



Commission for
Communications Regulation

Postal Strategy Statement (2008-2010)

Submissions received from respondents

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1 An Post

An Post response to ComReg's consultation paper 07/101 'Postal Strategy Statement (2008-2010)'

Introduction

An Post is pleased to respond to ComReg's consultation paper 07/101 'Postal Strategy Statement (2008-2010)' ('the Consultation'). The time period of 2008-2010 for application of this Strategy Statement is significant for the Irish Postal sector as it covers the period immediately preceding proposed liberalisation; hence it is important that ComReg fully considers its Strategy in this context.

As there are no specific questions in the Consultation, An Post comments as follows: Section 1 covers comments of a general nature and provides some contextual commentary; and Section 2 deals with specific issues in the Consultation.

Section 1: General Comments

Contextual background

At the core of regulation of the postal sector is the need to provide and develop the universal postal service to meet the fundamental social need that all users benefit from access to a universal postal service within, to, and from the State at an affordable price. Designated as the Universal Service Provider, An Post delivers in excess of 750 million items of mail to 2 million homes and businesses every year. An Post achieves this in an environment of significant internal change; improving Quality-of-Service; and charging amongst the lowest postal prices in Europe.

The ability of An Post to deliver its Universal Service Obligation is intrinsically linked to its financial integrity and its capacity to continually implement necessary operational change in a timely and efficient way. An Post recognises the rationale for an independent regulatory authority. However that industry regulator must, in our view, also commit to providing a positive and supportive regulatory framework. Increasingly accelerating competition raises the question as to how it will remain possible to provide a universal service that is currently funded by cross subsidies. Options to resolve this may include reducing the scope of the USO products and activities or finding another way to fund the USO. These options need to be considered.

The draft Third Postal Directive

In the Consultation, ComReg refers to provisions of the draft Third Postal Directive due to come into effect in 2011. Whilst An Post supports a forward-looking approach, ComReg must ensure that the focus of its Statement, which will expire before planned liberalisation, focuses not only on the future regulatory framework but also on the current framework.

Strategy Statement of the Department of Communications, Energy and Natural Resources (DCENR)

ComReg's Strategy Statement should take into account the strategy and sectoral policy of the DCENR¹. The DCENR's Statement was the subject of a public consultation in Q4 2007, but at the time of writing the response has not been issued.

In its response, An Post put forward the following twin principles that must underpin the strategy for the postal sector (i) the need to ensure an appropriate balance between the development of the sector and the gradual and controlled liberalisation of the market, as provided for by the current and draft European regulatory framework and associated transposition and (ii) the need to ensure (on behalf of the Minister as shareholder) the ongoing financial viability of An Post.

Section 2: Specific Comments in response to the Consultation²

2: Mission, Values, Vision

As a general point, An Post considers that these should explicitly refer to legislation or other guidance from the DCENR that ComReg is statutorily obliged to consider.

Mission:

ComReg is required to 'draw up and adopt a strategy statement reflecting its statutory functions', following a public consultation process, under Section 31 of the Communications (Regulation) Act 2002 No 20 of 2002 ('the Act')³.

In the case of the postal sector, ComReg's function is set out in the Act and the European Communities (Postal Services) Regulations S.I. 616 of 2002 ('the Regulations'). Specifically the function is 'to ensure compliance by providers of postal services with obligations in relation to the provision of postal services'⁴ and the objective in exercise of the functions is to 'promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users'.⁵ These functions should be referenced in ComReg's mission. An Post also considers that some additional points arising from the Act should be referred to in the Strategy. ComReg is charged with having regard to proportionality⁶;

¹ Policy Direction No 1 of 21 February 2003 requires that ComReg have regard to the objectives specified for the communications sector in the Statement of Strategy for the DCENR (then DCMNR).

² Numbering of Consultation headings is used

³ The Communications (Regulation) (Amendment) Act 2007 also requires ComReg to prepare an annual action plan and financial forecast from 1 July each year.

⁴ 10 (1) (c) of the Act. Regulation 17 of the Regulations provides details of the regulations with which ComReg is tasked with ensuring compliance.

⁵ 10 (1) (c) of the Act.

⁶ 12 (3) of the Act

policy statements of the Government⁷, international developments⁸ and Ministerial Policy Directions⁹.

Values:

Integrity, professionalism, impartiality, effectiveness and transparency are highlighted as the values underpinning ComReg's performance.

In the opinion of An Post, ComReg's strategy for regulation of the postal sector should be fully reflective of the principles underpinning the Government's 2004 White Paper 'Regulating Better'¹⁰. In addition to effectiveness and transparency the White Paper lists necessity, proportionality, accountability and consistency.

These are described as follows:

Necessity – is the regulation necessary? Can we reduce the red tape in this area? Are the rules and the structures that govern this area still valid?
Effectiveness – is the regulation properly targeted? Is it going to be properly complied with and enforced?
Proportionality – are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
Transparency – have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?
Accountability – is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?
Consistency – will the regulation give rise to anomalies and inconsistencies, given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

Vision:

An Post makes the following points in relation to the vision as outlined in the Consultation:

- ComReg's primary remit is that of promoting the universal postal service;
- An Post believes that customer needs and sound commercial rationale rather than regulatory intervention is the most appropriate tool for introduction of new products.

3.4 Postal Market

An Post recognises that a customer-centric approach is required to continue to prosper in a market where both traditional and non traditional alternatives to the market are

⁷ 12 (4) of the Act

⁸ 12 (5) of the Act

⁹ 13 (1) of the Act – Policy Directions were issued on 21 February 2003 and 26 March 2004

¹⁰ Regulating Better. A Government White Paper setting out six principles of Better Regulation.
www.betterregulation.ie

appearing. Our challenge is to remain relevant and recent initiatives such as the e-bay parcel card and Movies by Mail are examples of the An Post commitment to this. However such value-added initiatives should not be subject to excessive regulatory intervention.

3.5 Technical

An Post monitors developments in other countries and is currently evaluating a number of new product opportunities. However there are other less favourable conditions that ComReg should for completeness also include – operators may face obstacles in terms of planning laws and traffic congestion issues. There also potential knock-on effects from other legislative developments e.g. European Commission proposals to reform the Community Customs Code (CCC) and CCIP (Customs Code Implementing Provisions), if adopted, are likely to significantly increase the workload of all postal operators, inconvenience customers, and delay mail.

3.6 Political and Legislative

At this stage, it may be too early to discuss the implementation of the Third Postal Directive, without its finalisation and without proper and due consideration of the legislature and all stakeholders. An Post looks forward to playing its full part in this process.

ComReg provides a number of examples regarding liberalisation. An Post notes that the Dutch Government recently decided to postpone (indefinitely) full market opening. In the liberalised market in Finland, a strict ‘pay or play’ regime was introduced following concerns that the economic viability of the USP would be undermined if the licensing regime permitted competitor activities only in cities.

4 Goals and Objectives

ComReg proceeds from its mission, values and vision to set goals and objectives. An Post comments on these below. As a general point, An Post considers that given the prominence attached to the USO in the regulatory framework and ComReg’s functions, a specific goal to ensure the viability of the USO should be included.

5 Objectives - Consumer

In general, An Post welcomes the proposed objectives and strategies. However we would make the following comments:

- The reference to removing “inappropriate cross-subsidies between services” should be fully defined;
- In relation to the proposed investigation of the allocation of common costs, An Post notes that it has always been in compliance with the accounting direction in force at the time;
- A commitment is made to help resolve issues related to the collection of VAT and Customs duties. This does not appear to be a regulatory function;
- ComReg’s statutory role in relation to consumer issues is limited to that of issuing guidelines for complaint procedures in respect of the universal service¹¹.

¹¹ See 07/105. Handling specific complaints about An Post is a function reserved for the Ombudsman. The Act and the Communications (Regulation) (Amendment) 2007 specifically provides for consumer advocacy powers for ComReg in the electronic communications sector.

6 Objectives – Competition

ComReg has no express remit to encourage competition¹². Within the timeframe of this Statement, the Reserved area remains in force. This is an important factor in the development of the Strategy.

7 Objectives - Innovation

An Post notes that one of the strategies is to ‘provide regulatory certainty in relation to the continuity of existing regulatory obligations and future competitive market regulatory obligation’. This is especially important for An Post as the USP.

8 Objectives - Organisation

An Post welcomes ComReg’s intention to participate in such initiatives as the Better Regulation Forum. Therefore the points made by this initiative’s publications such the Report on RIA and the White Paper ‘Regulating Better’ should be borne in mind.

*

14 January 2008

¹² Section 12 of the Act expressly sets out promotion of competition as a objective only in relation to the electronic communications sector.

2 DX Ireland

Postal Strategy Statement (2008-2010)

Thank you for the opportunity to contribute to the Commission's consultation on its Postal Strategy Statement (2008-2010).

We welcome the Commission's recognition that sustainable competition in postal services is central to Ireland's continued economic success and we also look forward to working with the Commission to help develop the appropriate level of regulation leading up to full market opening by 31 December 2010.

The Commission acknowledges that Ireland has not been a leader in the field of market opening but we would like to encourage the Commission to now use this as an opportunity to learn from the experiences of its colleagues in other EU countries and elsewhere. The Swedish postal market has been opened to competition for 14 years and the Swedish incumbent operator does not benefit from the VAT advantage experienced elsewhere. This means that Swedish consumers have benefited from high levels of competition and dramatic efficiency improvements. The UK is another country that has removed most regulatory barriers to entry but the development of full competition there has been hampered by a regime that favours downstream access over end-to-end competition and Royal Mail's VAT exemption continues to foreclose large parts of the market. The result is that end to end competition has not developed to the point where consumers are seeing real benefits and where the regulator can consider reducing the scope of regulation.

It is our belief that most regulators strive for light-handed regulation and it is only right that regulators should only intervene when necessary and then limit their intervention to the minimum possible. However, the Irish postal market has been a government sponsored monopoly for hundreds of years and there are a large number of market distortions and potential behavioural problems that will not disappear immediately when the market is opened. For this reason we urge the Commission to ensure that the desire for light-handed regulation does not subjugate the need for proper control of anti-competitive activity. There are particular aspects of the postal market (such as high levels of common costs) that make it difficult to appeal to competition law in the event of anti-competitive activity and the Commission needs to recognise that ex ante regulation might well be required in the period around market opening.

We recognise that one of the main reasons for opening the postal market to competition is to create market conditions that incentivise the incumbent to improve its efficiency and introduce new services that meet the market's requirements. As discussed above, it is also desirable that regulation is light-handed when appropriate. We are absolutely convinced that the only way to achieve these objectives simultaneously is to ensure that there is healthy end to end competition that applies competitive pressure at all points of the incumbent's value chain. We would like to suggest to the Commission that it prioritises studies into how to achieve meaningful end to end competition.

We would like to draw the Commission's attention to what we consider are two very important omissions from the Postal Strategy Statement.

The first of these is the lack of a strategy or a performance measure for the introduction of postcodes in Ireland. We are sure that the lack of postcodes in Ireland is a major barrier to the development of an efficient postal service, one which encompasses the entire value chain from database generation and processing through to fulfilment and delivery. We urge the Commission to address this issue urgently.

The second important omission is the lack of a strategy to address the question of An Post's VAT exemption. This exemption not only gives An Post a clear competitive advantage in a major part of the postal market; it also means that customers in that market sector do not receive benefits such as price and product competition. We appreciate that the Commission does not have direct powers to determine the treatment of VAT by the incumbent operator but we do identify this as an issue that is critical for the achievement of the Commission's aim and warrants further study.

3 Irish Charities Postal Users Forum

Irish Charities Postal Users Forum

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8th January 2008

Response to Consultation 07/101

We welcome your Postal Strategy Statement (2008 – 2010) that sits comfortably with the recent consultation undertaken by the Minister for Communications on the same subject. Apart from the specific importance of the objectives and strategies outlined in the document, its publication has the generic benefit of creating awareness amongst users about the dynamic and changing nature of the postal market.

To date we have witnessed little of that dynamic change and renewal in the Irish postal service that appears locked in the “sell what we make” orientation. Successive managements in An Post have failed to create a customer centric culture within the organisation that is totally driven by the demands of its internal operations.

We find nothing objectionable in the document. The purpose of this communication is to lend support for a number of specific issues mentioned below. Even though we have been highlighting some of these to ComReg and to other bodies such as the Minister for Communications, the Joint Oireachtas Committee on Communications, the Business Regulation Forum, and the EU Commission, we are taking this opportunity to convey our support to you in your pursuance of the issues in question.

1. For this Forum, a critical issue is the need to reform much of the current domestic postal legislation – primary and secondary – in order to remove the very unique immunity that is conferred on An Post that is the dominant service provider to the extent that it is in effect a monopoly in the delivery of standard letters nationwide. The Post Office Act, 1908 is in urgent need of being revised to take account of the realities of the postal market in 2008 and beyond. Whilst EU legislation takes precedence over domestic legislation, it is necessary to overhaul the 1908 Act and the myriad of regulations that have been derived from it in the official monopoly era. National postal legislation also needs to be consolidated urgently.

Whilst An Post retains its current immunity from responsibility to its customers – an issue that could be contested under EU law – there is little chance of effective competition developing in the restricted letters market in Ireland because the playing pitch is so skewed in favour of An Post. Perhaps, that is a matter that the Competition Authority could examine.

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2. We believe that the Third Postal Directive must be transposed into Irish law by means of primary legislation that will be fully debated in the Oireachtas. We concur that the transposition must be unambiguous and precise.
3. It is imperative that the future regulatory framework can provide adequate safeguards against excessive pricing, and that business users will have convenient and affordable access to postal services. We strongly endorse the proposal in this regard put forward by the representative of LEGG Ltd at your postal conference last October.
4. It is important that ComReg monitors users' satisfaction levels independently to identify emerging needs, and that it is in a position to resolve user complaints. This Forum would like to see more public recognition being given to the important role of the Ombudsman in resolving user complaints against An Post.
5. "Quality of service" in the national postal service has come to be defined generally as the time taken to deliver certain types of letters from time of posting to time of delivery. The common perception in this has emerged from the huge emphasis being put on next day delivery which, whilst being an important factor in its own right, is only one of the determinants that make up quality. Issues like terms and conditions, access, reliability, security, and responsiveness to queries / complaints are other very important determinants of overall quality. This Forum would welcome the more general use of a broader definition of quality, or a new description for delivery standards.
6. We strongly endorse the need for ComReg to have the powers and the resources to regulate effectively after 1st January 2011, and that it is in a position to advocate effectively on behalf of users. We have already seen examples, for example in bulk mail access points, where ComReg had to issue a Directive to An Post because that company simply failed to listen to the needs of its bulk mail users and, thus, failed to meet their needs until forced to do so by Directive.
7. We believe that advocacy should include general market development issues in order to bring forth the dynamism and renewal that will be necessary to meet the changing and emerging needs of users.

Unfortunately, An Post as the dominant service provider in the letters market is failing to introduce initiatives to develop the growth potential of some segments of that market, particularly direct mail. Recent research from abroad shows that changes in attitudes towards direct mail by the public and by government are happening. For example, in the UK there is growing pressure on direct marketing

to change the way it operates with fresh proposals for the introduction of legislation surrounding data protection and green issues taking centre stage with politicians and pressure groups claiming that making all direct marketing 'opt in' would be a step in the right direction. If pursued into law some of these would have significant negative impact on how direct marketing operates. Direct mailers can see these changes emerging in Ireland too.

In recent years we've seen local authorities in Ireland describe direct mail as "junk mail" in their waste management literature, as well as government advertising on TV with the same message.

We've seen government withdraw the register of electors from being used to compile mailing lists, and in the process go beyond the letter and the spirit of the Data Protection Acts. As a direct consequence of that government action we are now witnessing the critical shortage of quality mailing lists for rental which is curtailing the growth of direct mail.

Postal administrations across western Europe, the USA, Canada, Australia and New Zealand – and Ireland up to 2000 – execute active promotional strategies to support a positive image of direct mail. For decades New Zealand Post has provided a very proactive direct mail consultancy and advisory service for businesses, and the benefits of that can be seen in the high volumes offering in that country and the public respectability achieved by the medium. Canada Post operates walk-in advisory centres for businesses with the objective of growing the market.

Currently, New Zealand Post is running an imaginative advertising campaign depicting the emotional connection that mail creates between people.

These postal administrations recognise direct mail as an advertising medium that must be managed accordingly and not just as a postal product. An Post does not have that recognition but simply treats direct mail as just another one of its services. It even suspends its bulk discount service – Postaim – in November and pre-elections and referenda irrespective of the needs of users, and its legal obligation under the EU Directive.

It is the only postal administration in the world to suspend a direct mail bulk service in that manner. Since the CEO of An Post disputed that statement by me at your conference on 18th October last I have asked him in writing on two occasions to supply me with a list of the countries that he maintains engage in such suspension as a "common feature" but three months later he has failed to do so. What media owner would act like An Post?

Against that non-user focused background of the dominant player, and apart from ensuring that EU Directives are complied with by service providers, particularly the dominant player, ComReg must advocate for innovative products and quality service delivery that is modern and vibrant in meeting users' needs in the years ahead.

8. It is the view of this Forum that ComReg must formulate and implement a proactive communications plan to focus on the postal market with a key objective of achieving greater engagement by business users and their representative organisations. It is necessary to inject dynamism into what traditionally has been a market that did not attract much public attention.

We would advocate for more outreach initiatives such as conferences where a dialogue can take place. Your October conference was excellent in terms of organisation, the speakers, and their content, plus very importantly the networking opportunities that it presented for users and user groups. We believe that such conferences would add greatly to the effectiveness and the public profile of your existing written consultation process.

We trust that these comments will be helpful to your important work on behalf of postal users.