proposal to modify the licences. Under the terms of the statutory notice, representations regarding the draft licence were requested by 24 June 2002.
- 1.4 The proposed modifications provided that in the event of disruption to the universal postal service in any part of the United Kingdom, as a result of official industrial action in three or more mail centres, Hays and TNT may provide postal services to an unrestricted range of existing customers for a period of 14 days or three times the length of the industrial action, whichever is the longer. Should the period of official industrial action exceed 31 days, Hays and TNT can provide such services for the period of the industrial action plus approximately three months. In the event that the Commission determines that there is other industrial action, an emergency or natural disaster, Hays and TNT may provide similar services for a period of approximately three months after the determination lapses.
- 1.5 Postcomm received formal responses or enquiries from five respondents. None of the responses were marked “confidential”. A list of those who responded or enquired is attached at Appendix 1. Copies of the responses are held in Postcomm’s library.
- 1.6 Postcomm is satisfied that making these modifications, with the safeguards they contain, is a proper exercise of Postcomm’s functions under the Act.
- 1.7 This decision document summarises the main points arising from the consultation and explains the basis of our decision to make the modifications in the terms in which they have been issued.

Contact details at Postcomm

- 1.7 If you have questions about any aspect of this document please contact Ros Poulson at:

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2. Consultees' representations and Postcomm's views on the representations

Support for the modifications

Consultees' representations

- 2.1 Consignia responded by indicating it had no objection to the modifications.
- 2.2 Postwatch have no objection to the modification in the manner described on the basis that this reflects the requirements of the operators. They believe that licensing other operators to deliver a wider range of services in the event of industrial action is unlikely to have any appreciable adverse impact on the provision of the universal service because these services will be provided to these operators' existing customers for a limited period of time and it furthers the interests of postal users. Postwatch states that what will, of course, have an appreciable adverse impact on the provision of the universal service will be the strike action itself.
- 2.3 Postwatch appreciate that there are clear commercial reasons why operators would only want to deliver the mail in the event of official industrial action, the primary one being that the time they need to implement their contingency plan will be provided by the seven days notice of any action which must be given. Postwatch has considered whether these proposals will encourage more unofficial action as a mechanism for circumventing operators' ability to invoke these procedures, highlighting the fact that a greater number of working days were lost from unofficial action in the year to March 2002 than from official industrial action.
- 2.4 Postwatch state that where industrial action affects a single mail centre or delivery office in a given area, they would expect Consignia's existing contingency plans, if effectively implemented, to permit it to maintain acceptable standards of service to senders/recipients. However, Postwatch comment, these may or may not meet the needs of consumers in the event of regional industrial action. In making these points, Postwatch note that they have not made the distinction between official and unofficial action as they believe that if customers are significantly affected following a disruption to the universal service, whether the action is official or unofficial is irrelevant.
- 2.5 Postwatch conclude that on balance it is better that some customers will benefit from this provision than none at all. And if customers' services were being significantly disrupted due to an increase in unofficial industrial action, operators are likely to consider ways of addressing this.
- 2.6 With regard to the current proposal for disruptions that fall outside the criteria specified, Postwatch believe that Postcomm should issue further guidance on how it intends to make a determination before additional mail

services are provided in order to ensure that consumers are not adversely affected and to provide operators with greater legal and regulatory certainty. Postwatch suggest this could include information such as:

- The criteria that will be used to assess any application to deliver additional mail services and subsequently determine whether the action is likely to affect customers adversely;
- How long Postcomm intend to take to complete a request for a determination so that additional mail services can be provided; and
- The basis on which any additional mail services will be provided eg for 14 days or three times the length of the industrial action.

2.7 Postcomm's view is that as the modifications were proposed with the consent of the licensees, they naturally reflect what was requested by the licensees, that is the automatic trigger applying only in the event of official industrial action. Postcomm has considered how it might use its power of determination in the event of unofficial industrial action and other disruption to the universal service and has concluded that situations can vary to such a degree that it is important to maintain flexibility. We will not, therefore establish trigger points in advance, but will take into account the likely length and extent of the disruption to the universal service in making any decision. It is important that any action taken by Postcomm is commensurate with the impact on customers of the likely disruption. The trigger point established for official industrial action will clearly act as a guide to Postcomm in considering when a determination might be made for other disruption.

2.8 Postwatch suggested that we should provide guidance on how long it would take for a determination to be made. Given that the circumstances in each instance are likely to be different, it is difficult to provide a fixed timetable for such action. Postcomm is, however, aware that it must act quickly and on a timescale which would meet the needs of customers, since there would otherwise be no point in making a determination.

2.9 Postwatch raise the question of the amount of time for which services can be provided. The modification provides that in the event of disruption to the universal postal service in any part of the United Kingdom, as a result of official industrial action in three or more mail centres, Hays and TNT may provide postal services to an unrestricted range of existing customers for a period of 14 days or three times the length of the industrial action, whichever is the longer. Should the period of official industrial action exceed 31 days, Hays and TNT can provide such services for the period of the industrial action plus approximately three months. In the event that the Commission determines that there is other industrial action, an emergency or natural disaster, Hays and TNT may provide similar services for a period of approximately three months after the determination lapses. In considering the terms of the standard licence contained in the recent

consultation document, Postcomm recognised that there was an imbalance in the time that services could be provided in the event of official industrial action and in the event of other disruption. This has been addressed for the future, but we feel that to make such a change to these modifications would be a change of significance which might require us to consult again. Given that these are short term licences, we propose to keep to the principles in the original modifications to these licences, noting that the issue is dealt with for the future.

Welsh Language

Consultees' representations

- 2.10 The Welsh Language Board agrees that effective competition between postal suppliers has the potential to improve the service to customers, but feels equally that it is important to ensure a level playing field and that therefore a requirement for postal operators to provide bilingual services in Welsh would be appropriate. This is something that Consignia currently offers.
- 2.11 Postcomm's view is that this is a not matter for it as regulator but is a management issue for those licensees for whom it is relevant under the Welsh Language Act.

3. Postcomm's decision

Background

- 3.1 In taking the decision to modify the licences held by Hays and TNT, we considered the responses received to the consultation notice.

Changes to the draft modifications

- 3.2 Postcomm reconsidered the wording of the modifications in paragraphs 2(b) and 3(a) and felt that it would benefit from re-wording to make it clearer. The changes do not affect the services permitted once the modifications are in place.

Assessment of impact on the universal service

- 3.3 The modifications will enable postal services to be provided only –
- (i) when there is disruption to the universal postal service, and
 - (ii) for a limited period of time
- and therefore are unlikely to have any appreciable adverse impact on the provision of the universal postal service in the United Kingdom.
- 3.4 The modifications have the effect of limiting the impact of the disruption to the universal service and reducing the backlog of mail that needs to be cleared at the end of a period of disruption.
- 3.5 These assessments also apply in the event of failure by Consignia to provide the universal postal service as a result of an emergency or natural disaster.

Users of postal services

- 3.6 Postcomm's view is that the modifications will further the interests of users of postal services by enabling Hays and TNT to provide an unrestricted service when there is interruption to the provision of the universal service.

Decision

- 3.7 Our overall assessment of the points made is that the modifications should be made as proposed, subject to the minor drafting changes highlighted in paragraph 3.2 above. We concluded that to make the modifications is a proper exercise of our functions under the Act in that it would have no adverse effect on the provision of the universal service and would further our duty in relation to the interests of consumers and competition. We therefore decided to make the modifications.

Appendix 1

Responses to the consultation notice were received from the following bodies/individuals:

1. Consignia plc
2. the Northern Ireland administration
3. Perth and Kinross Council
4. Postwatch
5. the Welsh Language Board