



Office of the Director of
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Regulation**

SPEECH

Can Effective Regulation Deliver
Quality Public Services - Address by
Etain Doyle to the Irish Congress of
Trade Unions Conference

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Introduction

Good afternoon ladies and gentlemen, fellow speakers, Mr. Chairman. I warmly welcome this invitation from the Irish Congress of Trade Unions for this invitation to take part in today's conference... to listen as well as to speak.

If you will bear with me, I want to try and do something difficult with you today. When we talk about regulation and liberalisation of markets, it is easy enough to talk at a very macro level, to have debate that is so broad that it is really ideological; this may be fun but it is far from the reality of consumers and producers of services. It is also easy enough to structure discussion at a very micro level where technical people seek to outwit each other with their command of today's and tomorrow' developments. All this is grand but the theme of your conference is much more pertinent to our lives. It is the stuff in the middle, the stuff that is so difficult - the complicated interaction of technology, human wishes and needs, competition principles, commercial reality and yes... public interest.

Contradictory though it may sound, we have become immunised to accelerating change in our lives. Almost every 'corporate vision type' speech drops this sort of pearl into the first paragraph. Easy enough but the hard bit is when we have to adapt to very disruptive change, change led by technological developments, or international developments such as those affecting Aer Lingus, or caused by the failure over time to adapt while the ground beneath you has shifted.

These are not just matters for the trade union movement and employees, although they do affect you. They are matters for everyone else as well – Government, employers, regulators and in particular citizens whose needs public services are they to provide.

The Public Service Concept

Why is it that our democracies have developed such a thirst for market liberalisation ? I believe that the answer is neither ideological nor technical but belongs to that space in the middle. In short it is because... life is so *complicated* in a modern society that it is extraordinarily difficult – even with the most efficient state apparatus in place – to run things from the top down anymore.

These are not just matters of principle; they are practical. Of course there are and remain services where the only *practical* delivery of service is through a state monopoly. Top of the list are security forces and coming up close behind are services like public health and the inoculation of school children.

Indeed the movement of public opinion on the health issue is the clearest indication that this issue of liberalisation does *not* have a simple theoretical base. We may be liberalising communications, but healthcare is shifting in the opposite direction. We are moving away from an age when we paid for our medicine and chose our GP on the basis of cost and quality of service. But we are now moving into an age where it will be thought bizarre that someone's access to first rate health care was dependent on their wealth. The best healthcare should be something that the poorest amongst has as of right.

Banking, should we nationalise it. No. Why? Because we would give the citizen consumer less power. Justice, should we privatise it? No. Why? Because we would give the citizen consumer less power.

Waste disposal. Should it be in private hands or a state monopoly? Let us look at models for how each would work *in practice* on a good day.

To be clear... my focus is public service. How these are delivered is as I say *practical* not *theological*. In the technological volcanic explosion that

is the communications business, it makes no sense to try to have any one agency try to predict and meet the demands of the developing consumer; it is just too complex.

For these liberalised services, the State must have structures with the expertise and eternal vigilance to ensure that private interests do not achieve dominance and strangle new competition.

Whether we are looking at the old Department of Post and Telegraphs or the new burgeoning array of telecommunications providers, the key is to keep our eye on what is required for the *users* of services. It is because of the speed of technological development and the speed of development of consumers needs that a single deliverer, immune from competition simply could not possibly keep up with the pace of the consumer.

In the modern world therefore, public service often means ensuring that the public has access to free-flowing markets through which its preferences and desires can be reflected.

Let us apply the same thinking to a form of communications that is a newer part of my professional life but which predates us all by several millennia... post.

The Postal Experience

Some eighteen months ago I was asked to add responsibility for regulating postal services, the quintessential public service, to my existing responsibilities for telecommunications and television distribution and transmission. Postal services go back to the dawn of civilisation with messengers bringing news of war and peace, births and deaths and business deals, originally by word or mouth and then in writing.

For generation after generation the postman and postmaster were some of the most appreciated public servants, with children and adults rushing to

see what the postman had brought, especially on birthdays and at Christmas! The last twenty five years however have seen considerable changes, not all for the better, and one of my main regulatory responsibilities is to ensure that the daily delivery of post remains an essential feature of Irish life and to secure improvements in the quality of service provided.

Modern day postal services operate both in the communications and the distribution markets.

The communications market covers all the ways in which individuals and organisations communicate with each other – telecommunications, broadcasting, internet, newspapers and periodicals and the post.

The distribution market is very different, particularly in terms of the customer base. Distribution involves the transport and delivery of goods to the addressee. Postal distribution through parcel services is a specialised segment within the sector, concentrating particularly on the delivery of individual packages.

This global description of the markets in which postal services operate is important in order to be aware of the indirect forms of competition in which postal services compete.

For example, an advertiser can choose to use any (or all or a combination) of the communication media mentioned in order to convey his message to potential consumers: postal services only provide one possible medium for his message. Someone wanting to send a piece of correspondence now has the option of email, fax, express mail or the letter post. Mail order is the “distant selling” of goods as an alternative to retail. The internet is becoming an important aspect of such sales activity, although the distribution side is still primarily linked to the postal sector.

During the 1970’s and 1980’s there was a general perception that the quality of postal services was declining at the very time that customer services needs were becoming more demanding. The service expected by

customers had been conditioned by levels of service provided in the past, when labour was plentiful and other means of communication were not available. Then, within a city such as Dublin or Cork, it was not uncommon to post a letter and expect to receive the reply the same day.

Significant variations in the quality of the postal services in each of the member states of the European Union were regarded as leading to market distortions. Cross-border services were a particular problem. When the EC prepared its Green Paper on the Development of the Single Market for Postal Services in 1991 a domestic item took an average of 1½ to 2 working days from collection to delivery, whereas a cross-border item within the Community took an average of 4 days. There were significant variations behind these community wide averages.

The perception of declining quality created a market gap which was filled by the modern “express carriers” who have built a whole new market on their reputation for speed and reliability, and vigorous competition with the traditional postal services and with each other. The growth of these services gave rise to a number of cases under European Competition Law, and more direct challenges to the scope of the postal monopolies.

Postal services are very different from Telecommunications in that the barriers to market entry are low and, as I have already mentioned, there are very many forms of indirect competition. The concern therefore was that the removal as required by the European Treaties of the traditional monopolies would threaten the very existence of the postal services as we know them.

These were some of the factors that led in 1999 to the introduction at European level of market regulation and controlled market opening in the postal sector.

The new regulatory framework defines the universal postal service to which every citizen and business in all Member States must have access [The “Universal Service Obligation”]. It covers letters and postal packages up to 20 kilogrammes in weight, and guarantees one collection

and delivery of letters and parcels every working day. Not only is the provision of this basic service guaranteed but I am required to ensure that the quality of service is improved and that the price charged is "affordable" and "geared to cost". I must also ensure that consumers have access to information about the specific features of the services available and that there is a defined procedure for responding to consumer complaints.

Under proposals about to be adopted by the European Community it will be January 2009 before postal services are open to full competition. However from next January there will be no restriction on the provision on services for postal items weighing more than 100g or priced at more than 3 times the price of a basic stamp. From January 2006 these limits will be reduced to 50g and 2½ times the price of a basic stamp. While this will give An Post and the other traditional postal service providers time to improve their service it must be remembered that they have been facing intensive competition for many years now from other segments of the communications and distribution markets.

I mentioned earlier that one of the specific objectives for postal regulators is to secure improvements in the quality of service provided.

The EU Postal Directive set specific targets for cross-border mail within the European Communities, and there have been significant improvements in quality over the last few years. Whether this is due to regulation or the impact of competition, direct or indirect, is difficult to say. The answer is probably that both have had an impact.

But within Ireland the domestic service, in my opinion, could be much improved. In May 1999 the Minister for Public Enterprise told the annual conference of the CWU (Communications Workers Union) that “... *quality of service in terms of next day delivery is not being maintained. This is cause for concern among the public. One of the objectives ... is that An Post should ensure that the quality of the Company's mail service*

is improved to a level where 95% of letters posted in the State are delivered on the next working day.”

Statistics published in An Post's Annual Reports show that for the last three years (i.e. 1998 to 2000) An Post has failed to deliver one letter in eight the next day. This is an average figure and is higher at certain times of the year, e.g. Christmas.

Despite all the investment by An Post in modern automatic sorting machinery the Minister's target is still only as aspiration. The target I have set for this year (2002) for nationwide delivery is 92% and for local delivery 94%, but I have asked An Post to submit specific detailed costed proposals to achieve a target of 97% for first class letters from 1 January 2003. Indications are that this target has been met for a number of months past. I expect to receive their report shortly, which will review all options to identify the cheapest and quickest measures to achieve the necessary result.

This is not to say that it is essential that all mail should be delivered by the next working day, but that a regular and reliable next day service should be available to those customers who need it. Give people choice. Let them decide. Indeed Ireland is unusual in that customers are not given a choice between a reliable next day service and a cheaper but slower second class service.

But there is no point in setting targets unless arrangements are put in place to monitor performance against those targets. An Post has, since it was established in 1984, published in its Annual Reports statistics outlining quality performance. Until recently it has also published results on a quarterly basis in the National Newspapers.

Regular and timely information about the quality of service performance is very important both for An Post's customers, who need unbiased information about what is likely to happen to their mail, and to An Post itself, who can use such information as a testimonial to their customers.

Under the new regulatory regime I have a statutory obligation to monitor quality performance, and am in the process of inviting tenders from competent independent organisations to do this on my behalf in accordance with the new European Standard for such surveys. It will be 2003 before we have the first results for a full year but I am hopeful that we will be able to begin publishing quarterly results later this year.

Another concern is that the introduction of competition will lead to substantial increases in prices. Indeed we have seen reports in the press recently that the introduction of competition in Britain will lead to substantial increases in prices. We have to be careful about jumping to conclusions based on emotional argument rather than fact.

In Ireland we have had overall price stability for some years now. There have been two main contributory factors for this commendable performance. One has been moderate pay increases as a result of the national wage agreements. The second has been the effect of the dramatic increase in the number of items of mail per head of population. But the Irish still post less than half the number of letters per capita than the more developed European nations. There are many that would argue that the lack of competition has discouraged the use of post and restricted the size of the market. The controlled introduction of competition is intended to ensure that competition leads to a larger overall market with the traditional postal service providers at least holding their own.

In the short term I also have a statutory obligation to approve any price increases for services for which An Post has a statutory monopoly. As you will be aware I have recently published a consultation paper on An Post's proposals to increase such prices, and my decision on this consultation will be published this week. In the meantime I know you will appreciate that I cannot say more at this time.

Regulatory Approach – Shifting the Focus

Whether providers of services are publicly or privately owned, in the absence of strong competition or effective regulation, the internal pressures from shareholders, management and staff can tend to get attention in priority to users. Where this happens quality of service and value for money suffers. Shifting this balance to a sustained strong external focus on users backed by strong internal management, organisation and employee support is difficult. However, it is absolutely essential if Irish people are to have the higher level of service they expect and need into the future.

In fulfilling its legislative mandate, the regulator has a key role in ensuring that the needs of users are brought into focus.

The first thing I need to do is to understand clearly what the issues are and how to deal with them, or to stay out of the way where that is appropriate. My approach to regulation is to review the market situation and market needs, developing research papers and surveys as needed and using consultation papers to ensure that I have a good understanding of the market on which to base our actions. As many of our papers are necessarily very technical, as an additional safeguard to ensure that we hear what users want, the ODTR receives feedback through its Consumer Forum which is comprised of representatives from business and residential consumer organisations. Thirdly, we receive feedback directly from consumers themselves through complaints which are submitted to my office.

As I said at the outset – the broad theory of a liberalised market can be got across in a matter of minutes and the nitty gritty of technological details have their own defined place in debate. The tricky bit is that stuff in the middle..... interaction with people's daily lives. It remains a communications nightmare of an Office such as mine that the vast majority of people we are ultimately trying to serve are not versed in the

detail that allows them to enter debate. Those who best understand the detail tend to come from a position of special interest.

If, using every means known to us to reach consumers, we find that they are getting what they want, then my job is to stand back. If there is a new technology out there on the horizon, then we should do all we can to help providers get it to consumers. If there are bottlenecks, if healthy competition is being stifled, or if exciting, commercially viable innovations are not coming down the tracks as they should, then we intervene within the limits of our powers.

The basic truths remain whether a service is delivered publicly, through a regulated market or through an unregulated market. We want what works... in practice... for the consumer. When we come to determine policy, we find quite quickly that the devil of these things is in the detail.

The Telecommunications & Television Transmission Experience

The key regulatory measures are set out in both national and EU legislation. It covers such matters as licensing of both new and existing players in the markets, outlines what can be put in licences which in turn defines the licensees' rights and obligations; the principles to be followed in setting interconnect rates and the framework for price caps; the framework for setting of the universal service obligation and consumers' rights.

To get the best results for consumers, the ODTR sets the framework for the market players, for it is these players and not the ODTR who introduce competition which will in turn deliver the best guarantee in terms of quality and prices to consumers. So when I talk about delivering quality services it also encompasses price and choice.

The frameworks for telecoms and broadcasting transmission will merge under the new EU regime for telecoms to be introduced next year. The regime for regulating postal services is separate and more limited than the current telecoms one, but generally follows similar lines. All of these frameworks work on the basis that strong competition gives the users the most responsive service providers in terms of price, choice and quality.

How does regulation seek to improve the quality of public services in the telecommunications arena. Let me give you one example. The real world is not one in which you have a single state monopoly one day and the next day you have cheerful new providers offering their wares to the consumer just as if they had opened a new shop next door. Take service level agreements – SLAs.

The treatment of competitors by the incumbent in the telecoms market is a key issue not just for the operators themselves but one which can impact directly on the consumers that they serve. Where other telecommunications operators rely on services from *eircom* to provide retail services to end users, the service levels provided by *eircom* are a critical driver in determining the level of services to the final customer.

Since 1999 there have been major problems with the delivery of leased lines which are a critical business enabler for the Irish economy. At the time *eircom* were in a lot of cases taking up to 100 days to deliver circuits to OLOs and their own retail customers. This was clearly unsustainable for an economy seeking to place itself as a world communications leader and in order to improve the situation the ODTR developed a framework for wholesale Service Level Agreements (SLAs). SLAs cover delivery timeframes, quality levels and maintenance terms for services including analogue and digital leased lines, ISDN lines and basic exchange lines. Penalties can result for non-compliance by *eircom* to the standard delivery times set out in the SLAs.

Following our initial approach to improve delivery it became apparent that *eircom* were still not meeting market demand – delivery timeframes were not reducing, order backlogs were growing with the result that consumer frustration began to reach unprecedented levels. As a result the ODTR had to take a more interventionist and heavy handed approach which resulted in a further review of the SLA regime. Penalties were uncapped so that consumers would be compensated for so long as delivery remained outstanding; specific processes, backed by penalties for compliance failure, were prescribed to keep customers informed about the progress of their orders during the delivery process; a backlog reduction programme was brokered with specific targets for completion; an industry forum was established to resolve inter-operator process issues; an audit of *eircom*'s delivery processes and systems was undertaken.

I am pleased to say that the situation has improved dramatically since the second SLA review and timeframes for leased lines have fallen to between 16 and 20 days today.

However, in order to ensure the SLA regime meets evolving market needs we have, following consultation, required a further amendment to the SLA regime, with the key focus being to improve fault management.

eircom have also committed to achieve a consistent 95% performance level in the delivery of leased lines by July 2002. This would mean that 95% of circuits would be delivered in accordance with the date committed to the OLO by *eircom* at the order stage. These arrangements represent a further improvement on the 80% performance level achieved by December 2001. Some elements of the SLA regime have been softened to reflect performance improvements.

We intervened to free the market, to give allow effective competition, to empower the consumer. Such a tailored regulatory approach has proved to be most effective.

I may note that we are also working on leased line pricing at present.

This is just *practical, detailed work* to bring technology and the realities of competition as close as we could to the lives of consumers.

Another hot topic... to which we shall endeavour to apply the same *practical* approach...broadband.

There has been some discussion as to whether, following some international comparisons to Korea or Sweden, from the early 1990s, if more could have been achieved in particular on broadband if there were still a State owned, monopoly regime here. I do not think so. While there has been a sharp fall in investment in the recent past, the competitive stimulus has resulted in very substantial growth in the market since 1998. A significant amount of investment has also taken place, although it is not delivering as much as it will do when necessary linkages are made in network development. We are unlucky that the change in the international investment climate happened when it did in our state of development, but there is solid work going ahead in many areas and I believe that we could have got as far as we have under the regime that existed prior to liberalisation.

Liberalisation freed up our market with considerable energy as soon as it was unleashed and Ireland took leaps forward that it was not making under the old regime. Indeed, the Minister for Public Enterprise had the foresight to recognise this when she cut short the derogation Ireland had received for the liberalisation of the Irish telecoms market to 1st December 1998.

Consumer Strategy

Back to the consumer... and quality of service. Quality of service is not just an add-on to a business or service, involving the employment of a few hapless clerks to absorb consumer frustration and lack of information: it is a key management responsibility that needs to be integrated into the whole process of running the business or service. Individual complaints

need to be seen as the symptoms of potentially wider problems, invaluable information about processes and approaches that need to be reviewed. Complaint handling services must be properly established and resourced, and integrated into service delivery and marketing.

Where the market fails to provide an adequate level of protection for their customers service providers need to be encouraged, through the implementation regulatory measures, to deal with their customers issues in an effective manner.

It is against this background that the ODTR has designed its consumer strategy. Within the price, choice and quality aims of the ODTR, our consumer policy focuses on encouraging and as appropriate, requiring service providers to set up and maintain minimum service standards and to provide information about them, thereby empowering the consumer to *take direct action* regarding poor service provision, quality or other issues. We seek to create the tools that allow the consumers to achieve this directly with their service provider themselves.

The ODTR monitors the implementation of these measures and acts as a backstop for consumers who do not get satisfaction via the operators' complaint handling procedures. This ensures that there is an external review and gives us useful information on areas of weakness within particular companies or industry sectors.

Codes of conduct and the Service Level Agreements have caused the operators to rethink and change their processes and put a better focus on users.

There are issues of broader economic and social policy that bear upon the regulation of the telecommunications sector. Access to basic services at affordable prices is the right of every citizen and this is maintained through tools such as price caps and universal service obligations. The framework for these is set in legislation at national and EU level.

Price caps are open to me where certain services have yet to see the benefits of competition. The purpose is to protect consumers from the high prices that might result in the absence of competitive constraints. It also encourages greater efficiency in the provision of services by the operator concerned, in that the operator is under pressure to achieve the efficiencies implicit in the cap in order to maintain his position. Indeed it is to do more, because the benefit of any further efficiencies remain with the operator. In December 1999 I imposed a three-year price cap on *eircom* which requires them to reduce the overall price of a basket of goods by 8% before inflation every year. I am pleased to say that thus far *eircom* have reduced their prices by more than that required under the price cap regime.

A review of the Price Cap is now underway and we will be considering all of the issues including the level of competition in the markets, the state of *eircom*'s transformation programme along with affordability and availability for users.

Another *practical* consideration is that of universal service. Following EU and national legislation, *eircom* has been designated as the USO provider for key telecoms services such as access to the fixed network and public payphones. This ensures availability of a uniform set of minimum telecoms services for all consumers. As I mentioned earlier, *eircom* is required to maintain affordable services for users, in particular those in rural and high cost areas and vulnerable groups of users.

Looking to the future there are additional services that I look forward to seeing coming on stream. In general, Ireland has been a follower rather than a leader in the fixed telecoms field, but I believe that this is changing. For example, demand for ISDN is only rising rapidly now, seven to ten years after leading western European countries: however the adoption gap is narrowing with operators seeking to be more responsive to users needs. Both operators and users are more aware of technological developments. The ODTR seeks to help the process by publishing briefing notes on

technologies and developing regulatory frameworks as quickly as possible to support new developments. We have also drawn attention to the potential of using services in one part of the industry in other areas. For example, pre-paid fixed telephony could be used to control internet costs in the same way as mobile.

The new regulatory framework for communication networks and services, recently adapted by the EU, will make some significant changes to the way the electronic communications markets are regulated. Perhaps the area of greatest impact for service quality will fall from the Universal Service Directive which sets out the range of services that may be designated as USO and also contains provisions on users' rights.

Regulation and the Wider Public Service

In the sectors I am dealing with, regulation is seen as a transition measure to help the market reach full and sustainable competition. Is there a role for similar regulation in respect of services that are not likely to be susceptible to market provision? Could it play a role in ensuring that quality of service is developed and maintained? In my view there is a good case for this, and indeed a number of Government agencies are using these kinds of tools.

The first issue is the articulation of the vision in terms of users and targets for achievement. This is a difficult task to do well. There is much criticism of mindless numerical targets, the achievement of which may distort and even reduce the quality of service for some users as compared with others. However, precisely because it is difficult, appropriate targets have to be set that cover the range of outcomes. It is very easy otherwise to get caught up in the short-term pressure of events and/or to be beguiled into thinking that if some progress is being made, everything will be fine. In our world now, it is not the extent of the road you have travelled that earns you a future; it is far more the speed and effectiveness with which

you are closing the gap to realising the full vision together with the clarity the practicality of your programme to complete the process and redefine further goals.

Secondly, there are moves to using price caps and efficiency measures rather than seeking to control everything that moves. With good quality evidence based decision making, this can provide the focussed external stimulus to performance and also ensure that ends and means are properly matched, with full attention paid to marshalling the necessary resources and expertise effectively. If there is not an adequate response, such measures may result in substantially more intrusive regulation in the short term. But the objective must be to get to the point as rapidly as possible where those running the services are making the decisions to keep quality services at peak performance in a most efficient and effective way.

Conclusion

With a strong culture of continuous change and re-calibrating performance against external needs, providers of public services should be less prone to massive disruptive change. They are more likely to have seen it coming in the case for example of technological change and be better able to respond if it comes ‘out of the blue’.

Again, may I thank you again for your invitation. We are all for the most part doing our best to serve the public. It is helped through days such as this in which people like ourselves from many disciplines get some sense of the practical detail that stands between well meaning theory and real service to the public. I look forward to learning from other contributions to this conference.

Thank you.