

Chapter 2

Central Fund

2.1 Election Postage Costs

An Post offers a range of discounts to customers who present mail for delivery at a time or in a manner that generates cost efficiencies for the company. Details of the general terms for availing of these discounts are given in An Post's brochure on *'Bulk Discounts for Mailers'*. The brochure advises that a contract for discounts is available from any of their Account Managers and suggests meeting customers to discuss requirements. The tone of An Post literature relating to discounts is one of advocacy or encouragement as bulk mailing generates cost efficiencies for the company.

An Post takes the following criteria into account when determining qualification for discounts

- the extent to which mail is presented to An Post at a time that facilitates off-peak processing and sorting
- whether mail presented can be processed by the automated equipment used by An Post
- the extent to which the mail presented has been or can be sorted without manual intervention
- whether delivery of mail can be deferred, *i.e.* customers do not have a requirement for next working day delivery
- conformity to specified dimensions.

Statutory Provisions Relating to Election Postage

An Post was established under the Postal and Telecommunications Services Act, 1983 (the 1983 Act). Regulation 4.2(a) of the European Communities (Postal Services) Regulations 2002 (S.I. 616/2002) designates An Post to be the provider of Universal Postal Services.

Section 57(1) of the Electoral Act, 1992, provides that each candidate at Dáil Elections may send, free of charge for postage, communications relevant to the elections, to each person on the register of Dáil Electors, for the constituency or to any combination of such persons, while Section 92 provides for the dispatch of polling information cards without prepayment of charges. Section 75 of the 1983 Act makes provision for the recoupment to An Post of any such free postage provided.

'The company (An Post) shall be entitled to be recouped out of the Central Fund or the growing produce thereof for the loss of postage which it incurs by reason of any enactment providing for free postage in connection with any election or referendum or any petition or address to the President, the Government or either House of the Oireachtas.'

An Post, exercising powers conferred on it by Section 74 of the 1983 Act, with the consent of the Minister for Communications, Energy and Natural Resources, made regulations setting out the criteria for electoral candidates in Dáil Elections to avail of the free postage scheme. These regulations, introduced in Statutory Instrument 338/1992, set out requirements and restrictions as to the nature of the postal packets, their size and weight, and the time and manner of their presentation to a post office.

Amounts Recouped to An Post

The amount recouped to An Post from the Central Fund, under these provisions, in respect of the 2007 General and Seanad Elections was €14,686,283² (€7m paid on account on 26 June 2007, and the balance

² This does not include an amount of €11,987 in respect of the issue of ballot papers by registered post to the Office of the Seanad.

of €7,686,283 on 17 January 2008). An Post, in support of their claim for payment, provided the following details of the number of items posted and the appropriate postal rates charged.

Table 5 2007 General and Seanad Elections Claim

| Number of Items | Rate | Total € |
|-------------------|-------|-------------------|
| 25,739,471 | €0.54 | 13,899,314 |
| 25,949 | €0.55 | 14,272 |
| 626 | €0.95 | 595 |
| 11,183 | €4.93 | 55,132 |
| 143,394 | €5.00 | 716,970 |
| 25,920,623 | | 14,686,283 |

While fully recognising the statutory imperative to ensure the provision of free postage to candidates at elections, it would appear that, having regard to the conditions set by An Post under SI 338/92, economies of scale and the attendant ease of handling the election material it would be likely that significant cost savings could be generated by An Post.

This possibility was also recognised by the Department of Finance which sought unsuccessfully in 1998 and again in 2007 to negotiate reductions in the amounts being charged by An Post for this service. Department of Finance papers reviewed during the course of audit indicate that in September 2007 when the Department was clearing An Post's second and final invoice, it requested a reduction in the bill. In the event, An Post refused to allow a discount and in January 2008 the full amount was paid as invoiced.

Audit Concerns

The bulk discounts offered by An Post ranged from 6 to 11 cents off the prevailing postage rates depending on the posting options selected. Application of these discounts to the posting volumes arising in the case of the general and Seanad elections of 2007 would have yielded savings for the Exchequer of between €1.5 and €3.3m.

While it would appear that the notice available regarding the timing of elections and the streamlined presentation of related postal material should give rise to significant cost savings for An Post, the State, as a user of postal services, was not in a position to avail of discounts comparable to those offered to other service users.

In the circumstances, I sought the views of the Accounting Officers of the Department of Finance, as operator of the Central Fund and of the Department of the Environment, Heritage and Local Government, as the Department responsible for the conduct of elections.

Response of the Accounting Officer, Department of the Environment, Heritage and Local Government

The Accounting Officer, Department of the Environment, Heritage and Local Government stated that the responsibilities of her Department concerning elections and referenda relate in the main to the policy and legislative framework governing their conduct. In addition, the Department has responsibility for certain aspects of the administration of elections and referenda. Primary responsibility for the conduct of elections and referenda in constituencies lies with returning officers. While the Department liaises with An Post in respect of the technical specification of some electoral communications for which An Post is entitled to recoupment, the question of the cost of the services is outside the remit of the Department.

When an election or referendum is called, the Department provides to An Post details of the electorate on a city/county and constituency basis (the data is provided to the Department by the 34 city and county councils which are the registration authorities). It also provides to An Post details of the electorate on islands and of any early polling day there as decided by returning officers. This information facilitates An Post in planning for the volumes of polling information cards which will move through the postal system over the period of an election or referendum. Detailed arrangements for feeding the polling information cards into the postal system are made at local level between post offices, returning officers and registration authorities.

The Department has no role in relation to the operation of the free postage facilities made available by An Post to candidates and political parties at elections and issues regarding the cost of distribution of the polling information cards or of a (separate) Statement for the information of voters are a matter for the Department of Finance, having regard to Section 75 of the 1983 Act, Section 4 of the Electoral Act, 1992 and other relevant legislation.

Response of the Accounting Officer, Department of Finance

The Accounting Officer, Department of Finance noted that it was clear Government policy, as enacted in legislation by the Oireachtas, that for elections and referenda, the entire electorate be supplied with communications from those presenting for election and polling cards, and, in addition for referenda, statements of information. He stressed that

- the free postage schemes are made by An Post having consulted with the Minister for the Environment, Heritage and Local Government and that there is no legislative provision for consulting with the Minister for Finance
- any question of changing policy in this context is a matter for Government and specifically the Minister for the Environment, Heritage and Local Government.

The Accounting Officer informed me that the Department has explored a number of times the question of a discount but the principal response from An Post was that they were entitled to full recoupment for lost postage. This entitlement is confirmed by legal advice. Legal clarifications obtained from the Attorney General's Office regarding the interpretation/definition of certain specific terms used in the legislation, *i.e.* 'free of any charge for posting', 'loss of postage' and 'recouping' the loss from the Central Fund confirmed that the term 'recoup' means that An Post must be paid for the actual loss it incurred which is the amount which it would have earned had the communications which were delivered under the free postage scheme been fully franked. The Attorney General agreed with An Post's definition of their loss - which is the postal charges which were lost to An Post in respect of the communications which were delivered 'free of any charge for postage'.

The legal advice also confirmed that the Department must pay the amounts charged by An Post.

Overall, the Accounting Officer concluded that since it is the express policy of the Oireachtas, as enunciated in electoral legislation, that communications be issued to each member of the electorate for Dáil elections and referenda the Department is legally bound to pay the amounts charged. Any amendment to legislation to change this would be a policy matter to be decided on by the Government and passed by the Oireachtas and since it is Government policy to ensure that the electorate are personally given communications under the Electoral Acts, it is not open to the Department to change those obligations and entitlements.

Conclusions

While An Post encourages and rewards businesses and other bulk mailing entities with discounted postal charges, the State as a user of its services is unable to take advantage of the more favourable terms available generally.

It is acknowledged that the Department of Finance has attempted to negotiate discounts for bulk postage and has gone as far as it can in the light of the legislative and policy framework. In effect, the strict terms of the legislation prevent the achievement of discounts and given the monopoly status of An Post there are no alternative providers.

