



Commission for
Communications Regulation

Response to Consultation

Universal Service Obligation – Bulk Mail Access

Draft Direction to An Post

Document No:	04/92
Date:	1 September 2004

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1 Foreword

One of the specific objectives which ComReg has with regard to regulating the postal market is to promote the development of the postal sector and in particular the availability of a universal postal service at an affordable price for the benefit of all users. Bulk Mail Customers are key to achieving this objective and to this end it is paramount that access to An Post's postal network is sufficient to meet the needs of such users.

This consultation is only about the number of access points for Bulk Mail Customers. ComReg is statutorily obliged to ensure that the number of access points to An Post's network meets the needs of users of the universal postal service. As will be seen from the responses received (published in full as an Annex) many users believe that other aspects, in particular, terms and conditions and pricing should be considered at the same time. The legislative framework does not provide for this. The obligations in respect of Terms and Conditions and tariffs are for An Post, subject to monitoring by ComReg, which also has powers to ensure compliance with these obligations. Prices for services reserved to An Post cannot be increased without ComReg's prior approval.

The paper sets out a draft Direction to An Post which provides that there will be at least one access point for bulk mail in every town with a population in excess of 15,000 and where a county does not have a town of that population, there will be an access point in the largest town of that county. For pre-sorted mail bulk mail customers will be able to deposit pre-sorted items at an access point in the Delivery Office from where such items would normally be delivered.

ComReg's analysis confirms that providing access to Bulk Mail Customers at the level set out in the draft Direction to An Post should enhance quality of service, encourage volume growth, provide better customer choice, reduce delivery costs and signal to all concerned that An Post is a customer focused organisation.

John Doherty
Chairperson

2 Introduction

2.1 Legal Basis

ComReg has obligations under the European Communities (Postal Services) Regulations, 2002 (S.I. No 616 of 2002) to issue directions to An Post to ensure that the density of the points of contact and of access points takes account of the needs of users. (Regulation 4 (1) (b)).

Access Points are defined in the Regulations as follows:

- physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers;

Users are defined in the Regulations as follows:

- any natural or legal person benefiting from universal service provision as a sender or an addressee;

ComReg is also obliged to monitor An Post's compliance with the following obligations:

- in respect of services for businesses, bulk mailers and consolidators of mail from different customers it applies the principles of transparency and non-discrimination with regard both to the tariffs and the associated conditions. Tariffs must be based on 'avoided costs' as compared to the standard service covering the complete range of services offered for 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. (Regulation 9(3)).

Regulation 18 (2) permits ComReg, where it is of the opinion that An Post has not complied with a direction issued by it under S.I. No 616 of 2002, to apply to the High Court for an order to direct An Post to comply with the direction.

See Appendix A for a more comprehensive statement of the legal position.

2.2 Consultation Paper

In carrying out its functions under the legislation, ComReg is obliged to take into account the views of interested parties. On 21 May ComReg launched its 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, ComReg document number, 04/54. To enable all parties to comprehensively respond the deadline for receipt of submissions was extended to 25 June 2004.

ComReg wishes to thank all of those who contributed to the debate. In total, 9 responses to consultation were received and these are listed as follows¹:

¹ The Periodical Publishers Association of Ireland submitted a late response stating that it concurs with the views expressed by the IMU.

An Post

DX Ireland

Eircom

Irish Direct Marketing Association (IDMA)

Irish Missionary Union (IMU)

Missionaries of the Sacred Heart

TICo Group Ltd

TPG, N.V. (The Universal Service Provider in the Netherlands)

Vodafone

The responses received to the consultation paper have assisted ComReg in forming its view on the most effective way forward while complying with the Regulations.

All points relevant to the consultation raised by the respondents have been considered, although readers will appreciate that it is not feasible to refer to every point made by every respondent in a document of this nature.

As stated in the consultation paper ComReg is publishing all responses received with the exception of submissions marked confidential as an Annex to this Report

2.3 Format of Document

This report deals with the main issues raised during the consultation. Each section briefly summarises the issues raised in the Consultation Paper and by the Respondents, ComReg's analysis of those issues and the position adopted in response to the consultation. ComReg's formal decision is set out in a separate chapter.

Details of the Consultation Questions are set out in Appendix B.

2.4 Issues outside the scope of this consultation

2.4.1 Miscellaneous Issues Raised by Respondents

A number of respondents took the opportunity to raise issues which are entirely outside the scope of this consultation, e.g., Postcodes, Complaints and Redress Procedures, Quality of Service and some which are related to the subject of this consultation but, nevertheless outside the scope of it, e.g., Terms and Conditions and Pricing for Bulk Mail Services.

2.4.2 Commission's Position

It is not appropriate to deal with issues raised by respondents which fall outside the scope of what ComReg consulted on. While many of the issues raised are of great significance to the development of the postal industry, ComReg adheres to a process

of transparency in its decision making process. This involves holding a public consultation with all interested parties so that ComReg can be fully informed prior to making its decision. For that reason the matters raised above in the current consultation would not have had the full benefit of the public consultation process used by ComReg in making decisions and as such it would be inappropriate to comment at this time without providing a platform for others to make their views known.

It is however ComReg's intention to hold a public consultation in the last quarter of this year about the services to be provided within the scope of the universal service.

This paper does not constitute legal, commercial or technical advice. ComReg is not bound by it, except where there is a formal Direction or other document issued in fulfilment of a statutory obligation. All other aspects of this response to the consultation are without prejudice to the legal position of ComReg and to its rights and duties under legislation.

3 Access Points for Bulk Mail Customers

3.1 Background

3.1.1 An Post's current provision:

An Post currently provides a range of services for the Direct Mail / Bulk Mail Industry, but in general the access points are confined to the four main sorting and distribution centres located at Dublin (Knockmitten), Cork (Little Island), Athlone and Portlaoise. Access to a limited range of services is also permitted at 20 additional locations selected by An Post. (An Post in its response to this consultation points out that 90% of customers pay an additional fee for their mail to be collected at the customers' premises and to be deposited at the designated access point.)

Two of the services provided for the Direct Mail / Bulk Mail Industry – Postaim and Pre-Sort discounts – require customers to sort mail for each delivery office (approximately 157 selections) before depositing it at one of the designated access points. In many cases such mail is printed (or can be printed) in delivery sequence.

3.1.2 Current Regulatory requirements

In May 2003, following a public consultation, ComReg issued a Direction² to An Post regarding the density of access points to meet the needs of users, as required by Regulation 4(1) (b). At that time it was decided only to issue a Direction in respect of access points for single piece mail. It was considered that users posting Bulk Mail could reach agreement with An Post about access points through the normal process of commercial negotiation. ComReg decided that it would only intervene on a case by case basis at the invitation of customers when it could be shown that the normal process of commercial negotiation had been exhausted.

3.1.3 Need for further consultation

Informal complaints have been received by ComReg from Bulk Mail users over the past year concerning difficulties experienced in accessing An Post's network. It became clear to ComReg during the disruption to An Post's services during March and April 2004 that the density of access points did not meet the needs of the Bulk Mail sector. It was on this basis that ComReg decided that it was necessary to consider issuing a Direction to An Post in this regard. To this end a consultation paper was published on 21 May 2004³ outlining a proposed Direction to An Post to deal with the density of access points for Bulk Mail.

3.2 Scope of Consultation / Direction

The consultation paper addressed the merits of issuing a Direction to An Post regarding the density of access points to take account of the needs of the Direct

² Postal Services – Universal Service Obligation, Tariff Principles and miscellaneous issues, D11/03, ComReg Document No: 03/50

³ Regulation of Postal Services – Universal Service Obligation – Bulk Mail Access, ComReg Document No: 04/54

Mail/Bulk Mail Industry. It must be made clear that the scope of the current paper focuses on this point only.

Services, pricing and associated access terms and conditions were raised by many of the respondents who maintained that access could not be dealt with in isolation; the other elements were intrinsic to the service provision. While ComReg has regulatory functions in regard to pricing of services and associated terms and conditions it is not possible to deal with these matters within a Direction issued under Regulation 4(1) (b) (ii).

3.3 Key issues regarding Access Points for Bulk Mail

There are three issues which need to be taken into account in deciding whether to issue a Direction in this regard;

1. Whether the existing number and geographical spread of access points meets the needs of bulk mail customers generally,
2. Whether the density of access points for those universal services that require mail to be 'pre-sorted' to delivery office level meets the needs of users of these services, and
3. Whether there is a need for ComReg to deal with these issues by way of a Direction under Regulation 4(1) (b) or whether it is best to allow customers to negotiate with An Post.

The responses to the Consultation highlight the restrictive and inflexible nature of the current arrangements which do not appear to always meet the needs of users.

3.4 Access Points for Bulk Mail generally

For bulk mail which requires the full range of processing the existing network of access points broadly meets the needs of users. However, concerns have been raised by a number of respondents. In particular reference is made in the submission by the IMU which complains that An Post has reduced the number of access points for its bulk mail services in recent years and users must comply with An Post's changes despite the increased expense incurred as a result. IMU argues that '*An Post management system is that it appears to be geared exclusively towards its own automation programmes, i.e. it lacks a customer focus. We believe that this style of operation will do immense damage to An Post's revenues in the future as users actively seek out alternatives. Users who cannot access suitable alternatives will be forced to pay exorbitant rates because they are 'captive users', and An Post can act towards them as a monopoly*'.

3.5 Access Points for Pre-sorted Mail

There was concern about the density of access points for pre-sorted mail, although many respondents linked their observations with comments about price and terms and conditions for the service. Various customers and groups of customers argue that they can prepare mail quite easily to meet postman walk delivery level. However they claim An Post does not offer any incentive for them to do so. The tariff structure for pre-sort service is not geared to attract this level of preparation

prior to handover to An Post. As a result they claim the volume of pre-sort mail will not grow to the potential levels it could rise to if the discounts available created a more attractive environment for these users.

Many argue that flexibility of access at times of industrial dispute is essential in order to minimise the impact on customers. ComReg would point out in this regard that An Post is legally obliged by Regulation 5 (d) to provide “Continuity of Service”:

the service shall not be interrupted or stopped except in cases of force majeure,

3.6 Need for Direction

The consultation paper specifically asked whether there was a need for ComReg to issue a Direction. All respondents except two welcomed and agreed with the ComReg approach. TPG argued that rather than enforcing specific physical access upon An Post, ComReg should focus on creating the right environment in Ireland which would compel An Post to accommodate customer concerns, prepare for competition and become efficient. An Post argued that ComReg did not have the power to issue a Direction in this regard.

3.6.1 Create an environment in which An Post provides a customer focussed and efficient postal service

ComReg agrees with the TPG objective of creating the right environment in which the universal postal service is customer focussed and efficient. ComReg considers that its draft Direction is an important stepping stone to achieve this objective.

3.6.2 ComReg’s power to issue a Direction

An Post has argued that ComReg does not have the power to issue a Direction about the density of access points for Bulk Mail. The grounds for An Post’s objections are set out in section 2 of its submission which is published in the Annex to this paper.

An Post appears to base its objections on the assumption that the purpose of the Direction is to facilitate competitors seeking to make use of An Post’s delivery network. This is not the case. As is made clear in section 3.2 above, and in the consultation paper, the proposed Direction is solely about the density of access points for the Bulk Mail services within the scope of the universal service that An Post is obliged to provide.

In this context it must be borne in mind that the definition of users - “any natural or legal person benefiting from universal service provision as a sender or an addressee” – is quite wide, particularly bearing in mind that the universal service defined by the Postal Directive is guaranteed to all users, and not just to vulnerable or disadvantaged groups.

Bulk mailers, consolidators of mail from different customers, and mail preparation companies are not competitors of An Post in the provision of postal services – on the

contrary they are vital to the success of An Post as they are the customers who can create the volume that is necessary to maintain a viable postal network.

However An Post has extended its business activity to compete with these customers in their own markets through its subsidiary Printpost Ltd. To this extent they are competitors, but An Post is under a specific obligation to ensure that its tariffs for the universal services, together with the associated conditions, shall apply equally between different third parties including its own subsidiaries.

3.6.3 Direction would infringe An Post's Reserved Area

Another objection by An Post is that the proposed Direction infringes the reserved area of An Post (Regulation 8(1)). The argument is that the introduction of access points at Delivery Offices would mean, in effect, the liberalisation of certain key functions of the public postal network, namely the collection, processing and transportation of mail to the office of inward sorting.

This ground for objection in this instance needs clarification. The proposed Direction does not authorise anyone to provide postal services in competition with An Post, nor does it require An Post to provide any services within the scope of the universal service that it does not currently provide.

What it does is recognise that producers of Bulk Mail are able to print it in whatever sequence they desire, and if there are benefits to them (in respect of either price or quality of service) they can and will print it in delivery sequence. Therefore they have no need to purchase the collection, processing and transportation elements of the standard universal services. The Postal Directives, the European Commission's Competition Notice⁴ and the Irish Regulations all recognise that if a business customer does not need these services there should be no need to buy them.

Finally it is worth noting that in recent infringement proceedings reported in the press the German Government has agreed to amend its legislation to allow competition in the mail preparation market:

Deutsche Post, the German postal service, is expected to face increasing competition in services involving the collection and sorting of letters. Until now, the company has refused to allow competitors to collect and sort letters weighing less than 100g; discounts are granted only to major customers. However, the EU believes that this is an infringement of guidelines on the liberalisation of postal services. Wolfgang Clement, the German minister of economic affairs, has now agreed to amend the law on postal services in Germany in order to open up the market for the collection and sorting of letters. – Handelsblatt 26 May, 2004

⁴ Commission Notice on the application of the competition rules to the postal sector and on the assessment of certain state measures relating to postal services (OJ No. C39/1998).

3.6.4 Customer focus

There appears to be a belief that An Post will not act on customers' wishes without a formal Direction. DX Ireland states that it's essential that ComReg issues a Direction as An Post will not voluntarily comply with users requirements unless they are directed by the Minister or the Regulator. The IDMA sums up the same point in this way – “this is the only available way currently to force An Post to allow levels of worksharing and discounting which are being requested by their customers.”

ComReg would point out that the issues of pricing and service availability are outside the scope of this consultation. The services are already available and have been available for some time and pricing will be considered separately in the context of compliance with Regulation 9 (3).

Section 70 of the Telecommunication & Postal Services Act of 1983 makes provision for the tariffs and terms and conditions for universal postal services to be provided by means of a Scheme. The Postaim/Pre-sort discounted services were introduced by An Post over the last 20 years under Schemes made under the 1983 Act.⁵ Customers who post bulk mail to meet the requirements of these services claim that they would post more if they had the option to deposit mail at the intended Delivery Office instead of bringing it to one of the four main distribution centres which act as an acceptance point only until it is transported to its final destination.

The net effect of access points at Delivery Offices should be a positive move for An Post and its customers. Access points at Delivery Offices for discounted services will encourage volume growth in the Direct / Bulk mail market and will reduce the workload to be carried out by An Post at the main distribution centres as it will no longer be a pre-condition of access to these services that the mail should be deposited at distribution centres.

An Post argues that the economies of scale achieved by centralising all of the processing to four main distribution centres would be lost should this proposed Direction be issued. But according to international studies mail processing has relatively high cost elasticities compared with mail delivery where economies of density are more important.

The issue therefore is which will be the most beneficial:

- to issue Directions which are likely to lead to increased volumes to be delivered by An Post's Delivery network, where cost elasticities are low and the potential gains from economies of density are significant, or
- to maximise the number of items of mail to be handled in the Mails Centres (distribution centres) even though the mail does not need such processing and the effect will be to reduce volumes to be handled by the delivery network.

⁵ Inland Post Amendment (No 60) Scheme 1999, SI No 61 of 1999. (Pre-sortation). Inland Post Amendment (No 36) Scheme 1986 SI No 362 of 1986 as amended by Inland Post Amendment (No 70) Scheme 2003 (Postaim)

3.7 Direction on Access Points for Bulk Mail users

The Consultation Paper set out a proposed Direction containing six provisions. Provisions (a), (b) and (c) essentially codified what is currently available from An Post in relation to access arrangements for bulk mail. Provision (d) proposed opening Delivery Offices as access points for bulk mailers to deposit mail intended for services which require mail to be ‘pre-sorted’ and bearing addresses for the particular Delivery Office in which the mail is deposited. Provision (e) proposed that where bulk mail is accepted at an access point on Saturdays, Sundays or Bank Holidays that this service should continue where possible. The final provision (f) provided that administrative functions and accounting information should be handled at a single point by An Post.

In the light of objections raised by An Post ComReg has reviewed the wording of the proposed Direction to ensure that there is no room for any party, on either side of the debate, to argue that the draft Direction does anything but to specify the density (number) of access points for Bulk Mail, as distinguished from the density of single piece mail covered by the Direction issued on 21 May 2003.

This has brought to light a number of anomalies in the current provision of access points. In particular there are 7 towns with a population in excess of 15,000 without an access point for bulk mail. These include Cork City and the towns of Carlow, Celbridge, Leixlip, Mullingar, Newbridge and Swords. It was also identified that five counties, namely Carlow, Leitrim, Monaghan, Offaly and Tipperary (NR) do not have an access facility to deposit bulk mail with An Post’s network. ComReg has corrected these anomalies in the draft Direction to be issued.

3.7.1 Definition of Terms

The following definitions will apply for the purposes of the Direction to An Post regarding Bulk Mail Access Points to be provided for its Bulk Mail customers.

3.7.1.1 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 universal 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.

3.7.1.2 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 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 Oifigiúil. 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.

3.7.1.3 Pre-sort Service

A pre-sort service is a universal postal service where the originator of Bulk Mail or an agent undertakes to sort mail in accordance with the sorting plan required by An Post or any other universal service provider and deposits this mail to An Post or any other universal service provider 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.

3.7.2 Standard Bulk Mail – Status Quo

The primary aim of the draft Direction is to ensure that access is provided in general for bulk mail customers so that the level of access provided takes account of the needs of users. The provisions (a) and (b) of the draft Direction essentially codified An Post's current practice. However, minor changes have been made to remove the anomalies referred to in 3.5 above and both provisions have been combined as follows:

- a. There shall be at least one access point in every town or city within the state with a population in excess of 15,000 at which customers, or their agents, are able to deposit Bulk Mail with An Post. Where an administrative county does not have a town with a population in excess of 15,000 there shall be an access point, for Bulk Mail, in the largest town of that county. In the case of Dublin City there shall be at least two access points, for Bulk Mail.

3.7.3 Access Points at Delivery Offices for 'pre-sorted' Mail

The second element of the draft Direction provides for depositing pre-sorted mail.

- b. In addition to the access points set out in (a) above, customers, or their agents, using one of An Post's pre-sort services, shall be allowed to deposit pre-sorted items at an access point in the premises from which mail for the destination of such items is normally delivered.

Mail which may be deposited at this point must be pre-sorted so that it only contains mail with addresses which are served by that particular Delivery Office. In that regard the only process required at the Delivery Office is to disaggregate the mail into delivery sequence.

3.7.4 Miscellaneous issues inherent in the proposed Direction

3.7.4.1 Bulk Mail Access on Weekend/Bank Holidays

While the Commission expects An Post to maintain the density of access points which currently accept Bulk Mail on Saturdays, Sundays and/or Bank Holidays at the present level it does not propose to direct An Post to do so.

3.7.4.2 Administrative functions/Accounting Information

The Consultation proposed that where access is provided to customers at the most convenient location to the customer it should be done in the knowledge that administrative functions as well as accounting data will be handled at a single point by An Post. ComReg has decided that it is not appropriate to decide on this issue in the context of an Access Direction to An Post. This matter falls more appropriately within pricing/accounting requirements.

3.7.5 Implementation

In considering the work involved for An Post to comply with the draft Direction ComReg believes that the work involved should not be onerous for An Post. Resources for accepting mail at the stipulated access points should already be in place. On the other hand Accounting / Administration arrangements will need to be revised (ComReg notes the IDMA's suggestion⁶ in this regard) and this will take some time for An Post to decide how best to proceed and to put the necessary arrangements in place. ComReg would expect this to be completed by the end of this year, so that the new arrangements can take effect from 3 January 2005.

In the meantime ComReg will be pleased to receive submissions from An Post or other interested parties;

- a. About the length of time that is needed to put the arrangements in place to comply with the draft direction.
- b. About difficulties with compliance at specific locations. It may be necessary to consider granting a derogation, subject to public consultation with interested parties, including the local County Development Board, in these cases.
- c. About any impacts of the draft Direction on Customers or the development of the postal sector that are not mentioned in Section 4 of this report.

Such submissions should be forwarded as soon as possible but not later than Tuesday, 30th November 2004. ComReg will consider these submissions and issue the direction to An Post, with any alterations it decides are appropriate in light of such submissions, as soon as possible thereafter.

⁶ See response to Question 4, point (f)

Decision No. 1. : The following is the draft Direction to An Post regarding Access for Bulk Mail Services. The Direction will be formally issued to An Post in accordance with the arrangements set out in Regulation 18 of S.I. 616 of 2002 and will be published in Iris Oifigiúil following consideration of the submissions requested in section 3.7.5 in respect of the effective date.

DIRECTION ON THE DENSITY OF ACCESS POINTS TO BE PROVIDED BY AN POST

The Commission for Communications Regulation (hereafter 'the Commission') in pursuance of Regulation 4 (1) of the European Communities (Postal Services) Regulations, 2002 (S.I. 616 of 2002), 'the Regulations', and having taken into account the views of interested parties following a public consultation, hereby gives the following direction.

For the purposes of this Direction the following definitions will apply:

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 universal 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.

Direct Mail: This 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 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 Oifigiúil. 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.

Pre-sort Service: A pre-sort service is a universal postal service where the originator of Bulk Mail or an agent undertakes to sort mail in accordance with the sorting plan required by An Post, or any other universal service provider, and deposits this mail to An Post, or any other universal service provider, 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.

An Post is hereby required to comply with the following MINIMUM measures in providing access to the universal postal service within the meaning of the Regulations.

- (a) There shall be at least one access point in every town or city within the state with a population in excess of 15,000 at which customers, or their agents, are able to deposit Bulk Mail with An Post. Where an administrative county does not have a town with a population in excess of 15,000 there shall be an access point, for Bulk Mail, in the largest town of that county. In the case of Dublin City there shall be at least two access points.
- (b) In addition to the access points set out in (a) above, customers, or their agents, using one of An Post's pre-sort services, shall be allowed to deposit pre-sorted items at an access point in the premises from which mail for the destination of such items is normally delivered.

Reason:

To ensure that any natural or legal person at all points in the State, as a sender, shall enjoy the right to a universal service ("universal service") involving the permanent provision of a postal service of a specified quality and that the density of access points takes account of the needs of users.

Timetable:

This Direction is given with effect from

Dated this day of

John Doherty
Commission for Communications Regulation

4 Impact Assessment of Access Direction on An Post and Mail Industry

ComReg is not obliged to conduct a Regulatory Impact Assessment on the Direction to be issued to An Post regarding Bulk Mail Access as European legislation has imposed this obligation in the Postal Directives which were subsequently transposed into national legislation. However, the following points highlight the possible impact that this draft Direction could have for An Post and the Mail Industry in general.

4.1.1 Volume Growth

Providing access points at Delivery Offices for bulk mail should encourage bulk mailers to increase the usage of the relevant discounted services. This provision will also have ‘spin-off’ benefits for mailers who wish to only target audiences based in certain geographic areas. Volume growth will make the cost of providing the universal service more viable for An Post and it will ultimately mean that the price of postage can be maintained at an affordable level.

A number of respondents highlighted the fact that to avail of discounts for pre-sort service mailers must comply with An Post’s condition that it is sorted to Delivery Office level. Respondents state that they can prepare/print off mail from their databases sorted to the level of postman walk. There is no need for these customers to pay for the sorting aspect of the value chain. However, discounts are not designed with these customers needs in mind. For that reason mailers deposit mail unsorted to one of An Post’s distribution centres to be fully processed. It is implicit therefore that much more mail could be prepared pre-sorted to delivery office level/ postman walk sequence if An Post created the right environment for users of the mail.

4.1.2 Better choice

Better choice of access points will increase customer satisfaction with the service provided and this should signal well for An Post as customer relations are heightened. The wider range of access points for depositing bulk mail will reduce transportation costs for mailers as most locations will have an access point close by. A better choice of access will serve as a move in the right direction for the bulk mail industry overall.

4.1.3 Operational Change

An Post argues that the four distribution centres will not be cost effective by the proposed changes within the proposed Direction as economies of scale could not be achieved unless all mail is concentrated to the distribution centres for the sortation process. The reality is that most of An Post customers posting bulk mail are capable of printing and sorting their mail to Delivery Office sequence level, in which case there is no need for these mailers to be required to purchase a sorting service.

Provision (a) of the draft Direction will create 12 additional access points. An Post will already have a presence in all of the areas where the additional access points will be required. An Post will need to ensure that resources are made available to convey the mail deposited at these points to the relevant distribution centre.

For provision (b) of the draft Direction, that mail may be deposited at Delivery Office level to avail of the relevant services. A similar scenario arises in that An Post will already have a presence at all of these locations. In so far as customers use the relevant services there will be less work at distribution centres and there will be a reduction in national transportation required. There will be no additional work either at local level in the delivery end or in the transport required. The work involved in accepting this mail from bulk mail customers will be transferred from existing access points to new access points.

Where the situation arises that the new access points generate an increase in the demand for these relevant services there will be more mail to be handled at Delivery Office level. The overall impact will reduce the unit cost for delivery which will benefit all postal users and therefore enable An Post to provide the universal postal service at an affordable tariff.

Should the situation arise that the demand for other services reduces because of the growth in demand for relevant services at Delivery Office level then there will be less work required at the distribution centres. However, as cost elasticities are absorbed differently, in this context there should be no adverse impact on unit costs providing An Post align resources deployed to workloads according to best international practice.

4.1.4 Increased quality of service

Should bulk mailers choose to move away from the distribution centres by availing of pre-sort services then this could very well increase sorting capacity at the distribution centre to deal with mail which requires full processing, ie, single piece mail. The net effect should be better quality of postal service for the whole country.

4.1.5 Reduce Delivery costs

Delivery is the highest cost activity within the postal network. It attracts a very high fixed cost. For that reason there is a commercial imperative for An Post to make the network more efficient by increasing the mail flows within this network and to reduce the greatest cost burden inherent in providing the delivery obligation.

Appendix A – Legislation

1. General

The EU “Postal Directive”⁷ 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 is transposed into national law by the European Communities (Postal Services) Regulations 2002 (SI No. 616 of 2002, "the Regulations"). Under the Regulations ComReg has been given responsibility for regulating the postal sector.

2. Universal Service Obligation

General

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.

Services

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*”⁸ and that Member States should be free to

⁷ 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.

⁸ Recital 11 of the Postal Directive.

specify, in accordance with national traditions and requirements, the type of postal service to be provided to every citizen in the State.⁹

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.

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 takes account of the needs of users [Regulation 4(1) (b) (ii)],

‘Access point’ means physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers.

‘Users’ means any natural or legal person benefiting from universal service provision as a sender or an addressee.

4. 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 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

⁹ 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;*”

services. Any such tariffs shall also be available to private customers who post under similar conditions.’

5. Obligation on ComReg to Monitor Compliance

Regulation 17 (1) provides that it is a function of the Regulator to monitor compliance with Regulations 4(4), 5 & 9 (1).

6. Directions and Compliance Order

Regulation 18 provides for the manner in which a direction is delivered to the universal service provider concerned and it also makes provision to apply to the High Court, in instances of non compliance, for an order to direct the provider to comply with the direction.

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.
- O.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.
- 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?

Annex Part A – Submissions Received

An Post

DX Ireland

Eircom

IDMA

Annex Part B – Submissions Received

IMU

Missionaries of the Sacred Heart

TICo Group Ltd

TPG, N.V. (The Universal Service Provider in the Netherlands)

Vodafone