

LICENCE GRANTED TO TNT UK LIMITED

DECISION DOCUMENT

NOVEMBER 2001

Summary

On 10 May 2001, the Postal Services Commission ("Postcomm") issued a consultation notice on the proposal to grant a short term licence to TNT UK Limited ("TNT"). Representations on the granting of that licence were requested by 8 June 2001. Postcomm having considered the representations decided to grant a licence to TNT.

This document summarises the main points of the responses to the consultation and sets out the reasons for the decision to grant a licence to TNT.

Table of contents

1. Introduction

Purpose of this document
Background
Contact details at Postcomm

2. Consultees' representations and Postcomm's views on the proposed licence grant

Requests for further information
Universal service obligation
Duration of the licence
Value added/special services
Necessity for licence

3. Postcomm's decision

Background
Assessment of impact on universal service
Safeguards
Competition
Ability to finance licensed activities
Decision

Appendix 1

List of those who responded to the consultation notice on the proposal to grant a licence to TNT.

1. Introduction

Purpose of this document

- 1.1 This document explains the outcome of the consultation process undertaken on the licence application received from TNT UK Limited ("TNT") and outlines the background to the decision taken to grant a licence to TNT.

Background

- 1.2 On 26 March 2001 the new regulatory regime for postal services established by the Postal Services Act 2000 came into force. On 21 December 2000 an application was received from TNT for a licence under Section 11 of the Postal Services Act 2000 ("the Act"). This application was considered under the terms of Postcomm's Interim Approach to Licensing published in April 2001.
- 1.3 On 10 May 2001 Postcomm issued a consultation notice on the proposal to grant a short term licence to TNT under Section 11 of the Act. This sought views on Postcomm's proposal to grant a licence to TNT and on the form of that licence. Under the terms of the statutory notice, representations regarding the draft licence were requested by 8 June 2001.
- 1.4 The proposed licence covered an existing mail service:
- To collect and deliver letters as agreed under a contract dated 23 November 2000 between TNT and a customer in the financial services sector, Crestco Ltd (Customer), involving guaranteed next day delivery by TNT of mail to members of a closed user group.
- 1.5 Postcomm received formal responses or enquiries from six 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 The responses to the consultation focused on a number of key areas, including:
- The impact, if any, of the grant of the licence on the universal service;
 - Consistency with Postcomm's interim approach to licensing;
 - The duration of the proposed licence; and
 - The necessity for a licence
- 1.7 Postcomm gave very careful consideration to the representations received and is satisfied that the granting of this licence, with the safeguards it contains is a proper exercise of Postcomm's functions under the Act.
- 1.8 This decision document summarises the main points arising from the consultation and explains the basis of our decision to grant a licence to

TNT in the terms in which it has been issued. In particular it explains the basis of decisions taken in relation to specific aspects of the licence.

Contact details at Postcomm

- 1.9 If you have questions about any aspect of this document please contact Shahida Mukhtar or Ros Poulson at:

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2. Consultees' representations

Requests for further information

Consultees' representations

- 2.1 Consignia requested further information on the provision of a service to a closed user group and suggested that on receipt of the information Postcomm restart the consultation process. No other requests for information were received.

Postcomm's views

- 2.2 Section 119 and schedule 7 of the Act mean that we have to exercise considerable caution in disclosing information. With TNT's approval Consignia were supplied with further limited information on the closed user group. We did not accept that there was any deficiency in our consultation process and therefore refused to restart a consultation process that was not flawed.

Universal service obligation

Consultees' representations

- 2.3 Consignia expressed concern about the precedent set for a de facto policy of licensing in a piecemeal fashion. Consignia thought that Postcomm would have difficulty in refusing other applications and as a result of raising expectations by the grant of licences on the part of applicants and their customers that the licences would be ongoing.
- 2.4 Consignia felt that Postcomm's approach was inadequate and that Postcomm might experience future difficulties in being even-handed. Essentially, Consignia's view was that Postcomm's universal service duty means that it should not grant any licences until its longer term licensing framework has been established and until then restrictions on operating within the licensed area should be strictly enforced.

Postcomm's views

- 2.5 Consignia did not seek to demonstrate that the grant of the licence would in itself have an effect on the universal service. Its argument seemed to be that Postcomm would be unable to refuse similar applications in the future and that the cumulative effect of this and other licences that it believed might be expected to be granted will have adverse universal service implications.
- 2.6 We do not accept that we are unable to refuse further licences for similar activities or to refuse to renew licences if this is necessary to ensure the continued provision of the universal service. Our statutory duty in relation to the universal service, following the provisions of the European Directive on postal services, makes it clear that we are able to refuse to grant or

renew licences for universal service reasons. We had made this clear in our interim licensing policy so that the application of that policy would be open and transparent and would not be discriminatory

Duration of the licence

Consultees' representations

- 2.7 The European Express Association (EEA) and the Association of International Courier and Express Services (AICES) objected to the proposed one year period of the licence. AICES regarded this short term period as discouraging to applicants, unrealistic in view of the investment involved and unfair when compared with the terms of Consignia's licence.
- 2.8 TNT also objected to the proposed one year term of the licence, on the grounds of the potential disruption to their customers. Instead they would have preferred the licence to run with the contract, or to a minimum 5 year term. Postwatch supported TNT's request for the licence to be granted for 5 years with the ability to extend the period should the contract be renewed.
- 2.9 Crestco Ltd felt that a 3 month notice period for termination, as stated in the draft licence, was not long enough for the important business of the Customer and requested a notice period of one year to be considered.

Postcomm's views

- 2.10 Postcomm accepts most of the points raised by the EEA, AICES and TNT but believes that on balance it would not be appropriate to alter its announced interim approach to licensing. It is our view that the intended development of Postcomm's longer term approach to licensing due at the end of this year will mitigate the force of the arguments for longer term licences.
- 2.11 It is also administratively convenient to retain the flexibility of a term of one year terminable on 3 months' notice. Interim licence holders will then be able to surrender their interim licences in favour of full licences if their activities continue to meet Postcomm's licensing criteria.

Value added/Special services

Consultees' representations

- 2.12 AICES expressed concern at what it characterised as Postcomm's intention to licence "value added express services" or "new services", which it considered exempt from any licensing requirements under the Act by virtue of the Postal Services Directive. AICES requested a general confirmation from Postcomm that "value added services" did not require a licence.
- 2.13 The EEA, which represents many of the same companies as AICES, expressed similar concerns regarding the need to licence what it termed "special services". Specifically, the EEA argued that the activities covered by the proposed licence fell into that category, that they were exempt from licensing requirement as a result of the application of the Postal Services

Directive, and instead should be subject to a “general authorisation procedure”.

- 2.14 TNT raised the same concern as the EEA regarding the legal position of “special services”, and similarly asserted that the activities proposed to be licensed fell into that category. Postwatch recommended that consideration be given to exempting special services and pointed out that a general authorisation would be different from individual licences and would therefore be subject to a separate consultation exercise.

Postcomm’s views

- 2.15 Postcomm had already considered this issue before putting the proposed licence out to consultation. There is no doubt that the Act prohibits the activities in question without a licence. If the Postal Services Directive requires the activities not to be reserved, the consequence appears to be that Postcomm may either regard itself as under a duty to grant the licence or consider a recommendation to the DTI for an exemption order for them. Such a recommendation cannot be made without consultation, which had not been instigated by Postcomm. In the circumstances, we believed it was proper to issue the proposed licence to TNT.

Necessity for licence

Consultees’ representations

- 2.16 Crestco Ltd, although supporting this TNT licence, stated that their support did not mean that they believed a licence was necessary or that an existing exemption under the Act would not apply. It therefore reserved the right to request that the activity covered by the draft licence be added to the list of exemptions provided for under the Act (which they have since done).

Postcomm’s views

- 2.17 Postcomm noted that the grant of a licence would not preclude it from reviewing the two issues raised by Crestco of whether there were additional grounds for concluding that a licence was unnecessary and whether it was appropriate to seek a further exemption. In the meantime the grant of a licence would remove any suggestion that an important service was being provided illegally.

3. Postcomm's decision

Background

- 3.1 In taking the decision to grant the licence to TNT, we considered the responses received to the consultation notice and advice on the scope for revising the provisions of the consultation draft.

Assessment of impact on the universal service

- 3.2 Because of -
- a. the short term nature of the proposed licence,
 - b. the limited scale of the TNT activities to be licensed, and
 - c. the past performance of the activities in question without any known effect on the universal service

we felt that it was highly improbable that they would have any discernable effect on the continued provision of the universal service.

- 3.3 Consignia's response provided no indication of how the grant of the licence proposed for TNT would, of itself, have an adverse universal service effect. We considered the projected turnover figures provided by TNT and took into account the level of business under the licence. We are confident that this licence is likely to generate turnover that is estimated at less than a tenth of one percent of Consignia's turnover.

Safeguards

- 3.4 We have drafted the TNT licence in such a way as to restrict the extent to which the business permitted by the licence can be developed.
- 3.5 This supplements the safeguard provided by our ability to terminate the licence after a year. Postcomm has made clear to TNT that there can be no presumption that the licence will be extended or renewed, and that, if a decision is taken to extend or renew the licence, TNT cannot assume that the terms will be the same. Terms and conditions appropriate at that time to safeguard the universal service will need to be included in any extended or renewed licence.

Competition

- 3.6 We had no doubt that the grant of the licence would further the interests of users of postal services by promoting competition and would encourage efficiency on the part of the postal operators.

Ability to finance licensed activities

- 3.7 We were satisfied that TNT could finance the proposed licensed activities and that the grant of the licence would not prevent any other licence holder from financing the activities authorised or required by its licence.

Decision

- 3.8 Our overall assessment of the points made about the way the licence is expressed, its conditions and duration, was that the licence should be granted as proposed for a one year period. We concluded that to grant an interim licence to TNT was 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 grant the licence.

Appendix 1

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

1. Association of International Courier and Express Services (AICES)
2. Consignia plc
3. Crestco Limited
4. European Express Association (EEA)
5. Postwatch
6. TNT UK Limited