Commission for
Communications Regulation

Consultation on how to assess and finance any unfair financial burden on the universal postal service provider

Consultation and draft Regulations

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Annex

1 Introduction

1 The Communications Regulation (Postal Services) Act 2011 ("2011 Act") provides that a designated universal postal service provider (“USP”) (currently An Post) may submit a request in writing to the Commission for Communications Regulation (“ComReg”) to seek to receive funding for the net costs (if any) of providing a universal postal service.

2 The 2011 Act requires that any such request shall be made in such form and manner as ComReg determines and shall be accompanied by such supporting information as may be reasonably required by ComReg. ComReg, in D09/13[1], made its determination on the form and manner of any such request. Based on the information provided to ComReg by a USP in any net cost request, including any additional information required by ComReg, ComReg shall determine whether provision of the universal postal service represents a net cost to the USP and whether, in the opinion of ComReg, represents an unfair financial burden on the USP.

3 Where ComReg makes a determination that the net cost of a universal postal service does represent an unfair financial burden on the USP it shall apportion that net cost among providers of postal services within the scope of the universal postal service, who shall make a contribution, in accordance with the cost apportioned to each of them for the purposes of meeting that burden. The assessment, apportionment, collection and distribution to the USP of such contributions shall be carried out in accordance with a “sharing mechanism”, provided for in regulations made by ComReg.

4 ComReg engaged independent economic consultants, Frontier Economics, to provide recommendations on how ComReg could assess whether a net cost is an unfair financial burden and if so, how ComReg should set the sharing mechanism to fund any unfair financial burden.

5 Having regard to the applicable statutory provisions set out in Chapter 5 of the 2011 Act, and the recommendations made by Frontier Economics in its report[2] published together with this consultation, this consultation sets out ComReg's preliminary views on:

- how ComReg will determine whether any net cost request represents an unfair financial burden on the USP; and

[1] ‘Response to Consultation and ComReg’s determination on the form and manner of any net cost request by the universal postal service provider under section 35 of the 2011 Act’ dated 25 July 2013
[2] ComReg Document No. 13/83a

- if ComReg should determine that the net cost of provision of a universal postal service does represent an unfair financial burden on the USP concerned, how it will apportion that net cost among providers of postal services within the scope the universal postal services. For completeness, a set of draft Regulations, as required by the 2011 Act, are also provided.

6 ComReg will carefully consider the information and views submitted by all respondents to this consultation. As noted in ComReg's published Consultation guidelines[3,] the purpose of a public consultation is to allow ComReg to consider the views of interested parties in reaching a decision. It should, however, be noted that the consultation process is not equivalent to a voting exercise and ComReg alone will form the final decisions, having had regard to all relevant information before it.

[3] ComReg Document No. 11/34

2 Executive Summary

7 Chapter 5 (section 35 and 36) of the 2011 Act sets out provisions related to possible financial support for the universal postal service. A designated USP (currently An Post) may submit a request in writing to ComReg to seek to receive funding for the net costs (if any) of efficiently providing a universal postal service. Any such request shall be made in such form and manner as ComReg determines[4] and shall be accompanied by such supporting information as may be reasonably required by ComReg. Based on the information provided to ComReg by a USP in any net cost request, including any additional information required by ComReg, ComReg shall determine whether provision of the universal postal service in a cost-efficient manner does represent a net cost to the USP and whether, in the opinion of ComReg, represents an unfair financial burden on the USP.

8 In determining whether a universal postal service represents a net cost to the USP, ComReg shall take into account any market benefit which accrues to the USP, calculated in accordance with Annex I to the Directive[5], the text of which is set out in full in Schedule 4 of the 2011 Act.

9 Where ComReg determines that the net cost does represent an unfair financial burden on the USP, it shall apportion that net cost among providers of postal services within the scope of the universal postal service. The assessment, apportionment, collection and distribution to the USP of such contributions shall be carried out in accordance with a "sharing mechanism", provided for in regulations made by ComReg.

10 Section 36(5) of the 2011 Act requires that the sharing mechanism shall operate:

a. in an objective, proportionate, and transparent manner

b. in a manner that does not involve or tend to give rise to any undue discrimination against:

i. particular postal service providers or a particular class or description of postal service providers, or

ii. particular postal service users or a particular class or description of postal service users.

[4] See ComReg Document 13/69 'Response to Consultation and ComReg's determination on the form and manner of any net cost request by the universal postal service provider under section 35 of the 2011 Act' dated 25 July 2013

[5] Directive 97/67/EC, as amended, on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended.

11 In this consultation, ComReg sets out its preliminary views on:

1. how ComReg will determine whether any net cost request represents an unfair financial burden on the USP; and

2. if ComReg should determine that the net cost of provision of a universal postal service does represent an unfair financial burden on the USP concerned, how it will apportion that net cost among providers of postal services within the scope the universal postal services. For completeness, a set of draft Regulations, as required by the 2011 Act, are also provided.

2.1 Preliminary views on assessing whether the net costs represent an unfair financial burden on the USP

12 Subject to the views of respondents to this consultation, ComReg's proposes that that it will apply a three criteria test in order to assess whether the net costs of a universal postal service represents an unfair financial burden on the USP, the three criteria being the following:

(1) **Absolute net cost of the USO**

A consideration of the absolute positive net cost of providing a universal postal service, in order to assess whether this net cost is material compared to the potential administrative costs of establishing and implementing a sharing mechanism. If the positive net cost is material, compared to the potential administrative costs, then ComReg will proceed to criteria 2 and 3 which will be assessed together.

(2) **Impact of the net cost on the profitability of the USP**

An assessment of whether the net cost of efficiently providing a universal postal service significantly affects the USP's profitability and/or ability to earn a fair return on its capital employed in the prevailing market conditions, carried out at the level of universal services as a whole.

(3) **Impact of the net cost on the competitiveness of the USP**

An assessment of whether the net cost of efficiently providing a universal postal service has a material negative impact on the competitiveness of the USP. This would be closely linked to the assessment under criterion 2 of whether the net cost significantly affects the USP's profitability. More specifically, it is unlikely that any net cost could be considered to cause a significant competitive disadvantage to the USP unless it also materially undermines the USP's profitability and/or ability to earn a fair return on its capital employed in the prevailing market conditions.

13 In order for a net cost to be determined to be an unfair financial burden, ComReg proposes that:

a. The net cost must be material compared to the potential administrative costs of establishing and implementing a sharing mechanism as assessed under criterion 1.

AND

b. The net cost must have a material impact on either the profitability (as assessed under criterion 2) or the competitiveness of the USP (as assessed under criterion 3) or a material impact on both criteria. This means, by way of examples, that ComReg proposes a net cost could be considered to be an unfair financial burden if:

- it has a material impact on the profitability of the USP and the competitiveness of the USP

  OR

- it has a material impact on the profitability of the USP but the impact on the competitiveness of the USP is less material

  OR

- it has a material impact on the competitiveness of the USP but the impact on the profitability of the USP is less material.

14 If ComReg determines that the net cost of providing a universal postal service does represents an unfair financial burden on the USP, based on the three criteria outlined above, the next step, pursuant to section 36 of the 2011 Act, is to use a sharing mechanism to apportion the net cost among providers of postal services within the scope of the universal service[6].

2.2 Preliminary views on the financing of any unfair financial burden on the universal postal service provider

15 Subject to the views of respondents to this consultation, ComReg's preliminary views on the form and operation of a possible sharing mechanism, established by Regulations made pursuant to section 36(2) of the 2011 Act, is set out below.

16 ComReg proposes that it would first assess whether contributions from other postal service providers[7], gathered through a sharing mechanism, would be greater than the administrative costs of establishing and implementing such a sharing mechanism. If ComReg should determine that total contributions would be less than the cost of collecting and distributing those contributions, then ComReg proposes that no such sharing mechanism should be established, as it would serve little or no practical purpose. This would mean that An Post, as USP, would fund any unfair financial burden in its entirety. However, if ComReg should determine that total contributions would be greater than the cost of collecting and distributing those contributions, then ComReg proposes that a sharing mechanism should be established.

17 ComReg proposes that such a sharing mechanism would use a pro-rata contribution approach, based on all revenues by providers of postal services within the scope of universal postal service. ComReg also proposes that the sharing mechanism should allow the capping of the proportion of revenues that small postal service providers or new entrants must contribute in certain circumstances in order to reduce the risk that the sharing mechanism may have an adverse effect on nascent or emerging competition in the market for the provision of postal services within the scope of the universal postal service. If the cap applies, ComReg proposes that An Post, as the current USP, would cover any shortfall in the contributions to the unfair financial burden fund.

[6] As a result of the 2011 Act, this is the only method available to ComReg to share any unfair financial burden

[7] That is, excluding An Post as the main postal service provider providing postal services within the scope of universal postal service and the current designated USP

2.3 Conclusion

18 In this consultation, ComReg has set out its preliminary views on how to assess and finance any unfair financial burden on the universal postal service provider.

19 In accordance with the 2011 Act it is ComReg that will determine whether the provision of a universal postal service by the universal postal service provider concerned represents an unfair financial burden on the USP. In order to make that determination, ComReg will require detailed evidence based information from An Post and the 2011 Act empowers ComReg to obtain such information from An Post where it is not provided.

20 Furthermore, in accordance with the 2011 Act, if ComReg finds that there is an unfair financial burden, it is the sharing mechanism provided for in regulations made by ComReg that sets out the apportionment, collection, and distribution to the USP to finance that unfair financial burden. In this consultation, ComReg has set outs its preliminary views and draft Regulations on how any such financing should apply.

3 Background

21 In forming its preliminary views on how to assess and finance any unfair financial burden on the universal postal service provider, ComReg has taken account of the relevant provisions of the 2011 Act. This is discussed further below.

3.1 Chapter 5 of the 2011 Act

22 The relevant provisions of the 2011 Act are contained in Chapter 5 of that Act. For information, Chapter 5 of the 2011 Act is reproduced in Annex 1 of this document.

3.2 Postal service providers providing postal services within the scope of the universal postal service

23 The 2011 Act provides that if the net cost of a universal postal service does represent an unfair financial burden then it shall be apportioned among providers of postal services within the scope of the universal postal service.

24 Other than An Post, only DX Ireland and Eirpost (a division of Nightline) have to date notified ComReg that they are providing, or intending to provide, postal services within the scope of the universal postal service. Therefore, at this time, there are only three postal service providers that could be part of any sharing mechanism. Also, and of particular importance in regard to any sharing mechanism, An Post currently provides 35 postal services within the scope of the universal postal service, while DX only provides 1 such service, while Eirpost intends to provide 1 such service in the future. Furthermore, An Post's turnover on its postal services within the scope of the universal postal service is and likely to continue to be considerably higher than the turnovers of DX Ireland and Eirpost, or any other provider of postal services within the scope of the universal postal service

4 Assessing any unfair financial burden on the USP

25 The information provided to ComReg in support of any request by a USP for funding for what it asserts is the net cost of efficiently providing a universal postal service, and ComReg's subsequent analysis of that information, should inform ComReg of both:

- the extent to which there is a verified direct net cost associated with the efficient provision of the universal postal service; and
- the extent to which any benefits of providing the universal postal service outweigh the net cost (i.e. whether there is a positive net cost associated with the USO).

26 If ComReg should determine that either the net cost has not been verified or that the net cost is outweighed by benefits accruing to the USP that are associated with the efficient provision of the universal postal service, then there would be no need to proceed to an assessment of whether the universal postal service represents an unfair financial burden.

27 If ComReg should determine that a positive net cost is associated with the efficient provision of the universal postal service, then, pursuant to section 35(4) of the 2011 Act, it must then determine whether that net cost represents an unfair financial burden to the USP. To be clear, this means that the 2011 Act provides that ComReg could determine that a universal postal service does represent a net cost, but may then determine that that net cost does not represent an unfair financial burden – i.e. that the net cost may be absorbed by the USP and the USP does not require any financial support in respect of same.

28 Although section 35(4) of the 2011 Act specifies that ComReg shall determine whether any net cost represents an unfair financial burden on the USP, it does not explicitly define the term "unfair financial burden". Similarly, Annex 1 of the Directive 97/67/EC, which is set out in full in Schedule 4 of the 2011 Act, also does not specify what constitutes an unfair financial burden, or how to identify it.

29 As highlighted by the European Regulators Group for Postal Services (ERGP)[8], some guidance comes from legal precedent around the definition of an 'unfair burden'. In particular, the ERGP notes the judgement of the Court of Justice in "European Commission v Kingdom of Belgium"[9], in which the Court defined an "unfair burden" as "*a burden which, for each undertaking concerned, is excessive in view of the undertaking's ability to bear it, account being taken of all the undertaking's own characteristics, in particular the quality of its equipment, its economic and financial situation and its market share*". However, the Court also states that "*it falls to the national regulatory authority to lay down general and objective criteria which make it possible to determine the threshold beyond which … a burden may be regarded as unfair*".

30 Taking account of the applicable provisions of the 2011 Act, the recommendations[10] made by ComReg's independent consultants, Frontier Economics, and ComReg's approach in the fixed telecom market[11], the following sets out ComReg's preliminary views on how to assess whether any net cost represents an unfair financial burden on the USP.

4.1 Three criteria test

31 ComReg's proposes that that it will apply a three criteria test in order to assess whether the net costs of a universal postal service represents an unfair financial burden on the USP, the three criteria being the following:

(1) **Absolute net cost of the USO**

A consideration of the absolute positive net cost of providing a universal postal service, in order to assess whether this net cost is material compared to the potential administrative costs of establishing and implementing a sharing mechanism. If the positive net cost is material, compared to the potential administrative costs, then ComReg will proceed to criteria 2 and 3.

(2) **Impact of the net cost on the profitability of the USP**

An assessment of whether the net cost of efficiently providing a universal postal service significantly affects the USP's profitability and/or ability to earn a fair return on its capital employed in the prevailing market conditions.

[8] ERGP report 'Net Cost Calculation and Evaluation of a Reference Scenario' @ http://ec.europa.eu/internal_market/ergp/docs/documentation/ergp-11-17-rev-1_en.pdf
[9] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008CJ0222:EN:HTML
[10] See ComReg Document No. 13/83a
[11] See ComReg Decision D04/11 (Document No. 11/42) 'Report on Consultation and Decision on the costing of universal service obligations: Principles and Methodologies' dated 31 May 2011

(3) **Impact of the net cost on the competitiveness of the USP**

An assessment of whether the net cost of efficiently providing a universal postal service has a material negative impact on the competitiveness of the USP. This would be closely linked to the assessment under criterion 2 of whether the net cost significantly affects the USP's profitability. More specifically, it is unlikely that any net cost could be considered to cause a significant competitive disadvantage to the USP unless it also materially undermines the USP's profitability and/or ability to earn a fair return on its capital employed in the prevailing market conditions.

32 In order for a net cost to be determined to be an unfair financial burden, ComReg proposes that:

a. The net cost must be material compared to the potential administrative costs of establishing and implementing a sharing mechanism as assessed under criterion 1.

AND

b. The net cost must have a material impact on either the profitability (as assessed under criterion 2) or the competitiveness of the USP (as assessed under criterion 3) or a material impact on both of these criteria. This means, by way of examples, that ComReg proposes a net cost could be considered to be an unfair financial burden if:

 o it has a material impact on the profitability of the USP and the competitiveness of the USP

 OR

 o it has a material impact on the profitability of the USP but the impact on the competitiveness of the USP is less material

 OR

 o it has a material impact on the competitiveness of the USP but the impact on the profitability of the USP is less material.

33 These criteria are explained in more detail below.

Criterion 1: Absolute net cost of the USO

34 ComReg proposes that the first criterion is to consider whether the net cost is material compared to the potential administrative costs of establishing and implementing a sharing mechanism. ComReg proposes that the following costs should be considered:

- the establishment costs of a sharing mechanism; and
- the on-going administrative costs.

35 ComReg is of the preliminary view that if its assessment should indicate that the net cost of a universal postal service is less than the administrative costs associated with a sharing mechanism, then ComReg would determine at that point that the net cost does not represent an unfair financial burden on the USP.

36 This criterion is one of the conditions highlighted by the ERGP for the net cost to be an unfair burden. Likewise, in fixed telecommunications, ComReg has specified that "*if the positive net cost is relatively small, ComReg will determine, on the basis of audited costs of the USO, whether USO financing is or is not justified, taking into account the administrative costs of establishing and operating a sharing mechanism (compared to the positive net costs of the USO).*"[12]

37 If, on the other hand, ComReg's assessment should indicate that the net cost of a universal postal service is greater than the administrative costs associated with a sharing mechanism, then ComReg proposes that it would proceed to apply the second and third criteria in order to determine whether the net cost does represent an unfair financial burden on the USP.

Criterion 2: Impact of the net cost on the profitability of the USP

38 ComReg proposes that the second criterion would be an assessment of whether any net cost associated with the efficient provision of the universal postal service significantly affects the USP's profitability and/or ability to earn a fair return on its capital employed in the prevailing market conditions, carried out at the level of universal services as a whole.

39 ComReg Decision D09/13[13] determined that the Profitability Cost ("PC") methodology is to be used to calculate the net cost of the USO, and that this should be based on efficient costs as required by the 2011 Act. Under the PC methodology, the net cost is the difference in operating profits with and without the USO. Consequently, the profitability assessment will be a comparison of the net cost of efficiently providing the universal postal service with the operating profits of the efficient USP providing the universal postal service as used in the net cost calculation reference scenario.

[12] At page 63, ComReg Document 11/42 (D04/11) – 'Report on Consultation and Decision on the Costing of Universal Service Obligations Principles and Methodologies' dated 31 May 2011
[13] ComReg Document 13/69 'Response to Consultation and ComReg's determination on the form and manner of any net cost request by the universal postal service provider under section 35 of the 2011 Act' dated 25 July 2013

40 A key issue to take into account at this stage is the relationship between an unfair financial burden assessment and any price control determination. Section 30 the 2011 Act requires ComReg to regulate prices for the USP's postal services within the scope of universal postal service, through a price cap in the form of CPI –X%, where ComReg has formed the opinion that there is no effective competition in the market for the supply of these services. Regulating the USP's prices in this manner requires an estimate of the revenue that the USP would need to finance an efficiently run universal postal service. Therefore, such a price control when implemented should cover the efficient cost of providing the universal postal service, leaving no net cost for the USP. However, over the course of the proposed price control period[14], a net cost to the USP could arise in the following circumstances:

- if there is sufficient entry or expansion in the market for postal services within the scope of universal postal service, resulting in a significant fall in the USP's market share such that it cannot achieve the level of revenues envisaged when the price control was put into effect and is unable to reduce its costs proportionately due to the requirements of the universal postal service; or

- if there are significant external shocks to the USP's provision of universal postal services (for example, unanticipated volume declines) that result in the level of the price control no longer being sufficient to cover the efficient costs of providing the universal postal service.

Criterion 3: Impact of the net cost on the competitiveness of the USP

41 The final criterion proposed by ComReg is to assess whether any net cost associated with the efficient provision of the universal postal service causes a significant competitive disadvantage for the USP. This would be closely linked to the assessment under criterion 2 of whether the net cost significantly affects the USP's profitability. More specifically, it is unlikely that any net cost associated with the efficient provision of the universal postal service could be considered to cause a significant competitive disadvantage unless it also materially undermines the USP's profitability and/or ability to earn a fair return from the provision of the universal postal service.

[14] As a result of the 2011 Act, the price control is for a period of 5 years with a review after 3 years on certain aspects of the price control

42 Nevertheless, given ComReg's statutory objective to facilitate the development of competition and innovation in the market for postal service provision, it is important to ensure that any unfair burden test includes consideration of whether the USP is placed at a significant competitive disadvantage. Having regard to this requirement, ComReg is of the preliminary view that the following factors should be considered under this criterion:

- changes in market share of the USP – if the USP is able to maintain high market shares of postal services within the scope of universal postal service, it would seem unlikely that the USP is being placed at a competitive disadvantage by any positive net cost; and

- market entry barriers – if there is large market entry barriers for the provision of postal services within the scope of universal postal service, it would seem unlikely that the USP is being placed at a competitive disadvantage by any positive net cost.

43 Further, ComReg is of the preliminary view that it will also assess what impact (if any) competition by postal service providers within the scope of universal postal service is having on the USP's profitability (linked to assessment under criterion 2) or whether the USP's profitability is more affected by factors other than competition by postal service providers within the scope of universal postal service.

44 Also, consistent with the requirements of the 2011 Act, any unfair burden assessment should relate only to the same period as the net cost funding request. As such, ComReg need only to consider whether any net cost causes a significant competitive disadvantage for the USP in the particular period concerned, and ComReg does not therefore need to forecast potential future impacts that may arise.

Q. 1 Do you agree or disagree with ComReg's preliminary views on how to assess any unfair financial burden on the USP? Please explain your response.

5 Financing any unfair financial burden on the USP

45 Section 36(1) of the 2011 Act requires that where ComReg has first made a determination, under section 35 of the 2011 Act, that the net cost of provision of a universal postal service does represent an unfair financial burden on the USP, ComReg shall then apportion that net cost among providers of postal services within the scope of the universal postal service, who shall contribute in accordance with the cost apportioned to each of them.

46 In line with ComReg's statutory objectives to facilitate the development of competition and innovation in the market for postal service provision, ComReg is of the preliminary view that any sharing mechanism created under section 36 of the 2011 Act should not have an adverse effect on competition in the market for the provision of postal services within the scope of universal postal service. As such, ComReg considers that it may be appropriate to include some measure of protection in the sharing mechanism for smaller existing postal service providers or new entrants to the market for the provision of postal services within the scope of universal postal service.

47 This chapter sets outs ComReg's proposals and preliminary views on:

- the method to be used to apportion any net cost (if it is an unfair financial burden) between providers within the scope of the universal service; and
- whether it is appropriate to build into the sharing mechanism some measure of protection for smaller existing providers or new entrants to the market for the provision of postal services within the scope of universal postal service.

5.1 Initial consideration before establishing a sharing mechanism

48 As outlined above, if ComReg should determine that the net cost of a universal service represents an unfair financial burden on the USP, based on the proposed three criteria test as set out in the previous chapter, then the next step, pursuant to section 36 of the 2011 Act, would be to apportion that net cost among providers of postal services within the scope of the universal service, by means of a sharing mechanism provided for in regulations made by ComReg pursuant to section 36(2) of the 2011 Act.

49 Before establishing any such sharing mechanism, ComReg is of the preliminary view that an initial assessment should be carried out as to whether the total contributions from other postal service providers (that is, excluding An Post as the USP), collected through a sharing mechanism, would be greater than the potential administrative costs of establishing and implementing that mechanism. In other words, if the cost of setting up and operating a sharing mechanism are likely to be greater than the total contributions gathered through the mechanism from other postal service providers, ComReg proposes that no such mechanism should be established as it would serve little or no practical purpose.

50 To illustrate the rationale for this recommendation, consider the following hypothetical example. The net cost of the universal postal service has been found by ComReg to be €2 million. The total net cost has been found by ComReg to be greater than the administrative costs of setting up a sharing mechanism, and a mechanism has been designed to attribute the net cost to operators in proportion to their market share. Now assume An Post has a market share of 99.5% of the postal services within the scope of the universal postal service. In this scenario, the net cost attributed to postal service providers other than An Post would be €10,000 (0.5% of €2m) which, in this example, would be less than the administrative costs of establishing and maintaining the sharing mechanism. In such case, ComReg is of the preliminary view that it would not make sense to implement such a sharing mechanism and this is reflected in the draft Regulations.

51 Also, if a sharing mechanism is established, it is worth noting that the administrative costs of establishing and maintaining a sharing mechanism will be covered by the postal levy payable to ComReg by postal service providers providing postal services within the scope of universal postal service. As An Post (given that, at this time, it provides most of the postal services within the scope of universal postal service) currently pays most of ComReg's postal levy, this means that at this time An Post would be contributing most of the cost of establishing and maintaining any sharing mechanism if such a mechanism is established.

5.2 Method of apportioning any net cost (that is an unfair financial burden)

52 In forming its preliminary view on a sharing mechanism, ComReg considered whether it is more appropriate to apportion any net cost amongst postal service providers using lump sums or pro-rated contributions. In particular, in forming its preliminary view, ComReg considered which approach best ensures that the sharing mechanism:

- operates in an objective, transparent and proportionate way;

- does not give rise to any undue discrimination;
- does not create significant administrative costs; and
- does not have an adverse effect on competition for the provision of postal services within the scope of universal postal service.

53 These are considered in the draft RIA set out in this consultation.

54 For the reasoning set out in the draft RIA, ComReg is of the preliminary view that where a sharing mechanism is established a pro-rated contribution based approach should be used. ComReg considers that a pro-rated contribution approach meets all of the desired criteria, whilst the lump sum contribution based approach may be considered discriminatory and may result in an adverse effect of competition given the large variations in size between current providers of postal services within the universal service. Frontier Economics notes in its supporting report that the pro-rated contribution approach has also been used by other national regulatory authorities in designing/implementing sharing mechanisms.

55 When using a pro-rata contribution approach, ComReg must also consider which measure of a provider's size, relative to other providers of products within the scope of the universal service, that the net cost should be pro-rated on. The most commonly used measure of a company's size relative to other companies in the same market is market share. Therefore, ComReg is of the preliminary view that market share is used for the sharing mechanism. Furthermore, ComReg is of the preliminary view that the market share should be based on revenues arising from the provision of postal services within the scope of universal postal service. This view is consistent with section 39(d)(ii) of the 2011 Act, which requires an authorised provider of postal services within the scope of the universal service to provide information to ComReg relating to its revenues from the provision of services within the scope of the universal postal service.

Protection for smaller postal service providers

56 ComReg considers that it is important that any sharing mechanism does not have an adverse effect on competition in the market for postal services within the scope of universal postal service. As set out above and in the draft RIA, ComReg is of the preliminary view that the use of a pro-rated approach, based on share of market revenue, to apportion the net cost is preferable, particularly with respect to minimising the risk of such an effect.

57 However, for providers with a low turnover and high costs (actual or expected), such as those who have just entered (or are looking to enter) the market for provision of postal services within the scope of the universal service, this approach may still risk putting these providers at a competitive disadvantage, or even deter entry completely which is contrary to ComReg's statutory function to facilitate the development of competition. Therefore, as recommended by Frontier Economics which ComReg concurs with, and for the reasons set out in the draft RIA, ComReg considers that some measure to protect smaller providers is included within the design of a sharing mechanism.

58 There are two possible options for a measure of this type:

(1) a revenue threshold below which an individual provider would not be required to contribute to any compensation fund ("threshold"); or

(2) a cap on the proportion of revenues that a provider must contribute on if their revenues fall below a certain threshold ("cap").

59 ComReg considers, as a point of principle, it is appropriate that all postal service providers providing postal services within the scope of universal postal service, including new entrants, should make some contribution to the net cost if it is found to be an unfair financial burden. Furthermore, ComReg notes that the 2011 Act makes no provision for some postal service providers to be excluded. Moreover, so long as the required contribution is at an appropriate level, ComReg considers that it is unlikely to induce exit or deter entry.

60 However, ComReg has a concern due to the current asymmetry in size between new entrants (and possibly the current postal service providers providing postal services within the scope of universal postal service) and the USP. For example, if the net cost identified by ComReg were large, then even if a new entrant were paying a small proportion of that net cost, it could be very significant compared to its total turnover.

61 Consequently, ComReg is of the preliminary view, as a protection for small existing postal service providers or new entrants, the contribution they pay be capped at an appropriate percentage of their turnover from the provision of postal services within the scope of universal postal service. It is difficult to set any pre-determined rules for the level at which contributions should be capped, as it will largely depend on an assessment of the entrant's ability to pay and an assessment of the likely impact of the sharing mechanism on the development of competition in the sector. Similarly, setting an absolute market share threshold above which postal service providers would be expected to make a full contribution could act as a barrier to entry/expansion.

62 Consequently, ComReg is of the preliminary view that for each net cost claim made by the USP (if it is found to be an unfair financial burden), that ComReg will carry out an assessment to determine the level at which contributions might be capped. The exercise would need to consider:

- the net cost of the USO as determined by ComReg (and if an unfair financial burden on the USP) to be recovered;
- the proportion to be recovered from non-USP postal service providers providing postal services within the scope of universal postal service;
- the impact of recoverability on the sustainability and profitability of non-USP postal service providers providing postal services within the scope of universal postal service; and
- the impact on the development of competition for the provision of postal services within the scope of universal postal service.

Collection and distribution of contributions to fund any unfair financial burden

63 Section 36 of the 2011 Act sets out requirements in relation to the collection and distributions of contributions from postal service providers providing postal services to fund any unfair financial burden. ComReg has elaborated further on these requirements in its draft Regulations as required by the 2011 Act.

64 In the interests of proportionality, ComReg proposes that the USP does not need to send its contribution to fund any unfair financial burden to ComReg (which ComReg would then return to the USP under the sharing mechanism). As the USP accounts for the vast majority of the postal services within the scope of universal postal service it is likely that the USP itself will be funding most of any unfair financial burden. If the net cost determined by ComReg is a large amount (for example €5 million), requiring the USP to contribute its share of this net cost by cash (say €4.9m) to ComReg, for ComReg to shortly send back as cash to the USP under the sharing mechanism could result in unnecessary cost (for example, cash transaction and insurance costs for both ComReg and the USP) and short-term negative cash-flow implications for the USP.

Q. 2 Do you agree or disagree with ComReg's preliminary views on how to finance any unfair financial burden on the USP? Please explain your response.

6 Draft Regulatory Impact Assessment

65 ComReg's published Regulatory Impact Assessment ("RIA") Guidelines[15] (Doc 07/56a), in accordance with a policy direction to ComReg[16], state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.

66 In this consultation, ComReg considers that it is not imposing a discretionary regulatory obligation but is acting in accordance with the statutory obligation imposed by sections 35 and 36 of the 2011 Act. Therefore, for the most part, there were not options open to ComReg that can be assessed by the RIA. However, there are options open to ComReg in setting the sharing mechanism and therefore a draft RIA is prepared below for this purpose.

67 ComReg invites interested parties to review this draft RIA and to submit any comments or information which they believe ComReg has not considered and should consider in finalising its determination on the form and manner of any net cost submission. Subject to respondents' views and consideration of any other evidence, this draft RIA will be finalised in ComReg's consultation response and which will in turn inform its decision.

6.1 Steps involved

68 In assessing the available regulatory options, ComReg's approach to RIA follows five steps as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

[15] Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009
[16] Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

Step 5: assess the impacts and choose the best option

Step 1: Describe the policy issue and identify the objectives

69 Pursuant to section 36(2) of the 2011 Act, ComReg is required if it finds a net cost to be an unfair financial burden on the USP to establish a sharing mechanism to assess, apportion, collect, and distribute contributions to the USP concerned from postal service providers providing postal services within the scope of universal postal service. As required by section 36(5) of the 2011 Act, ComReg's sharing mechanism, must operate:

- in an objective, proportionate, and transparent manner
- in a manner that does not involve or tend to give rise to any undue discrimination against:
    1. particular postal service providers or a particular class or description of postal service providers
    2. particular postal service users or a particular class or description of postal service users

70 The objective of this consultation and this draft RIA is to seek the views of interested parties on the proposed sharing mechanism.

Step 2: Identify and describe the regulatory options

Option: Lump sum or pro-rated contribution to net cost (if unfair burden)

71 There are essentially two methods that are available to ComReg to carry out the apportionment under the sharing mechanism. Each provider of postal services within the scope of the universal service could pay either:

(1) a lump sum, i.e. dividing the net cost equally amongst operators; or

(2) a pro-rated amount of the net cost according to some measure of the size of that particular provider relative to other providers, e.g. market share.

Option: Contribution cap or not for smaller postal service providers

72 In order to promote the development of competition in the market for postal services within the scope of universal postal service, ComReg considers that it is important that any sharing mechanism does not have an adverse effect on competition in the market for postal services within the scope of universal postal service.

73 For providers with a low turnover and high costs (actual or expected), such as those who have just entered (or are looking to enter) the market for provision of postal services within the scope of the universal service, the required contribution for a large net cost may risk putting these providers at a competitive disadvantage, or even deter entry completely. Therefore, to protect these particular postal service providers, ComReg could set a contribution cap.

Steps 3, 4 and 5: Determine and assess the impacts on stakeholders and competition and choose the best option

Option: Lump sum or pro-rated contribution to net cost (if unfair burden)

74 ComReg considers that both a lump sum and pro-rated contribution based mechanism could operate in an objective and transparent way. However, a lump sum contribution may not be considered proportionate as all providers would pay the same amount, regardless of their size or the proportion of relevant services they provide – so, a new entrant could be expected to contribute the same amount as An Post, an operator with revenues of c.€365 million per annum arising from the provision of universal postal services.

75 In considering how well each option meets the non-discrimination criterion, ComReg considers that it is important to bear in mind that for a mechanism to be truly non-discriminatory, providers with similar levels of provision of universal postal services would need to be contributing a similar amount. Therefore, a lump sum contribution could be considered to be discriminatory against particular providers.

76 In relation to the impact on competition, as the lump sum approach would lead to all providers contributing the same monetary amount, there is a significant risk that this approach could lead to an adverse effect on competition. This risk comes from the current structure of the market for postal services within the scope of universal postal service, in that there are extremely large variations in size between current providers of postal services within the scope of the universal service. Such an approach may therefore:

- put some smaller existing providers at a significant competitive disadvantage by weakening their financial position, possibly resulting in them ceasing provision of postal services within the scope of the universal postal service (depending on the size of the net cost identified by ComReg);

- put upward pressure on prices charged by existing providers, as a lump sum, will act as a significant sunk cost which will be passed onto postal service users; and/or

- prevent potential providers from entering the market for postal services within the scope of universal postal service through a significant reduction in their expected financial return, even perhaps resulting in a loss when the contribution to any unfair financial burden is taken into account (again, depending on the size of the net cost identified by ComReg).

77 The ultimate impact on competition in the market for postal services within the scope of universal postal service would depend upon the total size of the net cost, and therefore the size of the per provider contributions under this approach.

78 On balance, ComReg is of the preliminary view that a pro-rated contribution based approach is the best option. This proposed approach meets all of the desired criteria, whilst the lump sum contribution based approach may be considered discriminatory and may result in an adverse effect of competition given the large variations in size between current providers of postal services within the scope of universal postal service.

Option: Contribution cap or not for smaller postal service providers

79 ComReg considers, as a point of principle, it is appropriate that all postal service providers providing postal services within the scope of universal postal service, including new entrants, should make some contribution to the net cost if it is unfair to be an unfair financial burden and a sharing mechanism is required. Furthermore, ComReg notes that the 2011 Act makes no provision for some postal service providers to be excluded. Moreover, so long as the required contribution is at an appropriate level, ComReg considers that it is unlikely to induce exit or deter entry.

80 However, ComReg has a concern due to the current asymmetry in size between new entrants (and possibly the current postal service providers providing postal services within the scope of universal postal service) and the USP. For example, if the net cost identified by ComReg were large, then even if a new entrant were paying a small proportion of that net cost, it could be very significant compared to its total turnover. Consequently, as a protection for small existing postal service providers or new entrants, the contribution they pay could be capped at an appropriate percentage of their turnover from the provision of postal services within the scope of universal postal service

81 On balance, ComReg is of the preliminary view that a contribution cap for smaller postal service providers is the most appropriate option. It is difficult to set any pre-determined rules for the level at which contributions should be capped, as it will largely depend on an assessment of the entrant's ability to pay and an assessment of the likely impact of the sharing mechanism on the development of competition in the sector. Similarly, setting an absolute market share threshold above which operator's would be expected to make a full contribution could act as a barrier to entry/expansion. Setting this protection will result in An Post, as the current universal postal service provider, covering any shortfall. However, ComReg envisages that any such shortfall would be small relative to the contribution to any unfair financial burden that An Post would be making given that it provides significantly more postal services within the scope of universal postal service (35 out of a total of 37 notified to ComReg) and its turnover of those services is considerably higher.

Q. 3 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

7 Draft Regulations

S.I. No. [] of 2013

COMMUNICATIONS REGULATION (FINANCING OF PROVISION OF UNIVERSAL POSTAL SERVICE) REGULATIONS 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 36(2) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011), hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013.

Interpretation / Definitions

2. (1) In these Regulations, unless the context otherwise requires:

"Act of 2002" means the Communications Regulation Act 2002 (No. 20 of 2002);

“Act of 2011” means the Communications Regulation (Postal Services) Act 2011 (No.21 of 2011);

“applicable undertaking” means a postal service provider providing a postal service within the scope of the universal postal service;

“Commission” means the Commission for Communications Regulation;

"contribution cap" means, in relation to an applicable undertaking, a cap on the contribution to the unfair financial burden in order to promote the development of the postal sector for the provision of postal services within the scope of universal postal service and to promote the interests of postal service users availing of postal services within the scope of universal postal service;

“fund” has the meaning set out in section 36 of the Act of 2011;

“net cost” has the meaning set out in section 35 of the Act of 2011 and shall be calculated in accordance with ComReg Decision D09/13 dated 25 July 2013;

“postal service”has the meaning set out in section 6 of the Act of 2011;

“postal service provider”has the meaning set out in section 6 of the Act of 2011;

“postal service user”has the meaning set out in section 6 of the Act of 2011;

“postal service within the scope of the universal service”has the meaning set out in section 37 of Act of 2011;

"relevant financial year" means, in relation to an applicable undertaking, the financial year of the applicable undertaking;

"relevant turnover" means, in relation to an applicable undertaking, the gross revenue, excluding value added tax, paid or payable, of the applicable undertaking in respect of the provision of postal services within the scope of universal postal service in its relevant financial year;

"sharing mechanism" has the meaning set out in section 36 of the Act of 2011;

"unfair financial burden" has the meaning set out in section 36 of the Act of 2011 and ComReg D[]/13 dated [];

“universal postal service” has the meaning set out in section 6 of the Act of 2011;

“universal postal service provider” has the meaning set out in section 6 of the Act of 2011.

(2) In these Regulations:

(a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;

(b) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that a reference to some other enactment is intended; and

(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 2011 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.

(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.

(5) The Interpretation Act 2005 (No. 23 of 2005) applies to these Regulations.

Applicability

3. These Regulations apply to applicable undertakings following any determination by the Commission under section 35(4)(b) of the Act of 2011 that the net cost of provision of the universal postal service represents an unfair financial burden on the universal postal service provider concerned.

Assessment

4. The Commission shall assess the contributions of providers of postal services within the scope of the universal service for the purposes of meeting the unfair financial burden referred

to in regulation 3 on the basis of the statements of relevant turnover provided by applicable undertakings to the Commission as required by regulation 6(1) of the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2013 (S.I. No. 181 of 2013) and this regulation.

Apportionment

5. The Commission shall apportion the verified net cost determined to be an unfair financial burden among applicable undertakings as follows:

(a) an apportionment amongst applicable undertakings based on the relative revenue-based market shares of applicable undertakings determined from the statements of relevant turnover from applicable undertakings under regulation 4, subject to any contribution cap determined by the Commission to apply to any applicable undertaking in accordance with this regulation;

(b) the Commission shall determine whether a contribution cap is to apply to each applicable undertaking other than the universal postal service provider having regard to:

(i) the impact of apportioning the net cost on the basis of paragraph (a) on the sustainability and profitability of each applicable undertaking other than the universal postal service provider; and

(ii) the impact of apportioning the net cost on the basis of paragraph (a) on the development of competition in the provision of postal services within the scope of universal postal service; and

(c) if a contribution cap is determined by the Commission to apply to an applicable undertaking other than the universal postal service provider, the universal postal service provider shall cover any shortfall between the contribution that would have applied to that applicable undertaking based on paragraph (a), and the actual contribution to be made by that applicable undertaking under the contribution cap determined by the Commission to apply to that applicable undertaking under paragraph (b).

Collection

6. (1) If the Commission determines that the total contributions from applicable undertakings other than the universal postal service provider under regulation 5 would be less than the cost of establishing and maintaining the sharing mechanism, then no sharing mechanism will be established and the universal postal service provider will fund the unfair financial burden in full, and the Commission shall make this publicly known by way of an information notice.

(2) If subsection (1) does not apply, each applicable undertaking, except for the universal postal service provider, shall pay to the Commission its contribution to the fund as determined by the Commission under regulation 5.

(3) The Commission shall inform each applicable undertaking in writing of its contribution as specified in subsection (2) and contributions shall be paid to the Commission within 30 days by way of banker's draft or such other means and on such other terms, if any, as the Commission may decide.

(4) A request by the Commission to an applicable undertaking under this regulation may be delivered or sent by post to the applicable undertaking at the last address notified to the Commission of the applicable undertaking.

(5) In accordance with section 36(4) of the Act of 2011, the sharing mechanism and fund can be administered by the Commission or by any person appointed on such terms and conditions as the Commission determines, possessing, in the opinion of the Commission, the requisite degree of independence from a universal postal service provider and the applicable undertakings and who shall be under the supervision of the Commission.

(6) In accordance with section 36(6) of the Act of 2011, any amount payable by way of a contribution pursuant to these Regulations that remains unpaid by an applicable undertaking may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate for the time being standing specified in section 26 of the Debtors (Ireland) Act 1840, on the amount or part thereof remaining unpaid in respect of the period between the date when the amount or part thereof fell due and the date of payment of such amount or part.

Distribution to the universal postal service provider

7. (1) All contributions from applicable undertakings other than the universal service provider collected by the Commission pursuant to these Regulations shall be distributed by the Commission to the universal postal service provider within 60 days of receipt of the contributions from such applicable undertakings.

(2) All distributions to the universal postal service provider, including the notional distribution by the universal postal service provider to itself, will be recorded by ComReg and published in its annual report.

GIVEN under the Official Seal of the Commission for Communications Regulation this
[] 2013

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[],

Commissioner.

on behalf of the Commission for Communications Regulation

Q. 4 Do you have any comments on the draft Regulations? Please explain your response and provide details of any amendments that should be considered by ComReg.

8 Conclusion

82 In this consultation, ComReg has set out its preliminary views on how to assess and finance any unfair financial burden on the universal postal service provider.

83 In accordance with the 2011 Act it is ComReg that will determine whether the provision of a universal postal service by the universal postal service provider concerned represents an unfair financial burden on the USP. In order to make that determination, ComReg will require detailed evidence based information from An Post and the 2011 Act empowers ComReg to obtain such information from An Post where it is not provided.

84 Furthermore, in accordance with the 2011 Act, if ComReg finds that there is an unfair financial burden, it is the sharing mechanism provided for in regulations made by ComReg that sets out the apportionment, collection, and distribution to the USP to finance that unfair financial burden. In this consultation, ComReg has set outs its preliminary views and draft Regulations on how any such financing should apply.

85 ComReg will consider all submissions to this consultation, together with any other relevant evidence, in finalising its positions on how to assess and finance any unfair financial burden on the USP.

Annex: 1 Chapter 5 of the Communications Regulation (Postal Services) Act, 2011

Communications Regulation (Postal Services) Act 2011

Chapter 5

Financial support for universal postal service provision

35. Net cost of provision of universal postal service

(1) A universal postal service provider, designated under section 17 or 18, which seeks to receive funding for the net costs (if any) of providing a universal postal service may submit a request in writing to the Commission.

(2) A request under subsection (1) shall be—

> *(a) made in such form and manner as the Commission determines,*
>
> *(b) submitted no earlier than after the end of the first financial year immediately following the designation under section 17 or 18 and thereafter no later than 6 months after the accounts for the financial year concerned have been audited, unless the Commission agrees otherwise, and*
>
> *(c) accompanied by such supporting information as may reasonably be required by the Commission for the purposes of subsection (4).*

(3) Where a request is made under subsection (1), the Commission may require, in writing, the universal postal service provider concerned to give to the Commission such additional information as the Commission specifies in the requirement for the purposes of subsection (4) within 21 days from the date of the requirement or

such longer period as the Commission may specify.

(4) The Commission shall, on the basis of the information given to it under subsection (2) and any additional information given to the Commission under subsection (3), determine whether the provision of a universal postal service by the universal postal service provider concerned—

> *(a) represents a net cost to the universal postal service provider in the period to which the request made under subsection (1) relates, taking into account any market benefit which accrues to the universal postal service provider,*

calculated in accordance with Annex I to the Directive, the text of which Annex is, for ease of reference set out

in Schedule 4, and

(b) in the opinion of the Commission, represents an unfair financial burden on the universal postal service provider.

(5) For the purpose of making a determination under subsection (4), the Commission shall—

(a) take into account—

(i) the methodology used by the universal postal service provider with respect to the information given to the Commission under this section,

(ii) the extent to which the universal postal service provider is, in the Commission's opinion, complying with the obligations imposed on it by or under the Communications Regulation Acts 2002 to 2011 relating to the provision of a universal postal service in a cost-efficient manner, and

(iii) any other information which the Commission considers relevant,

and

(b) as appropriate—

(i) audit or verify, or

(ii) appoint a person possessing, in the opinion of the Commission, the requisite qualifications and degree of independence from the universal postal service provider, to audit or verify, the calculation of the net cost referred to in subsection (4).

(6) The Commission shall, subject to the protection of any information which it considers confidential (within the meaning of section 24 of the Principal Act), publish the conclusions of any audit or verification undertaken pursuant to subsection (5)(b).

(7) The Commission shall notify the universal postal service provider in writing of its determination as soon as practicable.

(8) Where the Commission determines that the universal postal service provision does not represent an unfair financial burden it shall notify the universal postal service provider of the reasons for the determination as soon as practicable after the determination is made.

36. Financing of provision of universal postal service

(1) Where the Commission makes a determination under section 35 that the net cost of provision of a universal postal service represents an unfair financial burden on the universal postal service provider concerned it shall apportion the net cost among providers of postal services within the scope of the universal postal service and such providers shall make a contribution, in accordance with the cost apportioned to each of them, for the purposes of meeting that burden.

(2) The assessment, apportionment, collection and distribution to the universal postal service provider concerned of contributions referred to in subsection (1) shall be carried out in accordance with a mechanism (in this Part referred to as a "sharing mechanism") provided for in regulations made by the Commission.

(3) The contributions referred to in subsection (1) shall be paid into a fund (in this section referred to as the "fund") established for that purpose by regulations made by the Commission and maintained and, subject to subsection (8), accounted for in accordance with those regulations.

(4) The regulations referred to in subsections (2) and (3) may provide for—

(a) the sharing mechanism and fund to be administered—

(i) by the Commission, or

(ii) by a person specified in the regulations, appointed on such terms and conditions as the Commission determines,

possessing, in the opinion of the Commission, the requisite degree of independence from a universal postal service provider and the postal service providers referred to in subsection (1) and who shall be under the supervision of the Commission,

and

(b) the making of contributions to the fund by a particular class or description of postal service providers referred to in subsection (1).

(5) In making regulations under subsections (2) and (3) for the purposes of this section, the Commission shall ensure that the sharing mechanism operates—

(a) in an objective, proportionate and transparent manner, and

(b) in a manner that does not involve or tend to give rise to any undue discrimination against—

(i) particular postal service providers or a particular class or description of postal service providers, or

(ii) particular postal service users or a particular class or description of postal service users.

(6) Any amount payable by way of a contribution pursuant to regulations made under subsections (2) and (3) that remains unpaid may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate for the time being standing specified in section 26 of the Debtors (Ireland) Act 1840, on the amount or part thereof remaining unpaid in respect of the period between the date when the amount or part thereof fell due and the date of payment of such amount or part.

(7) Where a sharing mechanism is established, the Commission shall, subject to the protection of any information which it considers confidential (within the meaning of section 24 of the Principal Act), publish an annual report—

(a) setting out the calculated net cost of the provision of a universal postal service audited or verified, as the case may be, under section 35(5)(b), and

(b) including information relating to the performance of the fund and the total amount of contributions collected and distributed from the fund to the universal postal service provider concerned during the period to which the annual report relates.

(8) The Commission shall—

(a) cause to be kept all proper and usual accounts relating to such fund as may be established pursuant to regulations made under subsection (3), and

(b) as soon as may be after the end of each financial year, submit the accounts to the Comptroller and Auditor General for audit and those accounts when so audited shall, together with—

(i) the report of the Comptroller and Auditor General thereon, and

(ii) a report of the Commission to the Minister in relation to the performance of its functions relating to the fund in the previous year, be presented as soon as may be after the end of the financial year to the Minister, who shall cause copies of the accounts and the reports referred to in subparagraphs (i) and (ii) to be laid before each House of the Oireachtas

Submitting comments

The consultation period will run until 5pm on 4 October 2013, during which time ComReg welcomes written comments on any of the issues raised in this consultation.

It is requested that comments be referenced to the relevant question numbers and paragraph numbers from this document. Where views are provided, please provide a supporting rationale for your comments, including if possible, an indication on the broader impact of any changes proposed.

As it is ComReg's policy to publish all responses in order to make them available for inspection, responses to consultations should be provided as non-confidential documents, with any information for which confidentiality is claimed (e.g. commercially sensitive information) supplied in a separate annex. In this respect, please refer to ComReg's Consultation Procedures - ComReg 11/34 and ComReg's guidelines on the Treatment of Confidential Information - ComReg 05/24.

We request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.

All responses to this consultation should be clearly marked:- "Reference: Consultation 13/83", and sent by post and/or e-mail to arrive on or before **5pm, 4 October 2013**, to:

Mr. Stephen Brogan
Commission for Communications Regulation
Abbey Court, Block DEF
Lower Abbey Street
Freepost
Dublin 1

Email: marketframeworkconsult@comreg.ie

Questions

Section Page