



Commission for
Communications Regulation

Information Notice

An Post's Compliance with obligations in respect of inbound cross-border mail

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1 Introduction

An Post has advised ComReg (letter attached) of its strategy for coming into compliance with the Terminal Dues principles, as set out in Regulation 10 of the European Communities (Postal Services) Regulations, 2002 (S.I. No. 616/2002). These require that *“terminal dues shall be fixed in relation to the costs of processing and delivery incoming cross-border mail”*.

An Post's strategy is to enter into bi-lateral or multi-lateral agreements that comply with the “cost based” obligations set out in the above Postal Regulations (which give effect to a European Directive).

An Post proposes that it will introduce three Access Services each of which will offer the same prices and terms and conditions as are available under the corresponding service offered to its domestic customers. These services will cater for operators who are unwilling or unable to enter into such agreements. The three Access Services will be:

- Standard service (based on the early presentation pre 3pm service)
- Pre-sorted Service (152 selections)
- Early Presentation auto sort service

The new services will also be available to any domestic operator.

ComReg welcomes the action being taken by An Post to address the losses it incurs in the delivery on inbound cross-border mail. ComReg will review An Post's compliance with the Tariff and Terminal Dues principles as part of its 2010 work programme.

Appendix A – An Post Letter



An Post

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11 December 2009

Ref: Inbound International Pricing

Dear John

1. Background

An Post delivers inbound international mail within Ireland on behalf of other postal operators. In general pricing arrangements are in place. However, a number of situations have arisen recently where an appropriate pricing arrangement is not in place for the delivery of inbound mail and this is a situation which An Post cannot allow to develop.

Therefore, An Post wishes to introduce three new services which are primarily intended for inbound international mail where there is no agreement in place with the sending operator. Technically, these services will form part of the Inland Scheme as they relate to mail presented at a Mail Centre in Ireland. These services will of course be available to anyone who may wish to avail of them provided they meet the conditions of the services.

2. Legal Position

An Post considers both Regulations 9 and 10 of the European Communities (Postal Services) Regulations, S.I. 616 of 2002¹ ('the Regulations') to be relevant.

Regulation 9 provides that the tariffs for each of the services provided by a universal service provider shall comply with the Tariff Principles, and covers certain other provisionsⁱ. Regulation 10 specifically relates to Agreements on Terminal Duesⁱⁱ. Specifically, the universal service provider shall arrange in its agreements on terminal dues for cross-border mail that certain principles are respected:

¹ Transposing Directive 97/67/EC and 2002/39/EC

- Charges shall be fixed in relation to the costs of processing and delivering incoming cross-border mail
- Levels of remuneration must be related to the quality of service achieved, and
- Must be transparent and non-discriminatory

Regulation 17 of the Regulations provides for the Regulator to monitor compliance with Regulation 9(1) and Regulation 10(1), with Regulations 9(6) and Regulation 10(2) providing powers for the issuance of directions.

3. An Post's understanding of ComReg position on Terminal Dues

It is useful for us to review statements which ComReg has made in public documents, and I refer in the main to ComReg documents 03/40² and 03/130³, as well as other relevant documents such as ComReg's Strategy Statement⁴. For clarity, I have sought to summarise ComReg's areas of concern regarding terminal dues below, as understood from public documentation to date:

- Compliance of arrangements with the Regulations (and in particular the principles contained in Regulation 10)
- Sustainability of An Post financial position and in particular cross-subsidy concerns
- Importance of International Mail to An Post (and in particular that incoming from the UK via Royal Mail)

ComReg's documentation has historically provided commentary on international settlement negotiations, noting that

'ComReg is concerned that this matter has not yet been resolved given both its importance and the significant adverse financial impact it has on An Post'.

In addition, ComReg noted that it

'is also cognisant that An Post must have the freedom to negotiate its negotiations as it sees best whilst seeking to be compliant with its obligations'.

² Information Notice *Terminal Dues Agreements* Document 03/40, 4 April 2003

³ Information Notice *Terminal Dues Agreements – Compliance with Regulation 10 (1) of S.I. 616 of 2002* Document 03/130, 23 October 2003

⁴ *Postal Strategy Statement (2008-2010)* Document 08/17, 15 February 2008



Furthermore, it continues

'Apart from the strict statutory obligation there is the commercial reality that a company the size of An Post cannot afford to carry losses in delivering inbound international mail...'

These excerpts recognise the importance of the statutory obligations, but also recognition of the commercial realities faced by An Post.

Finally, ComReg's Strategy Statement lists one of ComReg's strategies⁵ as

'Prices charged by An Post for delivery of inbound international mail to be cost reflective'

4. Current Position

An Post receives incoming international mail through a variety of arrangements (i) UPU convention (ii) Multi-lateral Agreement with other European USPs (iii) Bi-lateral Agreement with other European USPs (iv) other arrangements e.g. ETOEs.

There are also flows where agreements have not yet been concluded. Failure to agree such arrangements leads to the need for the Proposal.

A description of each settlement regime⁶ follows:

UPU Convention

This is an Inter-governmental Treaty which An Post is obliged to adhere to, with the following features:

- Remuneration based on 64% (in 2007) of the charge for a 20g priority letter in the domestic service, which equates to approximately 50% of the An Post domestic tariffs at all price points
- This does not *prima facie* cover costs of processing such mail
- This applies to 14% of all incoming mail
- This applies only to the designated operator(s) and in respect of 'universal service'

ComReg's view supports our own reading of the legal position in that this cannot apply to intra-European Union mail⁷.

⁵ See Page 11

⁶ All figures in the section relate to 2007

⁷ UPU 24th Congress Doc 41. Add.5 Declaration made on Signature of the Acts, which recognises the supremacy of European Community law



Multi-lateral Agreements with other European USPs

The REIMS III Agreement – a transitional arrangement under Regulation 10 (3) of the Regulations covers mail from Universal Service Providers in all EEA member states plus Switzerland, with some notable exceptions. Currently these are TNT (Netherlands), Royal Mail (United Kingdom), Bulgaria Post, Cyprus Postal Services, MaltaPost, Correos (Spain) and Correios (Portugal).

The REIMS Agreement contains these features:

- Remuneration based on 75-80% of domestic tariff, (note: differing percentages apply for different types of mail in 2008 and onwards)
- Includes quality of service penalties

Bi-lateral Agreements with other European USPs

In respect of TNT (Netherlands) An Post has concluded a bilateral agreement, based on REIMS rates, which represents 4% of all incoming mail.

Agreement based on REIMS offered but not yet signed

Currently, and as set out above, five countries do not settle with An Post under REIMS III and a bi-lateral arrangement has only been reached with one of these (TNT). This situation applied to 57% of all incoming mail in 2007, of which Royal Mail is by far the biggest contributor. This will potentially be a larger proportion in 2009 as two further operators exited REIMS arrangements.

An Post has sought to conclude an Agreement based on REIMS rates with Royal Mail, with Royal Mail proposing UPU rates.

This is not acceptable to An Post, as

- It does not seem to comply with the Regulations as it does not comply for example with the requirements of relating to cost, quality of service and transparency
- Additionally, EU Member States including the United Kingdom have made a formal declaration to the Acts of the UPU Congress stating the supremacy of Community law⁷ in such circumstances
- UPU rates represent approx. 50% of full domestic tariffs when applied to the incoming traffic from Royal Mail, and would contribute to endangering the financial position of An Post
- In addition, this provides a precedent for other trading partners to seek UPU rates, thus further encountering financial losses for An Post on



- international mail
- 'Below cost' pricing distorts competition and encourages arbitrage, putting both An Post and Irish-based fulfilment houses at a competitive disadvantage, encouraging ABA remail practices.

In summary, Regulation 10 of the Regulations imposes the obligation on universal service providers to enter into agreement(s) to ensure the cross-border provision of the universal service meets the principles therein. Furthermore, An Post – by virtue of designation as (i) universal service provider under Regulation 4 (2) a of the Regulations (ii) UPU designated operator (iii) with a Reserved Area until 31 December 2010⁸ – is obliged to deliver cross-border mail, even in the absence of an agreement.

An Post is therefore required to comply with delivering mail, but in a situation where the majority – and growing – proportion of inbound international mail is not covered by suitable remuneration arrangements, and indeed leads to an unacceptable position that renders An Post in danger of breaching its other obligations under the Regulations.

This is the position in which we find ourselves and one where we are seeking the support of ComReg in resolution of the issue by reviewing the Proposal below.

5. Proposal

An Post proposes to introduce a new Access Scheme, as and from 1 January 2010, for other operators who have not concluded individual agreements with An Post. This is the only viable alternative to settling on bi-lateral or multi-lateral terms.

It is proposed to offer the following three basic services:

- Early presentation pre 3pm
- Pre-Sort (152 selections) pre-noon
- Early presentation pre 3pm/ +85% Auto-sort

These are based on existing discounted domestic services⁹ with identical prices, terms and conditions to these, except for

- Use of Postage Stamps / Meter Frank of own country or Postage Paid Indicia of own company (acceptable to An Post) instead of An Post

⁸ Directive 2008/6/EC

⁹ Currently provided under Schemes 78 of 2007 and 79 of 2008.



Indicia / Meter Frank

- Payment based on monthly accounts and recoverable as a normal contract debt under the laws of Ireland
- Use of statistical sampling to determine volumes where appropriate
- EU, EEA and Swiss mail, which is not otherwise catered for in a scheme or agreement, will default into these services provided it meets the entry criteria even if the sender contends UPU rates should apply

Full details of applicable arrangements are set out in the Schedule.

6. An Post Request

Although there is no price increase as part of the proposal requiring concurrence under Regulation 8 (4) 2 of the Regulations, An Post is keen to ascertain ComReg's views on the Proposal given the importance and impact of the issues involved.

An Post would be pleased to discuss the details of the proposal further with a view to gaining ComReg's endorsement of the Schedule, perhaps by way of issue of Information Notice and agreement as to review programme for overall terminal dues compliance.

7. Conclusion

I trust you will agree that the proposals and timelines outlined are achievable and represent a constructive way forward. We look forward to an early response, and remain available for discussion to clarify as needs be.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Donal Connell".

Donal Connell
Chief Executive



ⁱ *Tariff Principles and Transparency of Accounts*

9. (1) The tariffs for each of the services provided by a universal service provider which form part of its universal service shall comply with the following principles:

- (a) prices must be affordable and must be such that all users have access to the services provided;
- (b) prices must be geared to costs;
- (c) comply with any uniform tariff decided by the Regulator under paragraph (2),
- (d) the application of a uniform tariff shall not exclude the right of An Post to conclude individual agreements on prices with customers, and
- (e) tariffs must be transparent and non-discriminatory.

(2) The Regulator may, with the consent of the Minister, decide that a uniform tariff for a service provided by a universal service provider shall be applied throughout the State.

(3) Whenever a universal service provider applies special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, the provider shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs shall take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and delivery of individual postal items, and together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions.

(4) The terminal dues arrangements entered into by An Post do not constitute special tariffs.

(5) Cross subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector is permitted only to the extent to which it is shown to be strictly necessary to fulfil specific universal service obligations imposed in the competitive area, in accordance with rules adopted to this effect by the Regulator. The Regulator shall inform the Commission of any such rules adopted by it.

(6) Where the Regulator is of the opinion that a universal service provider is not complying with the principles laid down in this Regulation, the Regulator may, after consultation with the Minister and in the case of paragraph (1)(c) with the consent of the Minister, issue directions to the provider for the purposes of satisfying the requirements specified in this Regulation.

ii *Agreements on Terminal Dues*

10. (1) In order to ensure the cross-border provision of the universal service, a universal service provider shall arrange in its agreements on terminal dues for intra-Community cross-border mail that the following principles are respected:

- (a) terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail,
- (b) levels of remuneration shall be related to the quality of service achieved, and
- (c) terminal dues shall be transparent and non-discriminatory.

(2) The Regulator may issue directions to a universal service provider, after consultation with interested parties, for the purpose of ensuring compliance by the provider with the principles set out in paragraph (1).

(3) The implementation of the principles set out in paragraph (1) may include transitional arrangements, designed to avoid undue disruption on postal markets or unfavourable implications for economic providers of postal services, provided there is agreement between the operators of origin and receipt. Such arrangements shall, however, be restricted to the minimum required to achieve these objectives.

DRAFT

S. I. No. of 2009

Inland Post Amendment (No. 80) Scheme

An Post, in exercise of the powers conferred on it by Section 70 of the Postal and Telecommunications Services Act 1983 (No. 24 of 1983) as amended by Regulation 8(4) of the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002) hereby makes the following Scheme:-

1. This Scheme may be cited as the Inland Post Amendment (No. 80) Scheme 2009.
2. This Scheme shall be operative from the 1st January 2010.
3. In this Scheme
“the Principal Warrant” means the Inland Post Warrant 1939 (S.I. No. 202 of 1939) as amended.

“No. 61 Scheme” means the Inland Post Amendment (No. 61) Scheme 1999.
4. Words defined in the Principal Warrant shall have the same meaning in this Scheme.
5. Regulation 4 of the Principal Warrant is hereby amended by the substitution for the words therein contained of the words:
“(1) Except where it is in this Warrant otherwise expressly provided, the provisions of this Warrant shall apply to the posting, conveyance, delivery or sortation of postal packets under the authority of An Post. The posting of a postal packet shall be deemed to occur when it first comes into the possession or control of An Post.

(2) The provisions of this Warrant shall not apply to postal packets
(a) posted in Ireland and addressed to a place outside Ireland or Northern Ireland.

- (b) Subject to charges determined in accordance with another Warrant.
- (c) sent from a country which is a Member State of the Universal Postal Union and not a Member State of the European Union or the European Economic Area or Switzerland and to which charges calculated in accordance with the Conventions of the Universal Postal Union apply.”

6. Regulation 5 of the Principal Warrant is hereby amended by the addition of the following paragraph (7):

“There shall be charged and payable for the conveyance of postal packets in respect of which there is no agreement with An Post whereby the charges are determined and which

- (a) are posted in a consignment weighing not less than 40kg,
- (b) do not bear a postage stamp issued by An Post, a franking impression to denote prepayment of postage pursuant to regulation 3(1) of the No. 61 Scheme or a Ceadunas.
- (c) comply with the terms and conditions set out in Schedule 9.

charges calculated in accordance with Schedule 9.

All Postal packets posted at the same place on the same day shall be deemed to form part of the same consignment. For the avoidance of doubt a Convention of the Universal Postal Union is not an agreement by which charges are determined for the purposes of this paragraph.”

7. The Principal Warrant is hereby amended by the addition of the Schedule to this Scheme to the Principal Warrant.

SCHEDULE

SCHEDULE 9

1. Postal packets to which this Schedule applies shall either be machineable postal packets to which the charges in Table A apply or other postal packets to which the charges in Table B apply.
2. An Post may determine the number of postal packets falling within each description of postal packet and each weight step set out in Table A or Table B by sampling or counting postal packets. The charge for postal packets shall be the sum of the number of postal packets of each description in each weight step as determined by sampling or counting multiplied by the charges respectively payable for postal packets of that description and weight step. Costs incurred in determining the number of postal packets shall be chargeable in addition to charges under Table A or B.
3. An Post may require the consignor (whether or not it is the sender) of postal packets to which Regulation 5(7) applies to pay such amount, as it may prescribe from time to time, by way of security for charges payable. An Post may refuse or return at its reasonable convenience postal packets if the amount so prescribed is not paid to An Post.
4. An Post may, on such terms as it may prescribe, invoice the consignor (whether or not it is the sender) in arrears by issuing an invoice for postal packets posted in a month at any time after the end of that month.
5. If an invoice is not paid within 30 days of issue by An Post, An Post shall be entitled to interest on the amount outstanding at the rate specified in Regulation 5 of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 for the period beginning on the day after the issue of the invoice and ending on the day on which the payment of the amount due is made.

TABLE A**Machinable Postal Packets**

Machinable postal packets are postal packets which are capable of being processed by An Post's automated sorting equipment. 85% of the postal packets have addresses that are capable of being sorted to destination by An Post's automated equipment without manual intervention and all bear indicia acceptable to An Post.

Machinable Postal Packets	Rate Per Item (€)	
	POP Letter	Flat
Type of Postal Packet		
Weight	<100g	<100g
Presentation of postal packets at the Dublin Mails Centre or the An Post Airmail Unit at Dublin Airport		
Presentation pre-15.00, 85% auto-sort	0.44	0.82

Machinable Postal Packets	Rate Per Item (€)		
	Flat	Flat	Flat
Type of Postal Packet			
Weight	101g – 250g	251g- 500g	501g-1kg
Presentation of postal packets at the Dublin Mails Centre or the An Post Airmail Unit at Dublin Airport.			
Presentation pre-15.00, 85% auto-sort	1.14	1.65	2.70

For the purposes of this table:

1. A **“POP Letter”** is a postal packet with the following dimensions:

Minimum dimensions:

90mm x 140mm x 0.18mm.

Maximum dimensions:

162mm x 230mm x 5mm.

2. A **“Flat”** is a postal packet with the following dimensions:

Minimum dimensions:

160mm x 250mm x 0.75mm.

Maximum dimensions:

250 mm x 350 mm x 18mm.

3. **“Auto-sort”** means sortation by An Post’s automated sorting equipment.

TABLE B**All Other Postal Packets**

The postal packets to which this table applies shall bear indicia acceptable to An Post.

Type of Postal Packet	Rate Per Item (€)		
	POP Letter	Flat	Packet
Weight	<100g	<100g	<100g
Presentation of postal packets at the Dublin Mails Centre or the An Post Airmail Unit Dublin Airport			
Presentation pre-15.00	0.46	0.87	2.04
Pre-sorted pre-noon	0.43	0.79	1.96

Type of Postal Packet	Rate Per Item (€)						
	Flat	Flat	Flat	Packet	Packet	Packet	Packet
Weight	101g–250g	251g–500g	501g–1kg	101g–250g	251g–500g	501g–1kg	1Kg – 2Kg
Presentation of packets at the Dublin Mails Centre or at the An Post Airmail Unit at Dublin Airport							
Presentation pre-15.00	1.28	1.84	2.94	2.58	3.74	5.91	7.50
Pre-sorted pre-noon	1.21	1.71	2.82	2.50	3.55	5.76	7.50

For the purposes of this table:

1. A **“POP Letter”** is a postal packet with the following dimensions:

Minimum dimensions:

90mm x 140mm x 0.18mm.

Maximum dimensions:

162mm x 235mm x 5mm.

2. A **“Flat”** is a postal packet with the following dimensions:

Save insofar as an item falls within the dimensions specified at 1 above:-

Minimum dimensions:

90mm x 140mm x 0.15mm.

Maximum dimensions:

300 mm x 400 mm x 25mm.

3. A **“Packet”** is a postal packet with the following dimensions:

Save insofar as an item falls within the dimensions specified at 1 or 2:-

Minimum dimensions:

70mm x 100mm x 25mm

Maximum dimensions:

Length, width and depth combined cannot exceed 900 mm. No one dimension can exceed 600mm (In roll form: length and twice diameter: 1040mm, greatest dimension not exceeding 900mm) with a tolerance of 2mm.

4. **“Pre-sorted”** means items pre-sorted according to the required pre-sort specifications supplied from time to time by An Post.

Given under the Common Seal of An Post this day of 2009.

Present when the Common Seal of An Post was affixed hereto.

Director

Director/Secretary

Explanatory Note

(This note is not part of the instrument and does not purport to be a legal interpretation).

This Scheme extends the scope of the Inland Post Warrant 1939 to include incoming cross border mail, allows An Post to determine charges by sampling and sets prices for such mail where there is no agreement with the sender.