

CLASS MEMBERS CUSTOMER GROUP **TERMS OF REFERENCE**

Bulk Mail Claim Limited v International Distribution Services PLC (Formerly Royal Mail PLC) Competition Appeal Tribunal, Case No 1639/7/7/24

BACKGROUND

1. The Collective Proceedings

- 1.1 Bulk Mail Claim Limited (15032344) (the “**Class Representative, or CR**”) was incorporated to bring collective, opt-out, proceedings against International Distribution Services Plc (the “**Defendant**”) for damages in respect of harm caused by an alleged breach of Chapter II of the Competition Act 1998 and/or Article 102 of the Treaty on Functioning of the European Union (the **Claim**).
- 1.2 The Claim “follows on” from Ofcom’s 14 August 2018 decision titled “Discriminatory pricing in relation to the supply of bulk mail delivery services in the UK” (“**Ofcom Decision**”). The Ofcom Decision concluded that the Defendant (“**Royal Mail**”) abused its dominant position in the market for “bulk mail” delivery services in the UK by attempting to introduce discriminatory prices via “Contract Change Notices” (or “**CCNs**”) on 10 January 2014.

2. The role of the Class Members Customer Group

- 2.1 The CR has applied for a Collective Proceedings Order from the Competition Appeal Tribunal which would permit it, as class representative, to bring opt-out collective proceedings against the Defendant.
- 2.2 In order to fulfil its duties and obligations to the Class, and in particular to assist it to ensure that it is always acting fairly and adequately in the interests of all class members, the CR has determined that it would be of benefit to the class as a whole, if it had the benefit of hearing the views of a group of potential class members, (the “**Class Members Customer Group**”).
- 2.3 The role of the Class Members Customer Group will be to assist the CR by providing its views on the questions and issues raised by the Collective Proceedings.
- 2.4 The nature of such assistance will be at the CR’s discretion but is likely to include participating in video / telephone conferences and possibly in-person conferences with the director of the CR from time to time throughout the duration of the Collective Proceedings, in order to give the CR the benefit of their views and to respond to specific questions from the CR.
- 2.5 For the avoidance of any doubt, the CR:
 - a) may seek assistance from individual Customer Group members (as opposed to the Class Members Customer Group as a whole) as it sees fit;
 - b) is under no obligation to follow or accept the advice of the Class Members Customer Group;
 - c) may choose to seek advice and views solely at its discretion.
- 2.6 For the avoidance of doubt, in considering the views and advice of the Class Members Customer Group, the CR shall at all times bear in mind its overriding duty to act fairly and adequately in the interests of all class members.

3. Customer Group Membership

- 3.1 Members of the Class Members Customer Group are to be appointed by the CR, in consultation with its lawyers, Lewis Silkin LLP.
- 3.2 The CR shall seek applicants by issuing a Press Release and placing a notice on its website and may, at its discretion, approach potential Class members who are likely to have significant claims in the case to invite them to join. If necessary, the CR will seek the assistance of trade organisations to identify potential Group Members. In light of remarks made by the Tribunal hearing the Claim, the CR will use reasonable endeavours to ensure that the Group consists of a representative range of different sizes of Customers. Similarly, the CR shall endeavour to include companies, government bodies and charities among the Group Members.
- 3.3 The views of the Class Members Customer Group will be advisory only and members of the Class Members Customer Group will carry no liability in respect of the views expressed.
- 3.4 The CR is responsible for appointing and removing members of the Class Members Customer Group and may do so at its sole discretion.
- 3.5 Each member of the Class Members Customer Group shall undertake to not disclose the fact of, or content of, the discussions held at its meeting with any third party outside the Class Members Customer Group, except to the CR, the members of the Consultative Panel and the CR's legal advisers. A confidentiality undertaking is annexed to the Terms of Reference that each member of the Class Members Customer Group shall sign and provide a copy to Lewis Silkin LLP (FAO Andrew Wanambwa).
- 3.6 Members of the Class Members Customer Group will be not reimbursed for their time spent serving as a member of the Group, but may claim expenses reasonably incurred and agreed in advance with the CR. Members shall submit invoices for expenses for approval for payment within a month of the expenses being incurred.
- 3.7 The identity of the members of the Class Members Customer Group shall be kept confidential by the CR, its legal advisers and Consultative Panel.

4. Meetings

- 4.1 The Class Members Customer Group shall meet at the request of the CR upon no less than five days' written notice, unless the meeting is required to be held in a shorter time frame, in which case the meeting shall be held as soon as possible. Members of the Consultative Panel may be invited to attend these meetings.
- 4.2 Meetings shall take place either by way of telephone conference, video conference (including online meeting software the use of which has been approved by Lewis Silkin LLP in advance) or in person at the offices of Lewis Silkin LLP (or any combination thereof).
- 4.3 The director of the CR shall act as Chairperson for all meetings of the Class Members Customer Group.
- 4.4 One or more members of the CR's legal team from Lewis Silkin LLP will also be present at meetings and will record a minute of the meeting to be provided to the CR and the members of the Consultative Panel only.
- 4.5 Unless Lewis Silkin LLP agrees in advance in writing, the Class Members Customer Group shall not discuss matters pertaining to the Collective Proceedings outside of arranged meetings. Discussions via email or other electronic media shall not take place. The only electronic messages that shall be created will be administrative in nature pertaining to the organisation of

meetings. Members of the Class Members Customer Group shall not create documents, formal or informal, and including personal notes regarding any matters discussed or to be discussed at meetings.

- 4.6 All documents to be provided to the Class Members Customer Group in order to update them on Collective Proceedings or bring matters in the public domain to their attention shall be prepared and sent by Lewis Silkin LLP. The Class members Customer Group shall not annotate or comment in writing on any such documents and will treat them as confidential.

5. Class Members Customer Group Members

- 5.1 Members of Class Members Customer group will serve on the Group subject to the terms of their individual letter of appointment ("**Letter of Appointment**"). They may resign at any time by written notice to the CR (cc Lewis Silkin LLP, FAO Andrew Wanambwa) given in accordance with their Letter of Appointment.

6. Immunity

- 6.1 Members of the Class Members Customer Group are not liable to the CR or any member of the class represented by the CR for any views expressed in Class Member Customer Group meetings. No judicial or other proceedings may be brought against any member in respect of any act or omission arising out of or relating to their role as a member of the Class Member Customer Group.

7. Notices

- 7.1 Any notice or other communication required or permitted to be given to the CR or to Lewis Silkin LLP under this agreement must be in writing and in English and subject to paragraph 7.2 must be delivered or sent to:

Name: Lewis Silkin LLP

Address: Arbor, 255 Blackfriars Road, London, SE1 9AX

Email: andrew.wanambwa@lewissilkin.com

Attention: Andrew Wanambwa

- 7.2 Lewis Silkin LLP may update its address and email address that notices or other communications must be delivered or sent to in accordance with paragraph 7.1, by providing written notice in English to the members of the Class Members Customer Group.
- 7.3 All notices to be given in connection with this agreement may be delivered personally or by prepaid post or by email.

3. Permitted Disclosure

3.1 The obligation set out in paragraph 2 shall not apply, or shall cease to apply, to Confidential Information that:

- a) has become public knowledge, other than through disclosure in breach of this Undertaking; or
- b) was already lawfully known to you otherwise than by reason of your membership of the CMCG; or
- c) is required to be disclosed by any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body; or
- d) is required to be disclosed under applicable law or by a governmental order, decree, regulation or rule.

4. Jurisdiction and Governing Law

4.1 You irrevocably undertake that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, controversy or claim arising out of or in connection with this Undertaking or its subject matter or formation, including any question regarding its breach, existence, validity or termination or the legal relationships established by it (including non-contractual disputes or claims), which shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed by:

NAME: _____

SIGNATURE: _____

DATE: _____

In the presence of:

WITNESS FULL NAME: _____

ADDRESS: _____

OCCUPATION: _____

WITNESS SIGNATURE: _____

DATE: _____