



Commission for
Communications Regulation

Consultation Paper

Regulation of Postal Services – Universal Service Obligation - Bulk Mail Access

Direction to An Post

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All responses to this consultation should be clearly marked:-
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(current consultations), to arrive on or before 5 pm, 18 June
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Please note, as part of a pilot programme, ComReg will publish responses received to this consultation on its website together with its report. For details regarding confidentiality, please refer to page 11 of this document. This is the first Consultation Document where responses will be published online.

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Contents

1	Foreword.....	2
2	Executive Summary	3
3	Introduction	4
3.1	DEFINITION OF TERMS	4
3.1.1	<i>Bulk Mail</i>	4
3.1.2	<i>Direct Mail</i>	4
3.1.3	<i>Pre-sort Service</i>	5
4	Access for Bulk Mail Customers	6
4.1	BACKGROUND	6
4.2	AN POST'S CURRENT POLICY	6
4.3	NEED FOR REVIEW	7
4.4	KEY ISSUES – ACCESS FOR BULK MAIL	8
4.4.1	<i>Access to An Post's four main distribution centres</i>	8
4.4.2	<i>Access to An Post's Delivery Offices</i>	8
4.4.3	<i>Accounting Records</i>	9
4.5	PROPOSED DRAFT DIRECTION ON BULK MAIL	9
5	Submitting Comments.....	11
	Appendix A – Legislation	12
	Appendix B – Consultation Questions	15

1 Foreword

ComReg is statutorily obliged to ensure that Access is available to all users of the universal postal service in a fair and non-discriminatory fashion. An Post, as universal service provider, is required to ensure that the needs of all users are met and that access is provided on an equal basis.

One of the specific tasks which ComReg has with regard to regulating the postal sector is to develop and promote the postal sector. Bulk Mail Customers are key to achieving this objective and to this end it is paramount that access to An Post's network is sufficient to meet the needs of these users.

In this paper ComReg is responding to the needs of consumers who need to post bulk mail. Comreg is proposing to also look at what will drive and develop the sector by opening up access to Bulk Mail Customers not only at Regional level but also at local delivery office level.

It is ComReg's opinion that opening access to Bulk Mail Customers at local delivery office level should contribute to and perhaps eliminate many of the capacity issues currently being experienced at An Post's sorting and distribution centres.

I am seeking the views of all interested parties, but I would especially appreciate comments from businesses that will be directly impacted by the proposals outlined in this paper.

I look forward to receiving responses to this consultation.

**John Doherty,
Chairperson.**

2 Executive Summary

Concerns have been raised with ComReg regarding the ability of An Post to adequately meet the needs of the Bulk Mail Industry. In response to its earlier consultation¹ on the issue of Access to An Post's network ComReg decided to intervene only on a case by case basis should Bulk Mail customers concerned and An Post not manage to reach an amicable agreement.

The proposal put forward in this paper would mean that Bulk Mail Customers would have a right of access at their choice to An Post's four distribution centres for mail which requires both sorting and delivery. Mail which requires this level of processing may also be inducted at one of the twenty locations which An Post currently accepts bulk postings of metered/franked mail.

Access at Delivery Office level also is proposed for mail that qualifies for the pre-sorted, postaim or any alternative discount services available now or in the future.

ComReg sees these proposals as developing the postal market specifically for Bulk Mail users and will have 'spin off' benefits for ordinary consumers as capacity is better utilised.

¹ Consultation Paper ODTR 02/95 and Decision Notice and Response to Consultation D11/03 ComReg 03/50.

3 Introduction

The Commission for Communications Regulation and its Office (“ComReg”) are responsible for the regulation of Universal Postal Services in Ireland in accordance with National and EC legislation². ComReg is the National Regulatory Authority (“NRA”) for the purposes of that legislation. In carrying out its functions under the legislation, ComReg is obliged to take into account the views of interested parties.

Following public consultation in late 2002³ ComReg issued a Direction to An Post on 21 May 2003 in respect of the density of Access Points for single piece mail. The Direction concluded that “with regard to access points for Bulk/Direct Mail, ComReg do not propose to issue a Direction to An Post at this time but will intervene on a case by case basis at the invitation of any specific customer when it can be shown that the normal process of commercial negotiation has been exhausted.”

Over the past year it has been brought to ComReg’s attention that the Bulk/Direct Mail Industry is not entirely satisfied with the current arrangements for gaining access to An Post’s network. During the recent Industrial Dispute ComReg received written complaints from a number of large mailers expressing disquiet in dealing with An Post regarding access to its network. ComReg has decided to hold a public consultation about the merits of issuing a Direction to An Post which will set out the precise nature of access which must be provided for Bulk Mail Customers as current arrangements clearly do not meet the needs of users.

3.1 Definition of Terms

The following definitions will be used for the purposes of any Direction issued by ComReg to An Post regarding Access for Bulk Mail Customers following this consultation.

3.1.1 Bulk Mail

This comprises correspondence, documents or publications consisting of a substantial number of similar items which are deposited with An Post, or any other service provider, at the same place and at the same time to be conveyed and delivered to the addressees indicated on the items themselves or on their wrapping. There are specific issues in relation to the ability of An Post to accept this mail other than in Dublin which is the key topic of this consultation.

3.1.2 Direct Mail

Direct Mail is a particular form of Bulk Mail. The Regulations define it as: "a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of

² Relevant legislation is detailed in Appendix A

³ Consultation Paper ODTR 02/95 and Decision Notice and Response to Consultation D11/03 ComReg 03/50.

the message, which is sent to a significant number of addressees, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping and includes cross-border as well as domestic mail. Bills, invoices, financial statements or other non-identical messages and communications combining direct mail with other items within the same wrapping shall not be included as direct mail."

Regulation 3(2) required ComReg to decide what constitutes a significant number of addressees in relation to direct mail and to publish the appropriate definition in the Iris Oifigiuil. It was decided after consultation last year that 2000 items would be considered as a significant number of addresses for nationwide delivery or 100 pieces for one specific local delivery office for the purposes of the Regulations.

3.1.3 Pre-sort Service

This arises where the originator of Bulk Mail or an agent undertakes to sort its mail in accordance with the sorting plan required by the Operator and presents this mail to the Operator so that it can be treated as a single aggregated unit of mail until it is received at the designated Delivery Office where it will then be disaggregated for final delivery.

4 Access for Bulk Mail Customers

4.1 BACKGROUND

ComReg is required to issue Directions to the Universal Service Provider(s) to ensure that the density of access points takes account of the needs of users. This paper specifically deals with access for Bulk Mail Customers and the obligations imposed on ComReg by the Regulations in this area are described in Appendix A.

Present access arrangements need to be reviewed to take account of the needs of users. Procedures for the management of customer accounts also need review in line with changes to access arrangements.

Different arrangements are needed depending on the service requested by the customer. The Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services, (OJ 98/C 39/02) is significant in this instance. It states that Bulk Mail Customers should be allowed to buy services from An Post for delivery only for items which are not reserved to An Post.

ComReg is conscious that mail volumes prepared by the Bulk Mail Industry are increasing and access conditions are not necessarily facilitating these user's needs in line with the growth levels experienced. Current access arrangements may be constraining growth in this sector of the postal market. One of the keys to sustaining the postal market as a vibrant industry, in competition with other means of communication, is the postal operator's ability to meet the ever changing needs of the Bulk Mail market.

4.2 AN POST'S CURRENT POLICY

An Post's current policy allows limited access for Bulk Mail Customers at its four main sorting and distribution centres located at Dublin, Cork, Athlone and Portlaoise. Access to a limited range of services is also permitted at 20 additional locations. Access at local Delivery office is not permitted.

The following is a direct quote from An Post's website, dated 21 May 2004, with regard to the key features of its Discount Structures available to its Bulk Mail Customers:

- *The introduction of a discounted deferred delivery option (delivery two days after posting) for customers with at least 500 items per posting with discounts for that group ranging from 2c to 5c.*
- *For larger mailers, posting 2000 items or more per posting, a discount of up to 18% (9c) off the headline rate for deferred delivery will apply.*
- *The deferred delivery option will be available at twenty four locations :
o Dublin, Cork, Portlaoise and Athlone Mails Centres;
And at the following locations:
o Bray, Castlebar, Cavan, Clonmel, Drogheda, Dublin City Centre, Dundalk, Ennis, Galway, Kilkenny, Letterkenny, Limerick, Longford, Naas, Navan, Roscommon, Sligo, Tralee, Waterford and Wexford.*

- *Increased discounts of up to 14% (7c) off the headline rate will be available to large mailers (with at least 2000 items per posting) posting at one of the four mail centres for next day delivery.*
- *Increased discounts of up to 7c for presorted mail posted by large mailers at one of the twenty four locations, for next day delivery, will also be available.’’*

An Post has invested in excess of €100million in an automation programme, which was completed during 2003 to create efficiencies in its network. An Post’s current guidelines for Bulk Mail access were devised with the operational demands of the automation programmes at the four distribution centres in mind. Maximising capacity efficiencies are core to the management policies adopted for each distribution centre.

Customer accounts are currently handled at a single location assigned by An Post on the basis each customer will only require access at one of the four main distribution centres.

4.3 NEED FOR REVIEW

ComReg has received formal written complaints from a number of organisations expressing concern that there is insufficient access to the postal system for bulk mail customers.

The following extracts from two of the larger utility companies sums up the main concerns expressed:

“... believes that there is insufficient access to the postal system for large customers, which has compounded the impact of the current postal dispute. If An Post were to permit ... to deliver mail directly to the relevant local centres of distribution, the damage arising out of the current dispute would be mitigated significantly. ...”

“A specific example is ...’s ability and practice of presenting bulk mail for regional delivery in Ireland at the relevant regional distribution centre; eg in Cork for delivery in the southern area. This eliminates the need for An Post to originate the mail at its dispersed Dublin sites.”

ComReg welcomes your views on these questions and further questions listed at the end of this chapter.

Q. 1. How adequate are the current points of access for bulk mail in meeting the needs of users:

(a) who present mail requiring full processing (sortation, transportation, and delivery)?

(b) who present mail pre-sorted (e.g. pre-sort discount, postaim)?

Please provide a reasoned response.

Q. 2. Is it necessary for ComReg to issue a Direction under Regulation 4(1)(b) to ensure that the points of access for bulk mail meets the needs of users? Please give your reasons.

4.4 KEY ISSUES – ACCESS FOR BULK MAIL

4.4.1 Access to An Post's four main distribution centres

It is clearly not workable or in the interests of Bulk Mail customers to be restricted to one access point for induction of their mail. Bulk Mail clients need to have access at a range of centres to accommodate the needs of their clients as well as create greater efficiencies in the Bulk Mail Industry. There is no advantage to a Bulk Mail client to be forced to induct mail in say Dublin or Cork when it is much more convenient for the client to drop the mail at another location.

However, capacity issues will arise for An Post. Restrictions or limitations will be required to ensure that Bulk Mail is accepted for processing within a timeframe that is practical for An Post's operational programmes. In this context An Post would be required to open a certain window for processing mail prepared to meet specific discount packages. Conditions should be geared towards the needs of bulk mail industry, not solely An Post's automation programmes.

4.4.2 Access to An Post's Delivery Offices

Bearing in mind that there can be capacity restraints at An Post's four distribution centres it is important to explore access at other levels. There appears to be no reason why access should not be allowed for Bulk Mail at local delivery office subject to certain criteria being fulfilled.

An Post already has a pre-sort service which allows mail to be bagged into approximately 157 local delivery locations throughout the country but direct access to these offices is prohibited. As with access to the four main distribution centres certain limitations would be required to ensure an efficient and fair environment for all bulk mail posters. ComReg decided last year that 100 pieces for one specific local delivery office constituted a significant number of addresses for the purposes of defining direct mail.

However, the window for inducting at this level would be narrower than that for inducting at one of the main centres. Mail inducted at this level would need to arrive extremely early in the morning to meet same day delivery or else have an induction window which would meet the staffing arrangements at local delivery office level for arrival later in the day.

The advantage of allowing access directly at local level would increase service take up and reduce capacity at the main centres. Overall quality should be increased while transportation costs may be reduced for both operator and client.

4.4.3 Accounting Records

The additional flexibility in access points will need to be matched by flexibility in An Post's administrative / technical systems.

4.5 PROPOSED DRAFT DIRECTION ON BULK MAIL

Bearing in mind the existing guidelines used by An Post and the points raised above ComReg puts forward the following proposed Direction regarding Bulk Mail Access to An Post network as the basis for this consultation:

- (a) Bulk Mail Customers should be able to post items at each of An Post's four Regional distribution centres, ie, Dublin Mail Centre, Cork Mail Centre, Athlone Mail Centre and Portlaoise Mail Centre five days a week (ie Monday to Friday, excluding public holidays). Mailings presented at these locations may require sortation, transportation and delivery services and/or transportation and delivery services only.
- (b) In addition to the requirements set out in (a) above, Bulk Mail Customers should be able to present mail items five days a week (ie Monday to Friday, excluding public holidays) at one or more of An Post's twenty centres currently accepting bulk postings of metered/franked mail. Mailings presented at these locations may require sortation, transportation and delivery services and/or transportation and delivery services only.
- (c) In addition to the requirements set out in (a) & (b) above, Bulk Mail Customers should be able to present mail items intended to secure the pre-sort discount or postaim or any future similar service (pre-sorted for approximately 157 Delivery Offices nationwide) at one or more of An Post's four main sorting and distribution centres and/or one or more of An Post's twenty centres currently accepting bulk postings of metered/franked mail for transfer to the required Delivery Office destination by An Post.
- (d) Bulk Mail Customers should be able to post mail items at each of An Post's network of delivery offices, (approximately 157 Delivery Offices

Nationwide) at specified times five days a week (ie Monday to Friday, excluding public holidays), subject to all the items bearing addresses served by that delivery office, that the minimum quantity for that office is 100 items (in line with ComReg's definition of a significant number of items for Direct Mail) and meeting all the required conditions of An Post to avail of the relevant service (eg minimum of 2,000 items nationwide)

- (e) In those locations where access for Bulk Mail is currently accepted on Saturdays, Sundays or Bank Holidays, this standard of service should continue to be provided where possible.
- (f) Bulk Mail Customers should be able to access any or all of the four sorting and distribution centres and/or any of the Delivery Offices Nationwide, whichever is most convenient to the customer on the occasion of that mailing, in the knowledge that administrative functions as well as accounting information will be handled at a single point by An Post.

Q. 3. Do you agree with ComReg's proposals for the Direction to be issued to An Post? If not, please state your reasons.

Q. 4. What other elements would you include in a Direction to An Post regarding Bulk Mail Access?

Q. 5. If a Direction containing the suggested elements was issued what effect would it have on the volume of mail you generate?

5 Submitting Comments

All comments are welcome; however, it would make the task of analysing responses easier, if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 21 May 2004 to 18 June 2004 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the proposed Direction to An Post regarding Access for Bulk Mail Customers and publish a report in June 2004 on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available on its website all responses to the consultation.

Please note: ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential, and will not be published.

Appendix A – Legislation

1. General

The EU “Postal Directive”⁴ establishes a harmonised regulatory framework for postal services throughout the European Union and for securing improvements in the Quality of Service provided, and defines a decision-making process regarding further opening of the postal market to competition. It was transposed into national law in September 2000 by the European Communities (Postal Services) Regulations 2000 (SI No.310/2000, "the Regulations") as amended by the European Communities (Postal Services) Regulations 2002 (SI No.616/2002, "the Regulations"). Under these Regulations ComReg has been given responsibility for regulating the postal sector.

2. Universal Service Obligation

The Regulations define a Universal Service Provider as the public or private entity providing a Universal Postal Service or parts thereof within the State, the identity of which has been notified to the Commission in accordance with Article 4 of the Directive.

Regulation 4(2) has designated An Post as a Universal Service Provider and the Minister for Communications, Marine and Natural Resources may designate one or more additional postal service providers as a Universal Service Provider having an obligation to provide all or part of the Universal Service. In this paper any reference to An Post should be read as a reference to all bodies designated as a Universal Service Provider.

The Universal Postal Service is set out in terms of weight limits and contents in Regulation 4(4). The definition does not however specify which particular services are “universal services”. It could be interpreted as covering all services provided by An Post for items weighing less than 20kg. But the intention of the European Authorities was to set out “*at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community*”⁵ and that Member States should be free to specify, in accordance

⁴ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service. OJ L 15 21.1.1998, p. 14, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services OJ L 176 5.7.2002, p. 21.

⁵ Recital 11 of the Postal Directive.

with national traditions and requirements, the type of postal service that MUST BE provided to every citizen in the State.⁶

Specifying the minimum level of service guaranteed does not mean that other postal services will not be provided, or that a Universal Service Provider will not offer a better quality of service than the minimum prescribed. But these are matters for the commercial judgement of the designated Universal Service Provider(s) or, except where there are transitional restrictions on market entry, of any other service provider who wishes to enter the market.

The following paragraphs set out the specific obligations imposed on ComReg in this regard, and this consultation paper seeks the views of interested parties as to how ComReg should deal with these issues.

3. Access to the Universal Service

The Regulator is required to issue Directions to a Universal Service Provider (currently only An Post) after consultation with interested parties:

- to ensure that the density of the points of contact and of access points take account of the needs of users [Regulation 4(1)(b)],

4. Essential Requirements

ComReg may issue Directions to a Universal Service Provider to ensure compliance with the requirements in Regulation 5 which include; security of the network; an identical service shall be offered to users under comparable conditions; the service shall evolve in response to the technical, economic and social environment; continuity of service; and without any form of discrimination between users.

5. Obligation on ComReg to Monitor Compliance

Regulation 17 (1) provides that the Director shall monitor compliance with Regulations 4 (1) (b), 4 (3) & 5.

6. Tariff Principles

Regulation 9 (1) provides that tariffs for each of the services provided by the universal service provider shall comply with the principles that the tariffs are geared to cost, affordable and that tariffs must be transparent and non-discriminatory.

Regulation 9 (3) states that where a universal service provider ‘...special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, they shall apply the principles of transparency

⁶ Recital 10 of the Postal Directive provides “Whereas, in accordance with the principle of subsidiarity, a set of general principles should be adopted at Community level, whilst the choice of the exact procedures should be a matter for the Member States, which should be free to choose the system best adapted to their own circumstances;”

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 service providers supplying equivalent services. Any such tariffs shall also be available to private customers who post under similar conditions.'

7. Competition Notice from the Commission, OJ 98/C 39/02

This Notice provides that the market for delivery is separate from the markets for collection, sorting and distribution. It is implicit that Bulk Mail Customers should be allowed to buy services from An Post for delivery only of items which are not reserved to An Post.

Appendix B – Consultation Questions

- Q. 1. How adequate are the current points of access for bulk mail in meeting the needs of users:
(a) who present mail requiring full processing (sortation, transportation, and delivery)?
(b) who present mail pre-sorted (e.g. pre-sort discount, postaim)?
Please provide a reasoned response. 8
- Q. 2. Is it necessary for ComReg to issue a Direction under Regulation 4(1)(b) to ensure that the points of access for bulk mail meets the needs of users?
Please give your reasons. 8
- Q. 3. Do you agree with ComReg’s proposals for the Direction to be issued to An Post? If not, please state your reasons. 10
- Q. 4. What other elements would you include in a Direction to An Post regarding Bulk Mail Access? 10
- Q. 5. If a Direction containing the suggested elements was issued what effect would it have on the volume of mail you generate?..... 10