



Commission for
Communications Regulation

Dispute procedures for access by a postal service provider to the postal network of a universal postal service provider

Response to Consultation and Procedures

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1 Introduction

- 1 The Commission for Communications Regulation ('ComReg') in Document 12/82¹ consulted on proposed procedures to be established by ComReg under section 33 of the Communications Regulation (Postal Services) Act 2011 (the "2011 Act"). Where appropriate, these procedures will apply to resolve disputes concerning access by a *postal service provider* to a *universal postal service provider's postal network*.
- 2 There were three responses to Consultation 12/82. ComReg has considered all these responses in establishing its procedures under section 33(5) of the 2011 Act. ComReg gratefully acknowledges the time and effort given by all respondents in considering Consultation 12/82 and in preparing their responses.

¹ 'Consultation and draft procedures: Dispute procedures for access by a postal service provider to the postal network of a universal postal service provider' dated 26 July 2012

2 Executive Summary

- 3 As a result of the liberalisation of the provision of postal services in Ireland, it is possible that *postal service providers*, and undertakings providing services outside the scope of the statutory definition of "*postal services*", might wish to negotiate agreements to access the *postal network* of the designated *universal postal service provider*. Generally these are commercial agreements and as such it is primarily competition law that regulates the right to enter into such an agreement, and the negotiation process. ComReg does not have competition law powers in respect of the postal sector.
- 4 Notwithstanding this, ComReg is required by the 2011 Act to establish and maintain procedures in the certain cases where ComReg is invited to intervene to resolve disputes concerning access to the *postal network* of the *universal postal service provider* by a *postal service provider*.
- 5 Consequently, in Consultation 12/82, ComReg sought the views of interested parties on the procedures to be established and maintained for the resolving of disputes relating to access to a *universal postal service provider's postal network* by a *postal service provider*.
- 6 Having considered the views of respondents to Consultation 12/82, ComReg has made some minor amendments in establishing the procedures which will be maintained by ComReg in accordance with section 33 of the 2011 Act. These established procedures are set out in Annex 1 of this document.
- 7 ComReg remains strongly of the view that it is in the interest of both the *postal service provider* concerned and the designated *universal postal service provider* to reach a mutually acceptable agreement concerning access to the *postal network*, rather than to have an agreement imposed upon them.
- 8 Furthermore, all parties engaged in a negotiation process under section 33 of the 2011 Act will of course have to be cognisant at all times of their legal obligations under Irish and EU competition law (as applicable). ComReg does not expect that access to a universal postal service provider's postal network will be unreasonably withheld. ComReg envisages that these procedures to resolve disputes will, in general, be only used as a last resort. Also, if legal proceedings in relation to the dispute have been initiated by either party, ComReg may decide not to intervene in the negotiations concerned until those legal proceedings have been concluded.
- 9 ComReg intends to keep these procedures under review in light of experience and feedback received from postal service providers.

3 Background

10 Section 6(1) of the 2011 Act defines “*postal network*” as

“the system of organisation and resources of all kinds used by a universal postal service provider for the purposes, in particular, of—

(a) the clearance of postal packets,

(b) the routing and handling of those postal packets from the access point to the distribution centre, and

(c) the distribution to the addresses shown on postal packets;”

11 Section 33(1) of the 2011 Act, confirms that a *postal service provider* has the right to enter into negotiations with a *universal postal service provider*, currently An Post, with a view to concluding an agreement to access the *postal network* of the *universal postal service provider*.

12 Section 33(2) of the 2011 Act provides for ComReg, if so requested by either party to the negotiations, to specify the period within which the negotiations shall be completed.

13 Section 33(3) of the 2011 Act requires ComReg, where agreement is not reached within the period specified by ComReg, to take such steps as are necessary to resolve the dispute in accordance with procedures established and maintained by it.

14 Section 33(4) of the 2011 Act gives some discretion to ComReg as to whether or not to intervene. In particular it need not intervene where it:

considers that—

the request for intervention is trivial or vexatious, or

the person making the request has not taken reasonable steps to reach an agreement on access to a universal postal service provider’s postal network.

15 Sections 33(5) to 33(7) of the 2011 Act require ComReg to make and publish the procedures it will follow and give it specific powers to impose or amend the conditions relating to access to a universal postal service provider's postal network, including

(a) the price of access,

(b) terms and conditions relating to matters other than price, and

(c) rules for the separation of accounts relating to access to the postal network.

16 Section 33(8) of the 2011 Act sets out the factors ComReg must take into account when making any decisions about the dispute. These are:

(a) the reasonableness of the terms and conditions relating to access to the postal network concerned,

(b) the interests of postal service users,

(c) the need to ensure and maintain the efficient provision of a universal postal service,

(d) the availability of alternatives to the access sought,

(e) the development of competition in the market for postal services,

(f) the feasibility of granting the access sought,

(g) the capital investment in the postal network made by the universal postal service provider concerned, and

(h) any requirements imposed by any enactment.

3.1 Access to postal networks

17 As a result of the liberalisation of the provision of postal services in Ireland, and the coming into operation of the 2011 Act, it is possible that *postal service providers*, and undertakings providing services outside the scope of the statutory definition of "*postal services*", might wish to negotiate agreements to access the *postal network* of the designated *universal postal service provider*.

18 Generally these are commercial agreements and as such it is primarily competition law that regulates the right to enter into such an agreement, and the negotiation process. Section 33(1) of the 2011 Act provides that a *postal service provider* has a right to enter into negotiations with a *universal postal service provider* with a view to concluding an agreement with that provider to access the *postal network* of the *universal postal service provider*.

- 19 ComReg considers that it is in the interest of both the *postal service provider* concerned and the designated *universal postal service provider* to reach a mutually acceptable agreement concerning access to the *postal network*, rather than to have an agreement imposed upon them. ComReg does not expect that access to a universal postal service provider's *postal network* will be unreasonably withheld but rather that both parties will engage constructively with a view to concluding an early agreement. Therefore, ComReg expects that the established procedures to resolve disputes will be sparingly used.

4 Respondents' views and ComReg's position

20 As noted in ComReg's published consultation procedures², the purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. All views have been considered and account taken of the merits of views expressed. It should, however, be noted that the process is not equivalent to a voting exercise on proposals and ComReg has exercised its judgement having considered the merits of the views expressed.

21 There were three responses to Consultation 12/82. Responses were received from:

- An Post
- Nightline
- TICO Mail Works

22 In this chapter, ComReg sets out the main views of respondents' and for each of these ComReg sets out its views which then, where appropriate, inform the established procedures set out in Annex 1 of this document.

4.1 Access to the postal network of the universal postal service provider will not be unreasonably withheld

23 In 12/82, at paragraph 2, ComReg noted that it does not expect access to the *postal network* of the *universal postal service provider* to be unreasonably withheld. In its response to 12/82, the current designated *universal postal service provider*, An Post, agreed with this.

24 ComReg welcomes An Post's concurrence on this.

4.2 Interpretation of terms in section 33(4) of the 2011 Act

25 In their respective responses to Consultation 12/82, An Post and Nightline request ComReg to provide guidance on its interpretation of the terms "*trivial or vexatious*" and "*reasonable steps to reach an agreement*" set out in section 33(4) of the 2011 Act.

² ComReg Document 11/34 'Information Notice on ComReg Consultation Procedures' dated 6 May 2011

- 26 Nightline is also of the view that a characterisation of any particular request for intervention as "*trivial or vexatious*" will necessarily be subjective.
- 27 ComReg notes that the terms contained in section 33(4) of the 2011 Act will be interpreted in light of the particulars of the negotiation and the evidence presented to ComReg by both parties to the negotiation.
- 28 ComReg does not agree with Nightline that the interpretation of "*trivial or vexatious*" will be subjective; ComReg believes it will be objective and based on the evidence presented to ComReg by both parties to the negotiation.

4.3 No requirement to take into account the capital investment expenditure of the postal service provider under 33(8) of the 2011 Act

- 29 In their respective responses to Consultation 12/82, An Post and Nightline note that there is no requirement for ComReg to take into account the capital investment expenditure of the *postal service provider* under section 33(8) of the 2011 Act.
- 30 ComReg agrees with the point made by the respondents and so the established procedures have removed consideration of the capital investment expenditure of the *postal service provider*.

4.4 Any decision made by ComReg will be reasoned and evidence-based

- 31 An Post in its response notes that a formal notification of the outcome should also be included in the procedures. An Post notes that this would require ComReg to set out in detail the reasons behind any decision made and its assessment under each of the criteria listed in Section 33(8) of the 2011 Act. An Post further states that any conclusion arrived at by ComReg should be evidence-based and not subjective in character.
- 32 In response, ComReg notes that its decisions are always evidence-based and detailed. To avoid any doubt, the established procedures now explicitly refer to the evidence-based nature of any decision made at paragraphs 19 and 26 of the procedures set out in Annex 1.

4.5 Any decision made by ComReg in relation to the price of access

33 In its response, Nightline notes that Section 33(9) of the 2011 Act states that:

"Where the Commission makes a decision with respect to the price of access to the postal network concerned it shall take into account any costs avoided by a universal postal service provider by granting such access and postal network costs of the universal postal service provider involved in granting such access."

34 Nightline requests that ComReg specify how it proposes to use the details sought from the *universal postal service provider* regarding 'costs avoided' and 'costs involved' in granting access. Specifically, Nightline requests ComReg to specify what methodology it proposes to use to arrive at a determination regarding the price of access to the *postal network* of the *universal service provider*.

35 Nightline notes that Crew and Kleindorfer (2008³) identify three main types of possible rules to govern access pricing, as follows:

35.1 Avoided cost pricing: a top-down approach, also known as retail-minus pricing

35.2 Delivery-area access pricing: a subset of cost-based or bottom-up pricing

35.3 Negotiated access pricing: The outcome here is whatever price is agreed through negotiations.

36 Nightline believes that the wording of the 2011 Act does not necessarily require ComReg to adopt avoided cost pricing as the method by which to set the price of access to the *postal network* of the *universal service provider* in the case of dispute.

37 In response, ComReg expects that in most cases involving negotiation by a *postal service provider* to access the *postal network* on the *universal postal service provider*, a negotiated access price will be the outcome.

³ Michael A. Crew and Paul R. Kleindorfer (2008) "Pricing for Postal Access and Worksharing" in the "Handbook of Worldwide Postal Reform", p. 32-66.

38 However, where negotiation fails and ComReg chooses to intervene, ComReg will, as required by the 2011 Act, take into account any costs avoided by the *universal postal service provider* and the *postal network* costs of the *universal postal service provider* involved in granting such access to the applicable part(s) of its *postal network*. ComReg currently envisages that this may well involve the use of both the avoided cost pricing and delivery-area access pricing rules noted by Nightline, but this will be case specific and therefore dependent on the particulars of the access being sought.

4.6 Timelines for dispute procedures

39 Nightline considers that for dispute procedures under section 33 of the 2011 Act precise timelines should be established and followed for each step of the established procedures. Nightline accepts ComReg's point that a one-size-fits-all approach will not be appropriate, given the different nature of the access requests which are likely to be made. Nevertheless, Nightline maintains that greater specification and tightening of the timelines for each step is possible.

40 In response, ComReg notes that precise timelines cannot be established in advance as each negotiation will be unique. However, where required to intervene in a dispute, ComReg will endeavour to work as expeditiously as possible and will require a similar commitment from both parties to the dispute.

4.7 Duration of any decision made by ComReg

41 An Post is of the view that any decision by ComReg should be for a fixed period of time or subject to periodic review.

42 In response, ComReg notes that any decision made in relation to a dispute will be applicable to the particulars of the negotiation, for example, the duration of the access sought will be set by the negotiation and any subsequent decision. Any decision made in relation to a dispute, like any commercial agreement, will likely include details of circumstances in which the particulars of the decision can be subject to re-negotiation by both parties. In the event of any dispute on any re-negotiation, either party can seek resolution by ComReg under the established dispute procedures pursuant to section 33 of the 2011 Act.

4.8 Appeal of any decision made by ComReg

43 An Post is of the view that the procedures should set out the appropriate appeals process that is available to either side following a decision being made by ComReg. An Post notes that this is set out in section 52 of the 2011 Act but for completeness should be included in the final procedures.

44 Nightline also requests that the details of the right of appeal should be included.

45 In response, ComReg notes that section 52 of the 2011 Act states that any decision made by ComReg under section 33(4) or section 33(5) of the 2011 Act may be appealed to the High Court by a *postal service provider* or user whose interests are materially affected by a decision within 28 days of notification of that decision by ComReg. To make this clear, ComReg will reference this right to appeal in the established dispute procedures set out in Annex 1 of this document.

4.9 Costs associated with dispute resolution

46 In relation to any additional costs incurred by ComReg in conducting the dispute procedures, An Post in its response requests ComReg to set out how these costs are to be split. An Post argues that as these costs are not related to universal postal services, they should not be included as part of the postal levy payable to ComReg. Rather, An Post believes that the costs should be borne between the two parties involved in the dispute.

47 Where it is discovered that the complaint is trivial or vexatious An Post also argues that the *postal service provider* requesting ComReg's intervention should bear all the relevant costs. Furthermore, in order to ensure that ComReg is only requested to intervene in genuine cases of dispute, An Post maintains that a system based on the payment of a deposit or a set fee should be used.

48 In response, ComReg notes that section 30(2) of the Communications Regulation Act 2002 states that:

"Subject to subsection 11A, for the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions in relation to postal services the Commission may make an order imposing a levy on providers of postal services providing postal services within the scope of the universal postal service."

49 ComReg's intervention, where required, in disputes relating to access to the *postal network* of the *universal postal service provider* is a discharge of its functions in relation to postal services. Therefore, ComReg considers that the cost of this intervention can properly be recovered by the postal levy payable to ComReg. This approach also ensures that *postal service providers* are not discouraged from seeking the use of the dispute procedures, where appropriate, due to the issue of cost.

50 In relation to the costs of any request for intervention that is trivial or vexatious; or where the person making the request has not taken reasonable steps to reach an agreement on access makes a decision, ComReg considers that the costs associated with these will be minimal as such requests will be eliminated by ComReg after its preliminary examination.

51 The cost of the dispute process will be explored further in a separate consultation in relation to the payment of the levy to ComReg by *postal service providers* authorised to provide a *postal service within the scope of the universal postal service*. Under section 30(11A) of the Communications Regulation Act 2002, a levy imposed by ComReg pursuant to section 30(2) of that Act has to be imposed in an objective, transparent and proportionate manner. ComReg plans to issue that consultation shortly.

4.10 Early / emergency intervention

52 TICO and Nightline in their respective responses propose that ComReg should adopt an early / emergency intervention approach where the dispute resolution procedures would take too long and could seriously damage a postal service provider's business.

53 In response, ComReg notes that the role of ComReg in such disputes is as set out in section 33 of the 2011 Act. ComReg's established procedures reflect the requirements of section 33 of the 2011 Act. ComReg again states that the onus is on both parties to the negotiation to reach an agreement; therefore, ComReg expects that the dispute procedures will be sparingly used. However, where required to intervene, ComReg, in conducting its procedures under section 33 of the 2011 Act, ComReg will endeavour to act as expeditiously as possible and will require the same from both parties to the negotiation.

4.11 Independent expert advisor

54 In its response, Nightline requests more detail on the use of an independent expert to advise ComReg on resolving disputes under section 33 of the 2011 Act.

55 In response, ComReg can confirm, given resource constraints within ComReg, ComReg plans to use an independent expert to conduct the review of disputes and to advise / recommend to ComReg what decision should be made. It is envisaged that such any such expert will have expertise in dispute resolution.

4.12 Other points raised

Establishing a set of default values for access

56 Nightline believes that it would be helpful if ComReg was to proceed immediately to define a set of default values for the price, terms and conditions of access, under various scenarios, and a methodology for determining these, based on its knowledge of Ireland's postal market, so that the market is not waiting for a dispute process to trigger such a definition.

57 In response, ComReg notes that the 2011 Act has set out ComReg's role in this respect and ComReg's role only relates to a dispute resolution where required and only after the best effort of both parties to the dispute has failed to bring about a resolution. To be clear, ComReg's role is not to set default values for access by a *postal service provider* to the *postal network* of the *universal postal service provider*. Furthermore, and even if it were so, default values cannot be established as each negotiation by a *postal service provider* to access the *postal network* of the *universal postal service provider* is likely to be unique.

Weighting of criteria under section 33(8) of the 2011 Act

58 An Post believes that the criteria that ComReg is obliged to take into account in reaching a decision under section 33(8) of the 2011 Act should be appropriately weighted by ComReg.

59 In response, ComReg notes that the 2011 Act requires ComReg to take all the criteria into account and does not draw any particular distinction between such criteria. Therefore, each criterion will be taken into account by ComReg in reaching a decision in accordance with the established procedures and the requirements of the 2011 Act.

Reasons for serving notice on ComReg on commencement of negotiation

60 In its response, Nightline recommends that the proposed clause which requires the *postal service provider* to set out the reasons why it is serving notice on ComReg at the commencement of the negotiation be removed.

61 ComReg disagrees with this recommendation. This clause is necessary to inform any subsequent dispute resolution and to enable ComReg to move as expeditiously as possible if a subsequent dispute arises. Therefore, the clause remains in the established procedures set out in Annex 1 of this document.

Use of application forms

62 TICO believes there is scope for ComReg to get involved on the basis of straight forward application form(s) where the *postal service provider* is required to identify details of the access sought and the *universal postal service provider* is required to immediately say why it has not been granted. TICO does not believe that the majority of cases will be unduly complicated.

63 In response, ComReg notes that each application is likely to be unique which does not lend itself to an application approach. Furthermore, ComReg believes where a dispute arises such as to engage section 33 procedures it will likely be in relation to issues of a complicated nature. ComReg also notes that both parties to the dispute have a responsibility to fully negotiate before seeking ComReg's intervention.

Refraining from retaliatory action

64 TICO believes that the procedures would benefit from provisions to ensure that during dispute resolution procedures both parties must refrain from any retaliatory action.

65 In response, ComReg notes that any such retaliatory action is likely to be prevented by competition law and such issues, where they arise, can be raised with The Competition Authority as ComReg does not have competition law powers in respect of the postal sector.

Facilitating the development of competition

66 Nightline claims that ComReg has a duty to "*promote competition*" in the postal market.

67 In response, ComReg notes that the statutory objective of ComReg to "*facilitate the development of competition and innovation in the market for postal service provision*" is explicitly stated at section 12(1)(c)(iii) of the Communications Regulation Act 2002 (as amended) to be subject to ComReg's objective at section 12(1)(c)(i) of the same Act "*to promote the development of the postal sector, and in particular, the availability of a universal postal service with, to and from the State at an affordable price for the benefit of all postal service users*". While section 34(3)(b) of the 2011 Act allows ComReg to give a direction "*to promote effective competition*", this only relates to access to "*postal infrastructure*" as defined by the 2011 Act, such as post office boxes, delivery boxes, postcodes.

Quality of service for access

68 In its response, Nightline states that it assumes that the Quality of Service (QoS) levels offered by An Post as part of its access to its postal network will be at least equivalent to those applied to An Post's own retail mail streams. Nightline requests ComReg to confirm that these QoS levels for access will be regularly monitored as part of the overall benchmarking which ComReg currently performs within the postal sector.

69 In response, ComReg notes that quality of service parameters will be part of the negotiation by both parties. The QoS monitor that Nightline refers to is not applicable as that relates solely to single piece *universal postal service* mail provided by the *universal postal service provider*. However, the concern raised by Nightline in relation to equivalence could be raised with The Competition Authority if it was considered to be anti-competitive. As noted before, ComReg does not have competition law powers in the postal sector.

Preliminary Examination under Step 2

- 70 Nightline requests ComReg to clarify in its section of its procedures that deal with the preliminary examination under Step 2 if the "*person making the request*" refers to the access seeker.
- 71 In response, ComReg can clarify that this refers to the access seeker and this will be made clear in the procedures.
- 72 Nightline also requests a mirror clause to clause 33.2 of the draft procedures in 12/82 be included in the section of the procedures that deal with the preliminary examination under Step 2. This would require the *universal postal service provider* to set out what steps have been taken to reach an agreement.
- 73 In response, ComReg notes that a mirror clause cannot be included as it is not required under section 33(4)(b)(ii) of the 2011 Act - the obligation under section 33(4)(b)(ii) is on "*the person making the request*".

Non-compliance with decision made by ComReg

- 74 Nightline requests ComReg to specify what sanctions will apply in the event that the access giver does not implement ComReg's decision according to the terms specified in the decision, in particular with respect to the timeline for implementation.
- 75 In response, ComReg notes that non-compliance will be assessed on a case by case basis. ComReg will first issue a direction under section 33(10) of the 2011 Act to the non-compliant party to ensure compliance with the particular condition of the decision concerned. Under section 51(4) of the 2011 Act, if ComReg is of the opinion that a party is not complying with the direction, ComReg can give notice to the party requiring compliance within 4 weeks. Under section 51(7) of the 2011 Act, if a party is still not at this stage complying with the direction, ComReg can apply to the High Court for an order requiring the party to comply with the direction.

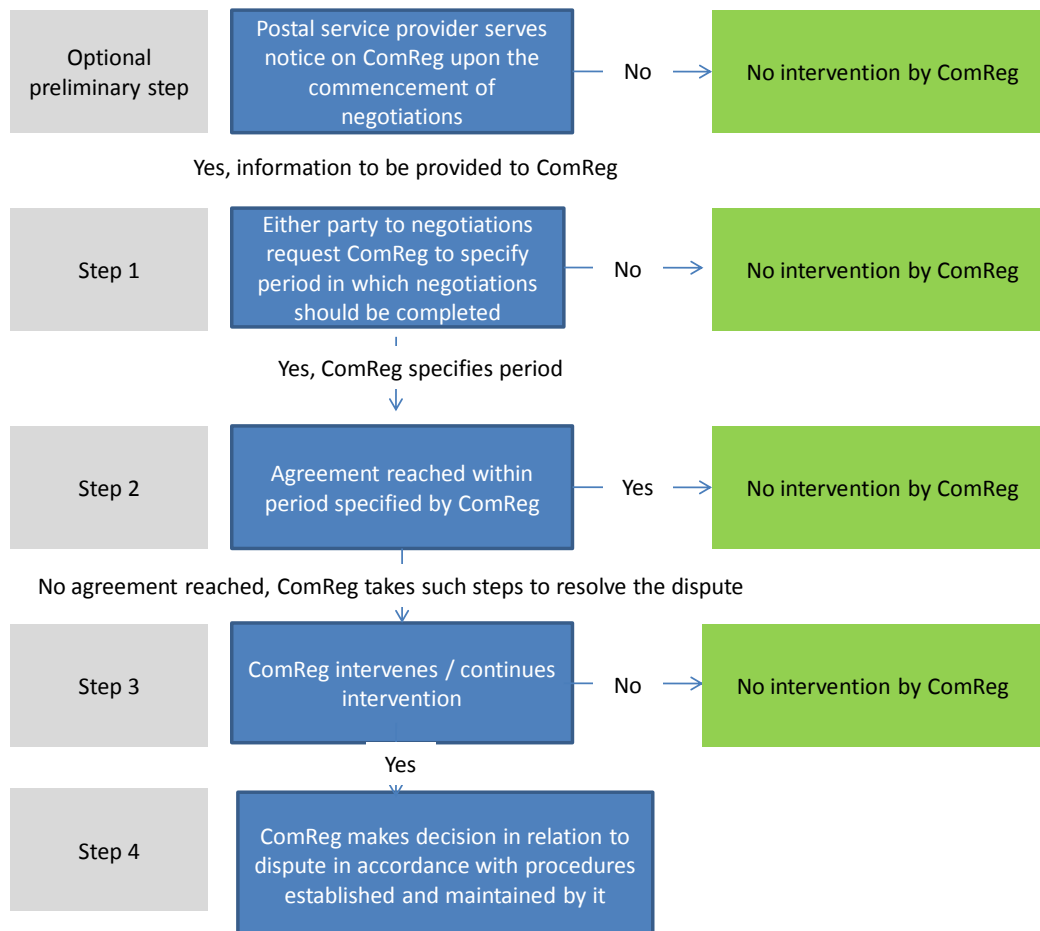
Terms and conditions for *postal service providers* accessing the *postal network of the universal postal service provider*

- 76 Nightline believes that it is crucial for ComReg, in addressing the issue of network access, to articulate clearly the distinction between the retail postal market on the one hand and the wholesale postal market on the other. Nightline further believes that a core principle is that the terms and conditions (including price) offered by An Post to its wholesale customers, that is, to alternative service providers including Nightline, must be different to those offered by An Post to its own large retail customers. According to Nightline, this reflects the difference in service requirements between these two categories of customer.

77 In response, ComReg notes access by *postal service providers* to the *postal network* of the *universal postal service provider* is not a retail access. The terms and conditions of this access will be subject to commercial negotiation and therefore is likely to be different from the standard retail terms and conditions.

Annex: 1 Procedures

- 1 The following are the procedures established and maintained by ComReg in relation to disputes under section 33 of the Communications Regulation (Postal Services) Act 2011 ("2011 Act"). If legal proceedings in relation to the dispute have been initiated by either party, ComReg may decide not to intervene in the negotiations concerned until those legal proceedings have been concluded.
- 2 ComReg's procedures under section 33 of the 2011 Act are presented graphically as follows with further details provided in the sections below:



Optional preliminary step: Serving of notice upon commencement

- 3 ComReg considers that it is in the interest of both the *postal service provider* concerned and the designated *universal postal service provider* to reach a mutually acceptable agreement concerning access to the *postal network*, rather than to have an agreement imposed upon them. ComReg does not expect that access to a *universal postal service provider's postal network* will be unreasonably withheld but rather that both parties will engage constructively with a view to concluding an early agreement. Therefore, ComReg expects that the procedures to resolve disputes will be sparingly used.
- 4 However, under section 33(1) of the 2011 Act, a *postal service provider* may serve notice on ComReg upon the commencement of negotiations with a *universal service provider* to access their *postal network*. While there is no obligation to do so, any such notice served must be in writing and sent by registered post to the postal regulation unit, ComReg. The notice should set out:
 - (a) The reasons why the *postal service provider* is serving notice on ComReg;
 - (b) The length of contract being sought with detail of start date being sought;
 - (c) The type and number of postal packets it is proposed will access the *universal postal provider's postal network*;
 - (d) What part of the *universal postal service provider's postal network* would be involved, e.g. the part used for clearance, the part used for routing and handling and / or the part used for distribution;
 - (e) The proposed geographical scope;
 - (f) The proposed time of deposit and the proposed time of completion;
 - (g) The proposed basis for remuneration of the designated *universal postal service provider*, e.g. a flat rate fee; or a per item rate subject to minimum and / or maximum amounts; or a cost sharing based on the actual use of the part(s) of the *postal network* concerned;
 - (h) Any other relevant material the *postal service provider* wishes to provide.

Step 1: Either party requests specification of period within which negotiations must be completed

- 5 Under section 33(2) of the 2011 Act, either party to these negotiations can request ComReg to specify the period within which the negotiations must be completed.
- 6 If either party to the negotiations requests ComReg to specify the period within which the negotiations shall be completed, ComReg will do so taking into account:
 - (a) The complexity of the access requested, and in consequence the amount of time necessary for the designated *universal postal service provider* to consider and make an offer; and
 - (b) The time that has elapsed between the initiation of the negotiations and the request for ComReg to specify a date for completion.
- 7 In order for ComReg to specify the period within which the negotiations must be completed, the party making the request must set out full details of the access being sought as specified in paragraph 4 of these procedures. ComReg will also require full details as to areas of negotiation where there is agreement with the *universal postal service provider* concerned and full details as to areas of negotiation where there is not agreement with the *universal postal service provider* concerned.
- 8 It will be appreciated that no two *postal service providers* will have the same requirements so it is not appropriate for ComReg to be unduly specific as to what should be included. Furthermore, it is not for ComReg to be involved in any part of the negotiation process unless requested to by one or other of the parties involved.
- 9 Upon receipt of the details from the requesting party, ComReg may write to the other party seeking its views.
- 10 ComReg may also require additional information before making its decision and may seek this additional information under section 13F(1) of the Communications Act 2002 to 2011.
- 11 ComReg will then set out in writing to both parties the period within which the negotiations must be completed or it will advise that it has decided not to intervene which is set out in Step 3 below.

Step 2: Agreement not reached within the period specified

- 12 In accordance with section 33(3) of the 2011 Act, where agreement is not reached within the period specified by ComReg, ComReg will take such steps as necessary to resolve the dispute in accordance with the procedures set by it.

Preliminary Examination

- 13 To carry out a preliminary examination of any matter under 33(4) of the 2011 Act, ComReg will require the following (at a minimum) from the person making the request, that is the *postal service provider* seeking access, and within the time period specified by ComReg:
- 13.1 Full details on the access being requested as set out in paragraph 4 of these procedures, including full details as to areas of negotiation where there is agreement with the *universal postal service provider* concerned and full details as to areas of negotiation where there is not agreement with the *universal postal service provider* concerned
- 13.2 Clear supporting evidence that the person making the request has taken all reasonable steps to reach an agreement on access to a *universal postal service provider's postal network*
- 14 ComReg reserves its right to obtain the required information from the person making the request, who is *postal service provider*, under section 13F(1) of the Communications Act 2002 to 2011.
- 15 In carrying out a preliminary examination, ComReg may seek expert assistance of an independent advisor. Such advisor will have signed an appropriate confidentiality agreement with ComReg in advance.
- 16 ComReg will endeavour to give both parties an indication of the period of time that will be required to make its decision whether to intervene or not. Any such indication of the period of time required will be based on the particulars of the information provided for the preliminary examination. Consequently, a general indication of the period of time required cannot be provided in advance of the required information being presented.
- 17 Following consideration of the information provided by the person making the request under the preliminary investigation, ComReg will, within a reasonable period of time, decide whether or not to intervene in the matter.

Step 3: ComReg intervenes or not

- 18 In accordance with section 33(3) of the 2011 Act, where ComReg has specified the period within which negotiations are to be completed, and where agreement is not reached within the period specified by ComReg, ComReg shall take such steps as are necessary to resolve the dispute.
- 19 In accordance with section 33(4) of the 2011 Act, ComReg may decide:
- (1) not to intervene in the negotiations concerned, having carried out a preliminary examination of the matter as set out in paragraph 13 of these procedures,
 - (2) to discontinue any intervention where ComReg considers that the request for intervention is trivial or vexatious; or the person making the request has not taken reasonable steps to reach an agreement on access to a universal postal service provider's network.

This decision will be evidence-based and supported by reasons and will be notified to both parties in writing. An Information Notice in relation to the making of the decision will also be published on ComReg's website.

- 20 In relation to a decision under paragraph 19 of the procedures, a user or postal service provider whose interests are materially affected by the decision may appeal to the High Court within 28 days of being notified of the decision in accordance with section 52(1)(a) of the 2011 Act.

Step 4: ComReg decision in accordance with procedures established and maintained by it

- 21 Where ComReg intervenes and takes such steps as are necessary to resolve the dispute, ComReg will require (at a minimum) the following information from both parties, by separate submissions, and within the time period specified by ComReg:
- 21.1 Full details on the access being requested as set out in paragraph 4 of these procedures, including full details as to where there is agreement and full details as to where there is not agreement.
 - 21.2 Clear supporting evidence that both parties making the request have taken all reasonable steps to reach an agreement on access to the *universal postal service provider's postal network* concerned.

- 21.3 Full details of the proposed terms and conditions relating to access to the *postal network* concerned so that ComReg can take into account their reasonableness as required by section 33(8)(a) of the 2011 Act.
- 21.4 Full details on how the interests of *postal service users* will be served in the completion of this negotiation so that ComReg can take this into account as required by section 33(8)(b) of the 2011 Act.
- 21.5 The *universal postal service provider* to provide full details as to the impact of completion of this negotiation will have on the need to ensure and maintain the efficient provision of *universal postal service* so that ComReg can take this into account as required by section 33(8)(c) of the 2011 Act.
- 21.6 Full details as to the availability of alternatives to the access sought so that ComReg can take this into account as required by section 33(8)(d) of the 2011 Act.
- 21.7 Full details as to the impact of completion of this negotiation will have on the development of competition in the market for postal services so that ComReg can take this into account as required by section 33(8)(e) of the 2011 Act.
- 21.8 Full details as to the feasibility of granting the access sought so that ComReg can take this into account as required by section 33(8)(f) of the 2011 Act.
- 21.9 The *universal postal service provider* to provide full details as to its capital investment in its *postal network*, in particular for the part(s) of the *postal network* on which access is being sought, so that ComReg can take this into account as required by section 33(8)(g) of the 2011 Act.
- 21.10 Full details of any requirements imposed by enactment so that ComReg can take this into account as required by section 33(8)(h) of the 2011 Act.
- 21.11 Full details from the *universal postal service provider* in question as to any costs avoided by granting such access to its *postal network* so that ComReg can take this into account as required by section 33(9) of the 2011 Act.
- 21.12 Full details from the *universal postal service provider* in question as to the *postal network* costs involved in granting such access so that ComReg can take this into account as required by section 33(9) of the 2011 Act.
- 22 ComReg may decide to ask either or both parties who are *postal service providers* to provide the required information under section 13F(1) of the Communications Act 2002 to 2011.

- 23 ComReg may seek the expert assistance of an independent advisor. Such advisor will have signed an appropriate confidentiality agreement with ComReg in advance.
- 24 Upon receipt of the information from both parties, ComReg will endeavour to give both parties an indication of the period of time that will be required to make its decision. Any such indication of the period of time required will be based on the particulars of the information provided. Consequently, a general indication of the period of time required cannot be provided in advance of the required information being presented.
- 25 Within a reasonable period of time, ComReg will consider the submissions and make a draft report setting out its initial findings and recommendations. The submissions of both parties and ComReg's draft report will be sent to both parties with a request under section 13F(1) of the Communications Act 2002 to 2011 to submit such additional information as is necessary to enable ComReg to decide how to bring the dispute to a conclusion, within the framework set out in section 33(7) of the 2011 Act.
- 26 In accordance with section 33(5) of the 2011 Act, ComReg will then make its decision in accordance with these procedures established and maintained by it and notify both parties in writing of same. ComReg's decision will be evidence-based and supported by reasons. An Information Notice in relation to the making of the decision will also be published on ComReg's website.
- 27 In relation to a decision under paragraph 26 of the procedures, a user or postal service provider whose interests are materially affected by the decision may appeal to the High Court within 28 days of being notified of the decision in accordance with section 52(1)(a) of the 2011 Act.