



Commission for
Communications Regulation

Information Notice

Terminal Dues Agreements – Compliance with Regulation 10(1) of S.I. 616 of 2002

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Background

In the Information Notice “Terminal Dues Agreements” ComReg 03/40 dated 4 April 2003, ComReg stated the following:

“Under Regulation 17(1) ComReg is required to monitor An Post’s compliance with its obligations in respect of its Agreements on Terminal Dues, and ComReg has powers available to it under Regulation 10(2) to require such compliance. The Commissioners have considered a report on the question of An Post’s compliance with its statutory requirements and they have decided that there is prima facie evidence of non-compliance. In the circumstances the Commissioners are requesting An Post to bring its Agreements on Terminal Dues into compliance with its obligations no later than 7 July 2003.17(1)” Foreword page 3

ComReg received a representation from An Post to extend the deadline and in an Information Notice announced that it had agreed to a new date of 22 July 2003 (see ComReg 03/74).

Current Status of negotiations

These negotiations have still not been concluded but because of the commercial sensitivities details of An Post’s negotiating strategies cannot be put into the public domain.

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

Issues to be considered by An Post

The important issue is that there is a statutory obligation on An Post under Regulation 10 (1) of S.I. No 616 of 2002 to ensure that “terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail”.

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 of the scale disclosed by An Post.

The recent price increase for domestic mail in Ireland (see ComReg documents 03/95 and 03/100) has increased the disparity between the price that posters of bulk mail in Ireland have to pay to An Post and those that postal service providers outside of Ireland can offer for delivery of mail in Ireland. This is an issue that neither An Post nor ComReg can ignore.

Issues in relation to extra-EU mail (UPU Convention)

Even when the Terminal Dues Agreements in relation to intra-EU mail that amounts to over 80% of outgoing and 83% of incoming mail by weight, are brought into compliance the issue of the agreements with countries outside of the EU will need to be resolved. The remainder of international mail is split

between an agreement that An Post has with two North American postal service providers and those countries where settlement is made on the basis set out in the Universal Postal Union (UPU) Convention. For further details on the UPU please see Section 3 of the Information Notice "Terminal Dues Agreements" ComReg 03/40 that contains a comprehensive background to the UPU along with details of the current UPU Arrangements.

The last UPU Congress at Beijing in 1999 was dominated by the debates on Terminal Dues and made the following provisions in the UPU Convention:

*"47 (1)... each administration which receives letter-post items from another administration shall have the right to collect from the dispatching administration **a payment for the costs incurred** for the international mail received". (emphasis added)*

*"47 (3) The provisions of the present Convention concerning the payment of terminal dues are transitional arrangements, **moving towards a country-specific payment system.**" (emphasis added)*

The next UPU Congress is scheduled to be held in Bucharest in September / October 2004. The issues raised at Beijing will be addressed by approving a new terminal dues system that is due to be operative from 1 January 2006.

Conclusion

ComReg has expressed its concerns to An Post, whilst accepting that its negotiating strategy is entirely a matter for the company. ComReg has a legal obligation to ensure compliance and will consider what steps need to be taken as soon as the current negotiations are concluded.