



Commission for
Communications Regulation

General

Green Paper on Services of General Interest

ComReg response to consultation

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Introduction

On 21 May the European Commission published a Green Paper on Services of General Interest. The term “general interest” covers a broad range of activities from commercial activities in the energy, electronic communications and transport industries to public services such as health, education and social services. The Commission for Communications Regulation (ComReg) welcomes the initiation of a debate on services of general interest. Our responsibilities include the regulation of the postal and electronic communications sectors in Ireland – sectors which are generally recognised as being “services of general *economic* interest”. Indeed, the Lisbon European Council of 23 and 24 March 2002 highlighted the potential for growth, competitiveness and job creation in the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe’s businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.

ComReg’s comments on the Green Paper¹ therefore mainly address services of general economic interest, where in many sectors considerable progress has been made in recent decades in both liberalisation and harmonisation, while protecting consumer interests. Indeed, it might be useful to create a clearer definition of “services of general economic interest”. This kind of dialogue should be helpful to discussion about developments in the various sectors.

The emphasis in the paper on ensuring high quality services for citizens is very welcome. However, it is not clear what the “value added” of a general framework directive would be. In most network industries, directives ensuring liberalisation, harmonisation and consumer protection are already in place. These reflect the sector-specific aspects of these industries and need to be adapted to the state of development of the market in the various Member States. Any general framework would necessarily be at such a high level that it is questionable whether it would achieve anything not already achieved by the sectoral frameworks.

In the sections which follow, ComReg has responded only to those questions which are relevant to its work or where it has some specific expertise or experience.

¹ Com (2003) 270 final, Brussels, 21.5.2003

Specific questions

1.1 What kind of subsidiarity?

Question 1

Should the development of high-quality services of general interest be included in the objectives of the Community? Should the Community be given additional legal powers in the area of services of general economic and non-economic interest?

While ComReg would welcome a clearer definition of the concept of “services of general non-economic interest”, it is not clear whether their inclusion or otherwise in the objectives of the Community would be helpful. On the issue of services of general economic interest, the existing legal frameworks within which both electronic communications and posts operate stem directly from the Treaty, and in particular Articles 86 and 95. The First Annual Report on the Implementation of the Telecommunications Regulatory package points out:

“The Community regulatory framework [for telecoms] has evolved out of three basic principles... (a) liberalisation of areas under monopoly, (b) harmonisation of the European market and (c) application of competition rules” and is based upon “a body of uniform liberalisation and harmonisation rules throughout the Union”.

These provisions therefore appear to grant the Community sufficient legal powers to achieve its objectives in these areas.

Question 2

Is there a need for clarifying how responsibilities are shared between the Community level and administrations in the Member States? Is there a need for clarifying the concept of services without effect on trade between Member States? If so, how should this be done?

The new electronic communications regulatory framework, which has been effective in Ireland since 25 July 2003, reflects a particular division of responsibilities between the Commission and National Regulatory Authorities (NRAs). The Commission has set down the procedures to be followed by Member States in defining markets, and set out in a Recommendation a list of relevant markets which NRAs must take as the starting point of their analysis. It has also set out guidelines for the determination of Significant Market Power, a pre-requisite for the imposition of obligations on operators, and is working with NRAs on a harmonised approach to remedies. The Commission can effectively require NRAs to withdraw certain proposed decisions; others are for the NRA alone to make.

In summary, therefore, the division and sharing of responsibilities between the Commission and Member States has just been revised in the electronic communications sector. The institutional arrangements are quite innovative and contain a number of different mechanisms for ensuring a harmonised approach and consistent application of the concepts set out in the Directives. It would therefore

seem appropriate to allow the new arrangements to “bed down” for a period before embarking on a revision.

Question 4

**Should the institutional framework be improved? How could this be done?
What should be the respective roles of competition and regulatory authorities?
Is there a case for a European regulator for each regulated industry or for Europe-wide structured networks of national regulators?**

In most member states there are different institutional approaches to both economic and non economic services.

In the case of electronic communications, an informal liaison process through the Independent Regulators Group (consisting of National Regulatory Authorities from the EEA countries) has been in existence for a number of years. The new regulatory framework has created a European Regulators Group for Electronic Communications Networks and Services (ERG)². With a remit to advise and assist the Commission in consolidating the internal market for electronic communications networks and services, and contribute to the consistent application of the new regulatory framework, the group provides an interface between the Commission and national regulatory authorities, and encourages inter-regulatory liaison.

ComReg welcomes the role that coordinated European liaison will play in the development of the internal market and the consistent application of European legislation. Given the fact, however, that conditions of competition differ between European countries, ComReg would maintain that the independence of an NRA to respond to national peculiarities, deviate and act independently of other regulatory authorities is an important regulatory tool. In addition pan-European regulatory institutions such as the ERG should be mindful of the negative impact which the revised 1996 Telecommunications Act had on the US telecommunications industry by removing regulatory flexibility from the Federal Communications Commission (FCC).³

Under the EU regulatory framework for electronic communications, there is increased emphasis on competition law as a regulatory tool. This will of necessity result in increased informal and formal cooperation between NRAs and National Competition Authorities (NCAs). ComReg agreed a formal co-operation agreement with the Irish Competition Authority in December 2002 which is publicly available in the interest of transparency.⁴

² Commission Decision of...establishing the European Regulators Group for Electronic Communications Networks and Services, (2002/.../EC)

³ As discussed in Robert C. Atkinson’s testimony before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, February 5th 2003.

⁴ Available on ComReg’s web site at:
<http://www.comreg.ie/fileupload/publications/comreg0306.pdf>

To date, the experience of the electronic communications sector has proved that even in network industries there is a need to have clearly-defined roles at national levels for all regulatory authorities enshrined in national legislation which in turn is based upon EU policy directions. There is no compelling case yet made for Europe wide institutions.

With regard to postal services, the introduction of National Regulatory Agencies for the postal sector is relatively recent, and an informal “self help network” has rapidly developed, combined with more formalised contacts through CERP. The possibility of regular meetings of “independent regulators” prior to each CERP Plenary meeting has been suggested. Against the background described above the scope for more formalised co-operation is restricted. Certainly there is no case at this stage for a European Regulator, while the need for a European wide structural network of national regulators would need to be fully evaluated before the decision was made to put arrangements in place. Postal markets are however changing rapidly and the situation needs to be kept under review.

1.2 Sector-specific legislation and general legal framework

Question 5

Is a general Community framework for services of general interest desirable? What would be its added value compared to existing legislation? Which sectors and which issues and rights should be covered? Which instrument should be used (e.g. directive, regulation, recommendation, communication, guidelines, inter-institutional agreement)?

There is a wide range of industries encompassed by the existing range of sector specific regulation. The regulatory objectives differ between sectors.

It is desirable to have greater clarity on services of general interest; otherwise a framework would not add any value.

However it is a difficult and complex exercise to determine common rules for a set of disparate public services of general interest.

A number of instruments, including a common legal framework, have been created and refined at EU level for the communications sectors over the past decade.

A new regulatory framework for electronic communications regulation across the EU came into place in July 2003 and this should be bedded down in each EU member state rather than introducing an additional framework incorporating additional non-telecoms services.

With regard to postal services, there are efforts at EU-level to produce a general harmonised framework which recognises the specificities of the postal market. While the Green Paper classifies the postal industry as a network industry along with electronic communications, energy etc. the postal network is very different from the other networks covered by European Regulation.

Most of these network industries can be characterised by significant investment in capital assets which makes it difficult to duplicate the networks.

There are very few fixed assets necessary to build a postal network and few if any barriers to entry. The regulatory focus therefore is one of ensuring that opening

markets do not undermine the provision of universal service, or make the price unaffordable.

Given the nature of the postal market (declining volumes, “old fashioned” image, etc) it is debatable whether competition will ever develop to the extent that it can fully replace regulation. In the case of Sweden and Finland markets have been fully open to competition for more than a decade; in the former there is limited competition, in the latter none.

Against this background it is difficult to see what added value a general Community framework for service of general interest would bring, particularly if it covered a more diverse range of services compared to those covered by existing sectoral legislation.

Question 6

What has been the impact of sector-specific regulation so far? Has it led to any incoherence?

The liberalisation of the electronic communications market in the EU, coupled with the creation of independent NRAs, has contributed to open, competitive markets which deliver innovative and competitively-priced services to end users, while protecting the rights of those end users at the same time. The Commission has recognised developments in the electronic communications sector in such a short time.

Commissioner Liikanen’s has stated:

‘Thanks to liberalisation, telecom services became the fastest growing sector of the European economy – in 2001 the growth rate was 9.5%. Competition keeps intensifying, leading to lower prices, more choice, better quality of service and innovation’.

This is further illustrated by the following graphs which chart the continuing growth of telecoms services in the EU since 1999 in terms of market entry by operators and growth in revenues.

Figure 1

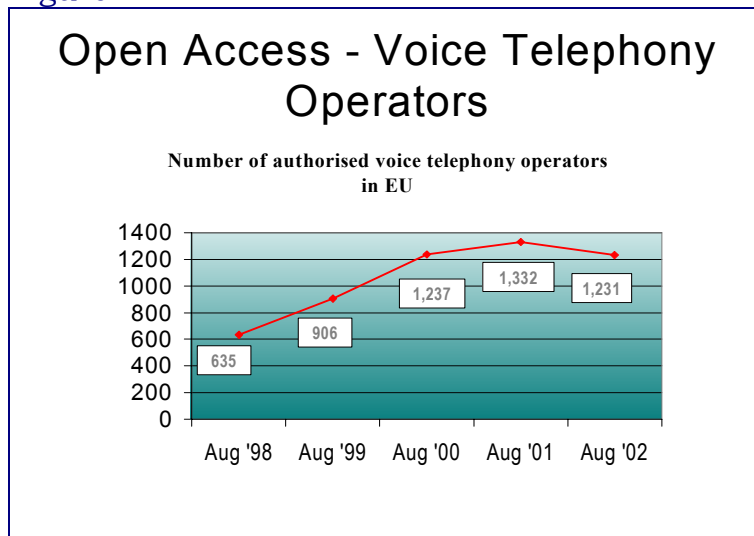
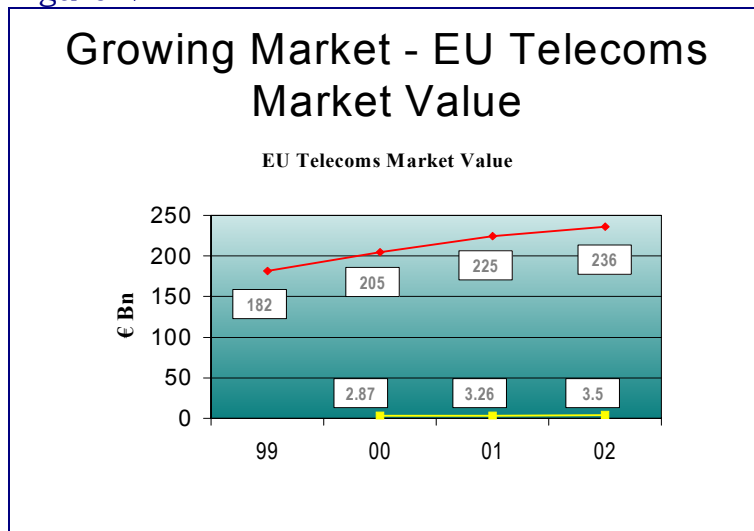


Figure 2



Furthermore, pan-European cooperation between bodies such as the IRG has helped ensure that there is coherent implementation of regulatory frameworks throughout the EU. See the response to question 4 for more information on this co-operation.

ComReg also operates under an explicit policy direction from the Irish Minister of Communications, Marine & Natural Resources:

“to ensure, where circumstances are equivalent, a consistent approach with other Member States, in relation to the imposition of regulatory obligations on undertakings”.

The telecommunications market in Ireland was fully liberalised by December 1998 and from the commencement of liberalisation, the mission of the regulator has been to put the needs of users first and make every effort to free up the electronic communications market to effective competition. This process has radically changed

the Irish electronic communications environment and market, instilling the concepts of price, choice and quality, and the concept of consumer power.

With regard to post, the European Commission has recently published a report⁵ which assesses the impact of the existing specific regulatory framework for the postal sector. The report concluded that there had been a significant impact particularly in securing significant improvements in the quality of cross-border letter mail.

1.3 A common set of obligations

Question 9

Are there other requirements that should be included in a common concept of services of general interest?

ComReg's response to this question relates to the postal sector only.

In the short term there is a need to ensure that reserved areas (monopolies) granted on a transitional basis are not abused, either by using the financial benefits for purposes for which they were not intended (e.g. financing investments) or by letting quality of service decline.

Existing community concepts include the following:

- (a) Universal service. This concept has been very valuable. Some universal service providers have been persuaded not to reduce services in marginal areas on foot of this concept. On the other hand commercially orientated companies seem to adopt the concept of universal service as a commercial necessity.
- (b) Continuity. Not an issue except in countries with a history of poor industrial relations.
- (c) Quality of service. This has been effective in securing improvements in quality of service time in terms of end to end transit time. On the other hand it has to be questioned whether this is appropriate to secure a sound basis for the future success of incumbent operators. The main focus of the postal services for letters is currently as an advertising medium. As such there is intense competition with other media. By requiring service providers to offer a quality of service better than that required by customers risks increasing the price to the level where the post cannot compete with other media. Another aspect that needs to be considered is that the focus on letters ignores the needs of the parcels sector which is growing in importance and is largely provided by suppliers other than the designated universal service provider.
- (d) Affordability. The lack of any quantifiable definition of affordability limits the effectiveness of the concept. For the moment pricing of

⁵ Report from the Commission to the European Parliament and the Council on the application of the Postal Directive (97/67/EC) - November 2002

services in the postal sector has not really tested the application of the concept. But if current trends in the decline in business volume are maintained, or accelerated, the concept will assume greater importance.

- (e) User and Consumer Protection. The Postal Directives extend this to all service providers and this is seen as essential.

Question 12

Have these requirements been effectively implemented in the areas where they apply?

The nature and extent of obligations are a key aspect of citizens' rights. EU requirements vary as to the level of prescription to member states.

The Commission does carry out an annual review of electronic communications regulation.

If the EU were to impose minimum requirements there would need to be a broader debate on the feasibility and appropriateness of these obligations across the EU.

A common framework for electronic communications regulation has been established and implemented effectively in the EU since the 1990's.

A recent Eurobarometer survey⁶ found that most European consumers are satisfied with almost all essential services including telecoms in relation to price:

“Telecommunication prices continued to fall in 2002.... Since 1996, prices of telecommunications services have decreased by more than 17%.”⁷

in addition to overall service delivery and access:

- “EU consumers have a relatively easy access to services of general interest: four services out of the eight services studied (water supply, postal services, electricity supply, fixed telephone services) are easy to access for more than 85% of EU consumers. 75% of EU consumers report having easy access to mobile telephony.
- The services with the highest level of overall satisfaction are postal services (74%), electricity supply services (73%), fixed telephone services and water supply services (both 71%). “

⁶ Eurobarometer 58. The full report is available (in French only) at:

http://europa.eu.int/comm/dgs/health_consumer/library/surveys/index_en.html

⁷ European Commission press release, “**Commission survey shows users are satisfied with most essential services but want better transport**”, 28th January 2003

1.4 Sector-specific obligations

Question 15

Should additional measures be taken at Community level to improve network access and interconnectivity? In which areas? What measures should be envisaged, in particular with regard to cross-border services?

There are no specific measures in place in the postal sector to require network access and inter-connectivity. It is possible that a policy of requiring network access and interconnectivity in the postal sector could become an effective barrier to real competition and effectively isolate the smaller member states that adopt this policy from access to the competitive global networks that have emerged. On the other hand if the commercial global networks were to use the delivery networks of the incumbent public postal operators in rural and other high cost areas the cost of serving these areas could be improved. However given that the major operators have signalled that they intend to build exclusive global networks it is essential that citizens in all member states should have access to all of these networks, and if the incumbent is not a member of one of these networks that there is access to the network of a universal service provider in all other member states and overseas countries.

The new EU framework for electronic communications also recognises the potential for trans-national markets.⁸

In addition there is scope in the Framework Directive for market analysis of trans-national markets to be conducted between NRAs.

Question 16

Which other sector-specific public service obligations should be taken into consideration?

Obligations in relation to consumer rights such as publication of transparent tariffs, publication of a customer charter, clear procedures for handling of customer complaints and user-friendly contracts are necessary elements for any efficient public service. In addition minimum service levels may need to be set for designated universal service providers.

These obligations are already provided for in both the electronic communications and postal sectors.

1.5 Definition of obligations and choice of organisation

Question 20

Should there be an enhanced exchange of best practice and benchmarking on questions concerning the organisation of services of general interest across the Union? Who should be involved and which sectors should be addressed?

⁸ Article 15.(4) of the Framework Directive states:

“After consultation with national regulatory authorities the Commission may, acting in accordance with the procedure referred to in article 22(3), adopt a Decision identifying transnational markets”.

Communications regulators depend upon a range of measurements both statistical (as in the case of the annual Implementation Report) and qualitative (as in the case of the ITU's annual Telecommunications Regulatory Survey). Such tools allow the ranking and benchmarking of both regulatory institutions and liberalised markets.

In addition pan-European regulatory fora such as the ERG can also be used for effective exchange of best practice.

However, in a fast-changing industry like electronic communications, such measurements and exchanges should be reviewed at regular intervals to ensure that they continue to be relevant and meaningful.

Existing arrangements in the postal sector appear to be working satisfactorily.

1.6 Financing

Question 23

Are there sectors and/or circumstances in which market entry in the form of "cream-skimming" may be inefficient and contrary to the public interest?

Incumbent public postal operators have frequently alleged that opening postal markets to competition would result in new operators "creamskimming" the most profitable markets. The case for this is far from proven. First there is a body of evidence that customers require universal service and that they will not use service providers who do not provide this, e.g. the City Mail experience in Sweden. Secondly whilst in theory there are very significant economies of scale in postal *delivery* the benefits of this can be dissipated by the inefficiencies that arise from a dominant provider that is not exposed to effective competition.

Therefore effective competition and open market entry are the most effective solutions to ensure efficient and competitive delivery of postal services.

In the area of electronic communications services, the danger of "cream-skimming" has been dealt with through the strengthening of the universal service while facilitating the development of competition

1.7 Evaluation

Question 25

How should the evaluation of the performance of services of general interest be organised at Community level? Which institutional arrangements should be chosen?

There is an annual implementation report in telecoms which incorporates data from industry consumer organisations and regulatory bodies. However this process is very time consuming and it may be more appropriate to adopt country profile reports as used by OECD which are not annual but regular.

More generally DG Internal Market's annual Scoreboard is a useful tool for measurement of a range of services. However by necessity this can only measure a very limited set of indicators given the diversity of the services which are evaluated.

Question 28

How can we improve the quality of data for evaluations? In particular, to what extent should operators be compelled to release data?

See responses to questions 20 and 25.

The postal sector is going through a period of fundamental change. Letterpost volumes are declining and parcel volumes, particularly of express parcels, are increasing. The content of letter mail is changing – it is becoming more and more an advertising medium. There is therefore a switch from the incumbent public postal operators to the more customer focussed emerging operators. In periods such as this accurate and up to date information is essential for good policy making and regulation. There is good provision to obtain information from incumbent public postal operators, but none to obtain information from the emerging operators, and as these are frequently multi-national companies it is difficult to obtain this under national legislation. The case to require information to be released to NRAs in confidence, on the understanding that only aggregated data will be published, is overwhelming.

This is best seen in regard to electronic communications where NRAs have been given enhanced powers in the new Framework Directive to collect and protect data from operators including data deemed to be commercially-sensitive or confidential. This includes data from operators other than incumbents and will ensure going forward that regulators and by extension end-users can make the most informed decision with regard to services of general interest.

Conclusions

The EC objective of economic integration focused on the removal of barriers to trade between Member States and in particular a number of services of general economic interest have been gradually opened up to competition. In spite of some very positive results, certain misapprehensions have been expressed. The Green Paper has been prepared by the European Commission to respond to concerns that the Commission should present a proposal for a framework directive on services of general interest.

The existing range of regulated services is quite disparate and the sector specific approach is clearly in the best overall interest of the sectors and the community as a whole. The development of a common framework would inevitably take the focus away from development of each of these services.