Neutral citation [2025] CAT 84

Case No: 1639/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

18 December 2025

Before:

HODGE MALEK KC
(Chair)
TIMOTHY SAWYER
ANDREW TAYLOR

Sitting as a Tribunal in England and Wales

BETWEEN:

BULK MAIL CLAIM LIMITED

Class Representative

- v -

INTERNATIONAL DISTRIBUTION SERVICES PLC
(FORMERLY ROYAL MAIL PLC)

Defendant

Heard at Salisbury Square House on 18 December 2025

RULING

APPEARANCES

Paul Harris KC, Ben Rayment and Hannah Bernstein (instructed by Lewis Silkin LLP) appeared on behalf of the Class Representative

Kenneth MacLean KC, Edmund Nourse KC and Andrew McIntyre (instructed by Hogan Lovells International LLP) appeared on behalf the Defendant

A. INTRODUCTION

1. This is the third case management conference (the "Third CMC") in these collective proceedings brought by the Class Representative ("CR") against the Defendant ("Royal Mail").

2. The procedural history and subject matter of these collective proceedings have been summarised by the Tribunal in its judgment on certification ([2025] CAT 19) (the "CPO Judgment") and its ruling following the case management conference of 23 September 2025 (the "Second CMC") ([2025] CAT 56) (the "Second CMC Ruling"). The orders following the Second CMC were made on 8 October 2025 (the "Second CMC Order").

3. To summarise briefly, these collective proceedings "follow on" from Ofcom's 14 August 2018 decision entitled "Discriminatory pricing in relation to the supply of bulk mail delivery services in the UK" ("the Ofcom Decision"). The Ofcom Decision found that Royal Mail had infringed competition law by abusing its dominant position in the market for bulk mail delivery services by attempting to introduce discriminatory prices via "Contract Change Notices" ("CCNs") on 10 January 2014. At the time the CCNs were issued, Whistl was a major access operator for bulk mail and had started to roll out its own delivery operations to final recipients in specific areas. It had been planning to extend its end-to-end delivery service across the UK, thus eroding Royal Mail's market share. It is the CR's case that as a result of the announcement of the CCNs, and prior to the Ofcom Decision, the funders for Whistl's planned expanded operation withdrew their funding.

4. Royal Mail appealed the Ofcom Decision to the Tribunal. This appeal was dismissed on 12 November 2019 ([2019] CAT 27) ("the Ofcom Tribunal Judgment"). A further appeal to the Court of Appeal was dismissed on 7 May 2021 ([2021] EWCA Civ 669; [2021] 5 WLUK 57).

5. It is the CR's case that:

(1) as a result of the infringement of competition law, Whistl withdrew from the relevant market, never to return;

(2) purchasers of bulk mail services paid higher prices than they would have otherwise, creating an overcharge (the "Overcharge"); and

(3) on a provisional basis, the CR estimates the total value of the claim in terms of the Overcharge is in the region of £1 billion, and the number of class members exceeds 290,000.

6. Whistl brought its own claim against Royal Mail primarily based on the Ofcom Decision ("the Whistl Proceedings"). This claim was settled between the parties in early 2025, but not before disclosure had been undertaken, which included not only documents from Whistl, but also from its former Dutch parent, PostNL (formerly TNT), and Whistl's potential funders, LDC. Also available in the Whistl Proceedings was material from the Ofcom investigation in the Ofcom case file and the evidence and submissions from the appeals to the Tribunal and the Court of Appeal.

B. PREVIOUS CASE MANAGEMENT OF THESE PROCEEDINGS

7. The Tribunal has been actively case managing these proceedings. Case management was considered at the collective proceedings order application hearing as reflected in the judgment [2025] CAT 19 (the "CPO Judgment") at [82] and the collective proceedings order made on 6 March 2025 and drawn on 7 March 2025 (the "Collective Proceedings Order"). At the Second CMC, among other case management matters, the Tribunal gave directions to trial, directions on disclosure, expert evidence, and determining the binding findings from the Ofcom Decision and the Ofcom Tribunal Judgment.

C. EVENTS SINCE THE SECOND CMC

8. Since the Second CMC and the Second CMC Ruling, the parties have been making progress on various fronts:

(1) **Binding findings**: The parties have liaised in an effort to resolve outstanding points of disagreement in relation to allegedly binding findings in the Ofcom Decision and the Ofcom Tribunal Judgment. The parties have filed a composite schedule setting out the remaining issues in dispute. Both parties agree that the remaining disagreements set out in the composite schedule should be resolved at trial, rather than by way of preliminary issue.

(2) **Disclosure**: Royal Mail has provided the CR with the 'off-the-shelf' disclosure from the Whistl Proceedings as referred to at paragraphs 5 and 6 of the Second CMC Order. Royal Mail has also provided the CR with the 'PostNL Disclosure' as stipulated by the consent order made and drawn on 23 October 2025, as agreed by the CR, Royal Mail and PostNL N.V.. Similarly, Royal Mail has provided the CR with the 'LDC Disclosure' as specified in the consent order made on 3 November 2025 and drawn on 4 November 2025, as agreed by the CR, Royal Mail and LDC (Managers) Ltd.

(3) **Amended Reply**: The CR has filed an Amended Reply pursuant to paragraph 7 of the Second CMC Order.

(4) **List of issues for expert evidence**: As directed by the Tribunal in the Second CMC Order, a without prejudice meeting between the experts (with solicitors in attendance) took place on 26 November 2025 to discuss the list of issues for expert evidence. The parties then filed a draft list of issues for expert evidence (the "Draft LOIFEE"). Additional expert materials have also been filed, as discussed below.

(5) **Litigation budget**: The CR has filed an updated litigation budget pursuant to paragraph 28 of the Second CMC Order. Royal Mail has provided information about its incurred costs to date and estimated future costs in its letter to the Tribunal dated 5 December 2025. Further, the CR has filed an updated scenario analysis for these proceedings pursuant to paragraph 29 of the Second CMC Order.

D. THIRD CMC AGENDA ITEMS

9. The main agenda items for consideration at the Third CMC were as follows: (1) industry evidence; (2) survey evidence; (3) binding findings; (4) the Class Member Customer Group; (5) mailing houses inclusion in the class; (6) expert evidence; (7) litigation budgets; and (8) directions to trial.

(1) Industry Evidence

10. Paragraph 22 of the Second CMC Order stated that any application for permission to adduce expert evidence from any individuals in addition to those to whom permission was previously given was to be made before the Third CMC.

11. On 9 December 2025, the CR wrote to the Tribunal applying to adduce industry expert evidence from a trade witness (the "Industry Evidence Application"). The precise matters this witness would address, the CR stated, would depend on what emerged from disclosure. Its best assessment at this stage was that the evidence would be expert evidence, drawing upon the witness' expertise within the mail industry to cover the following issues, stating at paragraph 2 of its Industry Evidence Application:

> "2. … market practices (such as typical contract terms, cost management and pricing practices, and commercial drivers for customers); related markets (such as the interrelationship between the Bulk Mail market and the small parcels and/or unaddressed mail market(s)); innovation and market development (including for example in relation to regulation); and context around other market participants (and their potential entry)."

12. The CR did not exclude the possibility that some of the relevant evidence may be deemed to be factual evidence, given the mixed nature that is typical of trade evidence.

13. The CR noted the difficulties as to the status of trade witnesses. It quoted the following from *Coll v Alphabet & Ors* [2023] CAT 47 ("*Coll*") at [33], which discusses Birss J's judgment in *Fenty v Arcadia Group Brands Ltd* [2013] EWHC 1945 (Ch):

> "…(1) Trade witnesses may give evidence of "the circumstances of the trade" and "nature and circumstances of [the] market", even including expressions of opinion as to the likely behaviour of market participants, without this amounting to expert evidence under CPR Part 35: see [35] and [39]-[40].
>
> (2) This is so even though such witnesses will explain and rely on their experience in the trade "in order to justify their evidence and add credibility to it": see [35].
>
> (3) Deciding whether evidence given by a trade witness amounts to expert evidence "cannot be done" without close examination of the evidence itself in the context of the issues in the proceedings (and in that case, Birss J had the benefit of the statements already being in evidence): see [40] and following."

14. In circumstances in which Royal Mail has industry evidence available to it internally (from its employees), the CR stated it was important it was also able to adduce industry evidence. The CR proposed that industry evidence could be determined at the PTR, or in a CMC in late 2027.

15. Royal Mail submitted that the Industry Evidence Application should not be granted as no specificity had been given on the expert evidence it proposed to adduce. Granting the application would amount to giving open ended permission to adduce expert evidence, with the issues to which this evidence would relate only being identified after September 2026. Such an approach would be inconsistent with the Second CMC Ruling, the Tribunal's recent Practice Direction on Expert Evidence (3/2025) or *Coll* at [11]. If the CR needed to wait for disclosure to identify these issues, it should make the application at that time.

16. On whether to allow the Industry Evidence Application, the Tribunal notes that the application does not provide the name of the proposed witness, nor has it been clarified in sufficient detail what issues this expert is going to address.

17. The Tribunal has decided that the CR has liberty to make an application for permission to call a trade witness, whether as factual evidence or expert evidence, within four weeks of the completion of the disclosure exercise (with the timetable for this being set out in the order to follow this ruling) but before the date of the exchange of witness statements.

18. That application will specify the precise issues, by reference to the pleadings, that the witness is going to cover, as well as the legal basis for why that person's evidence is admissible, either as factual or expert evidence.

19. Insofar as it is contended it is going to be factual evidence, that should be explained by reference to the authorities as to the admissibility of trade witnesses as witnesses of fact; insofar as it is going to be expert evidence it will have to refer to the relevant authorities.

20. The Tribunal considers that these issues are not straightforward. The Tribunal will come to a view prior to the exchange of witness statements, rather than leave issues relating to such evidence to be decided at the PTR or trial. This way, Royal Mail will know, prior to the filing of witness statements, what evidence is likely to be filed and what it will cover. If Royal Mail wish to respond to any such trade witness from the CR, it may well be that Royal Mail has potential witnesses inhouse who will be able to address those issues as a matter of fact.

21. The CR will likely want to have the ability to at least counter the evidence that is going to be given by the witnesses of Royal Mail. What will likely happen in the end is we will have two witness statements, if it is admitted, from the witness that is being proposed on behalf of the CR: one statement that will be served at the time of exchange of factual witness statements, and then a period after that, a further statement which could then address these issues, insofar as they have been made, by the factual witnesses on behalf of the Defendant.

(2) The CR's proposed Survey

22. Dr Williams' first expert report explained that his methodology would include a survey of bulk mail retail customers to test their actual or potential responses to increased competition. Following disclosure and further refinement, the CR explained, a survey company, IFF Research Ltd ("IFF") is being engaged.

23. Dr Williams proposed the following timeline for his survey:

(1) Dr Williams will prepare his survey questions and methodology in January 2026, for comment;

(2) thereafter, IFF will run a pilot survey in January/February 2026;

(3) following review of the pilot response rates and quality, final revisions will be made to the methodology and survey questions (and the survey questions shared with Royal Mail for any final input) by early March 2026; and

(4) the survey will be completed by IFF, overseen by Dr Williams, by the end of May 2026.

24. The Tribunal is conscious that surveys have differing utility in practice. Sometimes surveys are done on a misconceived basis. This can happen when both parties have their own surveys, with different methodologies leading to results which do not align. This would not assist the Tribunal. Alternatively, one party may produce a survey by itself with no input from the other side, spending a lot of money, only for the other side to say the wrong process was followed, and the wrong questions were asked, meaning the survey needs to be discarded.

25. What the Tribunal would prefer is to have a process whereby both parties have the full opportunity to give some input into the survey and its questions. The Tribunal considers that the process initially outlined by the CR was too much of a unilateral exercise: more structure and the opportunity for Royal Mail's engagement was needed.

26. To this end, the Tribunal directs that the first stage would be that Dr Williams will prepare his survey questions and methodology in January 2026. This will be provided to Royal Mail, who will come back with any initial comments. Thereafter, a pilot survey will be run. The results of this will be shared with Royal Mail. At this point, it would be for the CR to decide on a detailed methodology and questions for the survey. This again would be provided to Royal Mail who would have the right to come back with any comments. If all

is agreed, the parties would file this agreed methodology with the Tribunal for final approval.

27. If there is a dispute between the parties on the survey and the questions, this will be resolved by the Tribunal. This could either be done on the papers or in a hearing if the parties consider that this is necessary.

(3) Binding Findings

28. The Tribunal notes that it found the composite schedule of findings, referred to in paragraph 8(1), helpful. It has crystallised the issues between the parties and is easy to absorb. The Tribunal thus approves the composite schedule of findings.

29. The Tribunal also notes that there are fundamental points where Royal Mail dispute the alleged bindingness of the Ofcom Decision and the Ofcom Tribunal Judgment. This includes whether the infringement found had an effect, and what that effect was. To assist the Tribunal, the Tribunal requests that insofar as Royal Mail is making or intends to make an application to disapply any previous finding, Royal Mail should do so in a separate document setting out which findings it seeks to disapply and the reasons for doing so.

(4) Class Member Customer Group

30. As regards the Class Member Customer Group (the "Customer Group"), this was a matter that the Tribunal considered in the CPO Judgment and Second CMC Ruling. The purpose of the Customer Group is that, as there are likely to be some class members with potentially large claim entitlements, there should be a group of class members that the CR can consult with.

31. As of the Second CMC, the Tribunal was told there were five members of the Customer Group. The Second CMC Ruling stated that the Tribunal envisaged there being, if possible, about ten members in the Customer Group.

32. An issue arose in the Second CMC as to whether the Tribunal, and possibly Royal Mail too, should be told of the names of those in the Customer Group. The Tribunal stated that it should be aware of the Customer Group members, at least in terms of the sectors the members operated in, given the Tribunal's supervisory role in the conduct of these collective proceedings.

33. The Tribunal stated that once the Customer Group has grown, there should be further consultation with the members of the Customer Group as to whether they would wish their names to be identified. If a list is to be provided to Royal Mail this would be pursuant to the confidentiality ring order (external lawyers only). Royal Mail itself could then apply to the Tribunal for a list of names.

34. The CR updated the Tribunal that an additional class member had joined the Customer Group since the Second CMC, bringing the total to six. The CR stated it was continuing the process of inviting members and that a further class member was in the process of joining the group.

35. On the identity of the Class Members, the CR stated it had consulted the Customer Group members and could inform the Tribunal of the sectors of five members. This included the telecoms, retail, energy and utilities, publishing, and health sectors. The seventh potential member also operated in the retail sector. The other member operated across a range of sectors.

36. The reason why the Tribunal considered it appropriate for there to be a Customer Group is that these proceedings are brought on behalf of the class members. What the Tribunal wants to avoid is a situation whereby proceedings are brought on behalf of class members who do not engage at all, and if and when we get to the end of the proceedings, only a very small number of people express any interest in making a claim.

37. As explained in the Second CMC Ruling, what is unusual about these proceedings compared with other proceedings, is the range of potential loss for class members. Here, with around 290,000 representative persons, there will be certain entities who will have very substantial claims if it comes to distribution. Others may have only modest claims.

38. It is said on behalf of Royal Mail that the identity of those persons in the Customer Group should be made public. Openness is something that should be encouraged by the Tribunal rather than have secret justice. Furthermore, if the involvement of the Customer Group goes beyond a certain line, the members will become, in effect, parties to the action. On that basis, Royal Mail should be able to seek disclosure against these persons not merely as non-parties.

39. However, the Tribunal considers that merely because someone is a member of the Customer Group, this does not mean that they are parties to the action. They are no more than a sounding board for the CR who itself has a duty to ensure that these proceedings are being conducted properly, that all relevant considerations are brought to mind, that there is some form of engagement with the class and that the interests of the class members are taken into account.

40. The Tribunal's view, at the moment, is that these persons are not parties to the action, and so if there is going to be any application for disclosure, it would have to be by way of a non-party disclosure application.

41. As to whether the Tribunal should order the identities of these members be made public, insofar as there is such an application, that application is refused. The information provided by the CR is sufficient for present purposes.

42. The Tribunal understands that there is an element of discomfort among members of the Customer Group in that they have an ongoing relationship with Royal Mail, and they do not want to prejudice that by it becoming public that they are members of the Customer Group. The Tribunal understands this. The Tribunal does not believe that Royal Mail is in the business of harassing or causing trouble to any of its customers. The Tribunal does not consider it at all likely that Royal Mail will pick on individual members, simply because they have joined the Customer Group. The concrete point is Royal Mail’s proposal to seek disclosure from members of the Customer Group. While this is not a matter of victimisation, this may well be a disincentive to joining the group. The Tribunal is fully appreciative of its experience with the collective proceedings regime and the difficulties in getting engagement. The Tribunal does not want

to discourage engagement by class members, and the ability of the CR to get some sort of feedback from the class.

43. As regards the composition of the Customer Group, currently the financial services sector is not represented. The Tribunal notes that at [6.97] of the Ofcom Decision, it is stated that:

> "The main purchasers of Royal Mail's bulk mail delivery services were access operators, such as Whistl and UK Mail, and large individual customers such as banks and other financial services providers (including agency customers)."

If practicable, the CR should endeavour to get at least one entity from the financial services sector to join the Customer Group, given it is such a significant part of the class. If the CR ends up with eight members of the Customer Group including one from the financial services sector, the Tribunal would be content with this.

(5) Mailing houses inclusion in the class

44. The Tribunal was informed that on 21 November 2025, Royal Mail wrote to the CR to enquire about its position on whether mailing houses and mail consolidators fall within the scope of the class. Royal Mail explained that mailing houses are effectively intermediaries who offer certain bulk mail services to retail customers including preparation, printing and sorting. Mail consolidators are companies that combine or consolidate smaller shipments of mail into larger shipments, allowing them to qualify for discounted bulk mail rates. Mailing houses and mail consolidators may contract with Royal Mail directly but may also contract with a combination of an access operator and Royal Mail, or may contract with an access operator who then contracts with Royal Mail.

45. Royal Mail stated that if mailing houses are included in the class, questions regarding rates of pass-on between different levels of the chain will arise. Therefore, this issue could affect, *inter alia*, the scope of expert evidence required. Further, if mailing houses and mail consolidators fall within the scope of the class, this may give rise to a conflict of interest between class members that will need to be addressed. Accordingly, Royal Mail sought clarification

from the CR regarding the class definition in order to avoid disrupting the proceedings.

46. The CR responded that intermediaries such as mailing houses and mail consolidators were not in the class. The chain of services in the market was quite clear: Royal Mail supplies the delivery services, because they are the only people who could, and the people who are in the class are the end customers of the delivery services.

47. The Tribunal noted that the definition of the class explicitly carves out access operators which is defined as "Bulk Mail Retail Operator who procures Bulk Mail Delivery Services from Royal Mail". While the CR explained that the intermediaries highlighted by Royal Mail are not within the class, this is not necessarily reflected in the wording of the Collective Proceedings Order.

48. The Tribunal sees the potential for difficulties, further down the line, if there is no clarity as to who is within the class. If intermediaries are not excluded clearly from the class, certain intermediaries may advance claims at the settlement or judgment stage seeking their share of any damages offered by way of settlement or awarded by way of judgment damages.

49. Hence the Tribunal directs that the parties endeavour to agree wording to exclude the intermediaries as discussed in the Third CMC. This wording should be provided to the Tribunal for its approval. If the parties are unable to agree a definition and propose different versions, both versions should be set out with an explanation of why each party is proposing its particular wording and identifying any flaws with the proposed wording of the other side.

50. Mr MacLean KC for Royal Mail also pointed out that such a change and the role of intermediaries may have implications for pass-on. The Tribunal agrees. Once this definition has been approved by the Tribunal, both parties are to consider what impact this has on the current wording of the pleadings. Following this, if Royal Mail wishes to amend its Defence, it is likely the Tribunal will grant permission.

(6) Expert evidence

(a) Comparator countries

51. In the Second CMC, the Tribunal gave permission to the CR to adduce and rely on written and oral expert economic evidence from Dr Chris Williams. Dr Williams has filed three expert reports in these proceedings to date, the third being filed pursuant to a direction in the CPO Judgment requiring him to set out his proposed methodology in greater detail.

52. The methodology being adopted by Dr Williams in his third expert report was summarised by the Tribunal in the Second CMC Ruling at [12]. His methodology involves conducting a difference-in-differences ("DiD") analysis by which Dr Williams will consider what the impact of competition in the bulk mail market would have been by reference to the impact of competition in comparator bulk mail postal markets in Europe. Under this methodology, Dr Williams stated that he would compare the UK market to the German and Swedish markets.

53. Within his third expert report, Dr Williams referred to the possibility of considering additional comparator countries. The Tribunal ordered that if Dr Williams wished to refer to additional comparator countries, he was to file and serve a list of these additional comparator countries prior to the Third CMC and explain why these additional comparator(s) are appropriate.

54. The CR has now confirmed that Dr Williams intends to include the Netherlands as an additional comparator country.

55. The CR explained that the Netherlands' inclusion may provide useful additional data for Dr Williams' analysis. Furthermore, he will use separate DiD models, two including and one excluding the Netherlands, giving him the ability to exclude data from the Netherlands if he considers the results are not robust.

56. The Tribunal notes this position and sees the sense in the inclusion of the Netherlands in the manner proposed by Dr Williams.

(b) Royal Mail's positive case

57. At the Second CMC, the Tribunal granted Royal Mail permission to adduce and rely on written and oral expert economic evidence from Mr Matthew Hunt and expert forensic accounting evidence from Mr Andrew Grantham.

58. Paragraph 26 of the Second CMC Order required Royal Mail to file and serve an expert report from Mr Hunt and/or Mr Grantham confirming whether Royal Mail intended to advance a positive case as to how any Overcharge and/or how any pass-on ought to be calculated, and if so, setting out their proposed methodology. A joint report from Mr Hunt and Mr Grantham regarding this issue was filed on 5 December 2025 (the "Joint Report"), in which Royal Mail stated it did intend to advance a positive case.

59. In particular, the Joint Report stated that Mr Hunt would:

(1) set out his views on Royal Mail's potential competitive response(s) in the counterfactual, in response to the actual or potential expansion by Whistl, including Royal Mail introducing a zonal tilt charge;

(2) consider the potential for regulatory intervention by Ofcom in the counterfactual in relation to: (i) introducing a "Universal Service Obligation" ("USO") fund and requiring Whistl to contribute to that fund; or (ii) modifying the terms of the USO; and

(3) in relation to estimating the quantum of damages, provide certain inputs into Mr Grantham's estimation of quantum. Specifically, Mr Hunt expected this may include: (i) potential inputs into Mr Grantham's analysis of the alleged overcharge to the class and volume of affected commerce; and (ii) consideration of the extent of pass-on of the overcharge for different categories of Bulk Mail customers.

60. Further, the Joint Report explained that Mr Grantham's approach would include:

(1) interrogating Whistl's planned roll-out to establish whether there was a viable "base case" for Whistl's end-to-end bulk mail delivery service absent the price differential and absent any competitive response from Royal Mail;

(2) defining and establishing the assumptions in the counterfactual, with input from Mr Hunt, reflecting, if applicable, the financial impact of Royal Mail's potential competitive response and/or Ofcom's potential regulatory intervention and determining any applicable Overcharge suffered by the class; and

(3) calculating quantum, giving consideration to Mr Hunt's analysis on any pass-on to end customers, of the loss to the class.

61. However, Royal Mail explained it would not be advancing a positive econometric case. Instead, Mr Hunt would consider and respond to the model put forward by Dr Williams.

62. In the Third CMC, the CR brought the Tribunal's attention to paragraphs 20(b) and 27 of the Joint Report which state the following:

> "20. Mr Hunt will consider the impact of the potential counterfactual scenarios that he identifies, on Bulk Mail wholesale and retail prices in the market. This will be based on:
>
> …
>
> (b) Mr Hunt may also draw qualitative inferences from entry in Bulk Mail markets in other countries and the consequent impact of that on competition and prices over the claim period, while considering any differences with the UK. For instance, Mr Hunt may consider qualitative evidence on the sustainability of entry or potentially lower prices following entry in different countries and whether it is appropriate to draw any inferences from those examples for the UK.
>
> …
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> 27. Mr Hunt considers that experience from Bulk Mail markets in other countries could be useful in understanding how sustainable entry by Whistl may have been in the UK and how competition and Bulk Mail prices may have evolved in the UK in the counterfactual following Whistl's entry. However, such an analysis would be broadly qualitative in nature, considering carefully the differences between

> countries, rather than the quantitative econometric approach that Dr Williams proposes to undertake."

63. The CR contended that Royal Mail should be ordered to provide particulars regarding the "other countries" referred to in these passages. Mr MacLean KC, on behalf of Royal Mail, pointed out that until research has been conducted and disclosure completed, his experts will not be in a position to identify the countries relevant to the analysis.

64. In these circumstances, the Tribunal will order that Royal Mail, within a certain period after conclusion of disclosure, identify the countries that have been reviewed by its experts and in particular those countries that the experts consider provide relevant information and that they will rely on in their expert reports.

65. Going further, the CR noted that the Joint Report referred, at multiple points, such as at paragraph 11(a), to "Royal Mail's potential competitive response(s)", without stating what these responses were. The CR submitted that Royal Mail should be required to plead its proposed counterfactuals now rather than wait for disclosure. The CR argued that Royal Mail should already know this given its historic position in the market and that the Whistl Proceedings, for which Royal Mail was relying on the same experts, settled only a matter of months or less before the exchange of expert reports. Mr Harris KC for the CR stated that allowing for the asymmetry of Royal Mail not being required to plead its counterfactuals now would put the CR at a disadvantage.

66. Royal Mail submitted that this was a matter of timing. Given the trial was in 2028, there was no need, other than tactical benefit to the CR, to require Royal Mail to plead its counterfactual in advance of disclosure, which could ultimately change following disclosure. Therefore, while Royal Mail had no problem in being required to plead out its counterfactuals, it averred that this should wait until disclosure has been completed.

67. The Tribunal agrees with Royal Mail's submission. However, the Tribunal will require Royal Mail to set out, in a letter, the potential competitive responses in the counterfactual referred to at paragraph 11(a), to the extent that they have been identified, by a date in March 2026.

68. Thereafter, once disclosure has been completed, then, within a set period to be specified at a later date, Royal Mail can apply to amend their pleading to plead out its counterfactual.

(c) List of Issues for Expert Evidence

69. In the Second CMC Ruling, the Tribunal noted that the experts were far apart on many issues, including how the Overcharge is to be estimated, what methodologies are viable, and which, if any, comparator countries are suitable for any DiD models.

70. The Tribunal emphasised the importance of avoiding the scenario where the experts failed to engage with each other's positions in the lead up to, and at, trial. To address this, the Tribunal directed that a meeting of experts be held by 12 November 2025.

71. Prior to trial, the Tribunal ultimately wants to receive a detailed joint expert report expressing the areas of agreement and disagreement. This would serve as an effective agenda for when expert evidence is called at trial. In light of this objective, the parties were directed to seek to agree a list of issues for expert evidence which was to identify which expert(s) would cover each issue and identify any disputes.

72. The parties filed the proposed Draft LOIFEE before the Third CMC. The Draft LOIFEE comprised 11 issues encompassing issues of economic and/or forensic accounting evidence. In summary, the Draft LOIFEE included:

(1) The CR's theory of harm (Issue 1);

(2) Royal Mail's commercial responses to the actual or potential expansion of Whistl (Issues 2 and 4);

(3) Quantum (Issues 3 and 11);

(4) The actions of Whistl in the counterfactual (Issue 5);

(5) The effects of Royal Mail's conduct on Whistl (Issue 6);

(6) The actions of Ofcom (Issue 7);

(7) LDC's investment decisions following Royal Mail's and/or Ofcom's conduct (Issues 8 and 9); and

(8) Assessment of the Overcharge suffered by the Class (Issue 10).

73. As to overarching comments, first, the Tribunal is keen that these issues are dealt with by reference to particular pleadings. The Tribunal will be giving directions that the parties are going to give particulars of their respective cases, either by letter in March 2026, or by amended pleadings, after disclosure. What the Tribunal does not want is to have open-ended issues where there is no clarity.

74. Second, the Tribunal is keen to ensure that the experts do not trespass beyond what is permissible for experts. In particular, that they do not end up giving evidence on matters which are not within their field of expertise or competence, and that they do not trespass impermissibly on issues which are for the Tribunal to ultimately assess. Rather, the role of the experts should be to identify what the relevant factors may be for when the Tribunal decides these issues.

75. Starting with Issue 2, there was a dispute over whether Royal Mail's competitive/commercial responses should be prefaced with the phrase "likely range of", as advanced by the CR, or "potential", as advanced by Royal Mail. A similar issue arises elsewhere within the issues, including Issue 4. The Tribunal directs that "likely" should be removed. What the Tribunal wants is for the experts to identify what may have been the potential commercial responses. However, the evaluative decision on what those commercial responses would have been is a matter for the Tribunal. As to what is a potential response, these will have to be viable or credible with the experts explaining why this is the case: the Tribunal does not want to hear incredible responses. For this reason, in Issue 4, the Tribunal prefers the wording of Royal Mail (in the manner which reflects the matters agreed and that the Tribunal directs in the next paragraphs).

76. Moving on, the CR proposed that references to the counterfactual should be qualified by the word "lawful". Royal Mail contested this and argued that the experts cannot confine their opinion to counterfactuals that are "lawful" without making a judgment as to lawfulness, which would not be within their expertise. Rather, it submitted, arguments on the "lawfulness" of a counterfactual would be a matter for legal submissions at trial. The Tribunal is not going to require that "lawful" be included. While the Tribunal is only going to be considering lawful counterfactuals if there are issues as to the lawfulness of counterfactuals, this will have to be drawn out in the pleadings.

77. Within Issue 2 as well as Issues 4, 6, 7 and 10, the CR proposed wording which includes the entry into the bulk mail market by persons other than Whistl. Royal Mail contested this on the basis that neither party has put forward a counterfactual involving the entry of other market entrants. It highlighted that Dr Williams' first expert report at [6.3.1] referred to Whistl being the "sole entrant and competitor to Royal Mail Bulk Mail Delivery Services". The CR claimed that the parties' pleadings do include a dispute about other possible market entrants and their potential success. The CR brought the Tribunal to Royal Mail's Defence at [66.1] which stated (emphasis added):

> "At no point since it became possible to do so in 2006 has any other Access Operator sought to develop an E2E bulk mail delivery service. That includes UK Mail, the second largest provider of bulk mail retail services, which in 2012 indicated that it 652 25 did not see E2E delivery as an attractive option to pursue and has never reversed that position. This remains true notwithstanding the withdrawal of the CCNs by Royal Mail in 2015 and the issuing of the Ofcom Decision, the CAT Judgment, the CA Judgment and the Supreme Court's decision on permission to appeal. <u>It is to be inferred from the fact that nobody else has sought to pursue an E2E bulk mail delivery business that such a business would not be successful</u>."

78. The CR stated that it had denied Royal Mail's proposition in its Reply. Royal Mail's position was that this passage of its Defence did not assist the CR as it merely reiterated that there were no other market entrants to consider for the purpose of the counterfactual.

79. The CR contended that in any event, in considering the effect of the infringement on prices in the end-to-end bulk mail delivery market, the experts will need to assess not only the impact of competitive pressure from Whistl, but

also the impact of perceived potential entry from other would-be entrants (even if those entrants did not, in fact, enter the market).

80. The Tribunal noted that the CR had not specified who these other potential market entrants would have been. If there were others, the Tribunal is not going to shut the CR out from relying upon them at this stage. However, the Tribunal would require that if there were others, these would need to be pleaded or otherwise identified in an acceptable form. The Tribunal considered that the exact wording in the Draft LOIFEE could be agreed between the parties but that "other market entrants" should be clarified with wording to the effect of "identified by either party".

81. What the Tribunal wants to understand is what the parties say were the potential market entrants, because there will be, or there may well be, at trial an issue as to who these other people were and why they did not come in.

82. This same logic should also be applied to the proposed wording in the rest of Issues 2, 4, 6, 6(c), 6(d), 6(e), 6(f), 7, 10(b), 10(c), 10(e), and 10(f).

83. Continuing to Issue 4, Issue 4(a) is to be edited to remove reference to "a matter of fact" and "would have" is to be replaced with "may have".

84. For Issue 6, there was a dispute related to the "Zonal Tilt". The Zonal Tilt describes a set of percentage-based adjustments that were applied to the uniform Average Price Plan 2 prices. In January 2014, Royal Mail notified customers of a change to these prices. The Zonal Tilt was a part of the CCNs, however the Zonal Tilt was not found, in itself, to breach competition law.

85. Royal Mail's proposed wording stemmed from its position that the CR's case followed on from the Ofcom Decision. Royal Mail could only be liable insofar as any of the alleged effects on Whistl were caused by its infringing conduct; insofar as any of the alleged effects on Whistl were caused by Royal Mail's non-infringing conduct, these fell outside the scope of the CR's claim. Hence it was not a sensible suggestion to consider the effects of the price differential, which was found to infringe competition law, together with the Zonal Tilt, which was

not found to infringe competition law, given that the Tribunal's task is to determine the effect of the infringing conduct.

86. The CR argued that its pleaded case was that the Zonal Tilt would not have formed part of Royal Mail's counterfactual response as a matter of fact, and/or because it was unlawful, or alternatively would have been implemented only for a short period of time. The CR argued that whilst it was correct that the CR's claim is follow-on (and, accordingly, the CR does not claim damages in respect of the Zonal Tilt), it is necessary to consider the effect of the absence of the Zonal Tilt, given that the CR's pleaded counterfactual includes one in which there was no Zonal Tilt.

87. For Issue 6(ii), the Tribunal considers that the experts should be allowed to consider both the price differential and the Zonal Tilt together. For Issue 6(iii), in order to give the parties the flexibility they were looking for, the Tribunal considered it should be worded as: "The aspects of the CCNs for which no finding of infringement was made (including the Zonal Tilt as notified on 10 January 2014)".

88. For Issue 6(b), there was a dispute as to what the experts were to consider regarding investment into Whistl. The CR proposed the experts consider how Whistl's financial attractiveness was affected by Royal Mail's conduct. Royal Mail contested this addition given that it was not in the competence of the forensic accounting experts to consider how Royal Mail's conduct would have affected LDC's investment decisions. Rather the appropriate question for the experts would be how the conduct would have affected LDC's expected returns. The CR countered that to limit the experts to considering only the expected returns of LDC was inappropriately granular and would limit the methodology for addressing the agreed issues, rather than identifying the agreed issues.

89. The Tribunal considers that the CR's wording was too broad and that Royal Mail's wording was too narrow. What the Tribunal wants is for the experts to identify the relevant factors to an investor. This list of considerations may not be limited to pounds, shillings and pence. However, it is not for the experts to

come to an ultimate view regarding investor attractiveness. This is a matter for the Tribunal.

90. For Issue 8, which concerned a similar matter, the Tribunal directs that the wording should be, or similar to: "The extent to which the defendant's conduct has the potential to have affected LDC's investment decisions or, to the extent relevant, other potential investors' investment decisions.".

91. Regarding Issue 9, following the above, the proposed wording of Royal Mail regarding "the likely impact of" was rejected. The rest of the Issue was to be amended following the points addressed above.

(7) Litigation Budgets

92. As stated above in paragraph 8(5), the CR was directed to provide an updated litigation budget pursuant to paragraph 28 of the Second CMC Order. Royal Mail also provided information on its expenditure so far. On reading the CR's litigation budget, the Tribunal notes that there was a relatively high burn rate of its budget compared with Royal Mail's. This was to be expected given Royal Mail had already been through the Whistl Proceedings, which were settled at a late stage.

93. The Tribunal is keen to understand, first, the extent to which the CR has got sufficient control and examination with professional assistance on the amounts being spent in these proceedings, and second on the potential conflicts and squeezes between the lawyers and funders. As seen in other cases, lawyers may end up being paid in deferred fees if litigation is more expensive than expected meaning further funding is required. The Tribunal does not want to have avoidable disputes between funders, the CR and lawyers. These things need to be managed carefully. So far, the Tribunal does not have concerns. However, the second point referred to above needs to be borne in mind throughout.

94. On Royal Mail's budget, the Tribunal was expecting more detailed costs figures than what was provided, in a fashion similar to what the CR had provided. Royal Mail should provide this for the next CMC. If there is no CMC following

disclosure, the CR and Royal Mail are to provide updated costs budgets in any event by a date to be stipulated by the Tribunal.

(8) Directions to Trial

(a) Expert evidence

95. In the Second CMC Ruling, no directions were given regarding the exchange of expert evidence as it was still to be determined whether Royal Mail would advance a positive case. The parties now disagree on whether expert evidence should be exchanged simultaneously, as proposed by the CR, or sequentially, as proposed by Royal Mail.

96. Royal Mail stated that although Mr Hunt would provide a positive case, he did not intend to propose an econometric model of his own for assessing the Overcharge, but rather to consider and respond to Dr Williams' econometric model. If reports are exchanged simultaneously, this necessarily means that Mr Hunt's response will come in his reply report, with the consequence that Dr Williams would not be able to respond to it.

97. Further, Royal Mail avers that sequential filing would also save costs and minimise the volume of expert evidence overall as: (i) it should reduce the risk of repeating background and contextual evidence; (ii) allow the experts for Royal Mail to agree with relevant points of the other experts rather than repeat these; and (iii) for the forensic accounting evidence, to allow Mr Grantham to adopt and adapt the business plan put forward by the CR's expert, Mr Gary Davies, rather than produce his own duplicate plan. Finally, sequential filing would reduce the risk of "ships passing in the night", which Royal Mail stated was a risk given the substantial uncertainties on the CR's proposed approach and the lack of articulation by Dr Williams of his alternative methodologies.

98. The CR countered that the risk of "ships passing in the night" was misconceived given Dr Williams had already produced three expert reports, and because Royal Mail confirmed that it will be advancing a positive case. Sequential exchange would put the CR at a material disadvantage as Mr Hunt would get two chances

to respond to Dr Williams. If there were any issues on duplication or misaligned evidence, this could be resolved by the experts meeting on a without prejudice basis, prior to filing their expert reports.

99. The Tribunal considers that there is no one size fits all approach; what the Tribunal wants is something that is comprehensible and manageable at a reasonable and proportionate cost to the parties.

100. The two possible approaches are: (i) both sides serve their expert evidence, followed by another round where both sides serve a reply; (ii) one side serves its expert evidence, then the other side serves its expert evidence, and then the first side serves a reply on purely responsive evidence.

101. The Tribunal is attracted by the second approach on the facts of the present case, because by the time we get to the experts' reports, there will be a great deal of understanding between the experts as to what these reports are going to be covering. The Tribunal has given various directions as to what the pleadings should be supplemented by. Hence, the Tribunal shall order sequential reports as suggested by Royal Mail.

102. The next stage after that will be the joint meeting of experts. At that point, the Tribunal will expect the experts to produce an analysis of what points they have agreed, on what points they disagree, and on the points of disagreement, the reasons for their disagreement, cross-referring, if necessary, to the evidence and to their earlier expert reports.

103. Whether or not there is any need for any further reports, such as a summary report, cannot be determined until we see the results of the earlier stages. Whilst the Tribunal is not saying that there should not be a standalone report from each expert prepared after the meeting of experts, the Tribunal is not going to order that now, which the Tribunal appreciates could just be an added expense. A lot of this will be driven by the contents of the filed expert reports and the joint meeting of experts' joint statement. This latter exercise is very important and the experts should concentrate on it because that will be a focus point for the Tribunal when it comes to trial.

(b) Disclosure extension request

104. The CR sought an extension to the deadline for the parties to confirm whether they are seeking further disclosure from 19 February 2026 to 19 June 2026. This would necessitate pushing back other disclosure deadlines and the deadline for serving witness statements. The CR argued the extension was justified as the disclosure by Royal Mail was larger than expected, specifically, the disclosure included 20% more documents than Royal Mail had previously informed the CR and the Tribunal. Furthermore, the CR had encountered technical difficulties. The CR stated that Royal Mail would not be prejudiced as the previous intervals would be maintained and neither the PTR nor the trial date would be affected.

105. Royal Mail stated the proposed four-month extension would create "crunch points" around the deadlines for expert reports. Furthermore, if the CR was experiencing difficulties with its disclosure review exercise, it should utilise additional resources rather than disrupt the ordered timetable.

106. Having reviewed the submissions of the parties, the Tribunal is prepared to give a ten-week extension to the current timetable. The Tribunal requests that the CR write to the Tribunal by the end of February 2026 to update the Tribunal on how matters are progressing.

(c) Opening submissions

107. The Second CMC Order stated that directions for opening submissions shall be addressed at the Third CMC. Having considered the parties' position, the Tribunal considers that this matter should be addressed in the PTR.

108. This ruling is unanimous.

Hodge Malek KC Chair	Timothy Sawyer	Andrew Taylor

Charles Dhanowa, CBE., KC (Hon) Registrar	Date: 18 December 2025