



Commission for
Communications Regulation

Postal Regulatory Framework

Implementation of the Communications Regulation (Postal Services) Act 2011

Submissions to Consultation

Reference: ComReg 12/81s

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An Coimisiún um Rialáil Cumarsáide

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Additional information

Consultation:	12/38
Response to Consultation:	12/81, D08/12

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June 11, 2012

Ms Sinead Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1

Dear Madam:

AIB appreciates the opportunity to respond to the below consultation paper. AIB is a significant user of the postal service, posting close to 30 million letters on a yearly basis. Mail plays a pivotal role in AIB customer communication strategy and is an integral element of our business.

In relation to ComReg's Postal Regulatory Framework Consultation, references ComReg12/38 please note the following responses to question 6 and 7 of your consultation paper:

Question 6

Should An Post be required to provide a single "last resort" Bulk Mail service as described in paragraph 5.41?

AIB'S postal requirements can vary from time to time and the current range of discounts on offer from An Post gives AIB a number of postal options. Should An Post only be required to provide a single "last resort" Bulk Mail service. It is AIB's view that such a development be restrictive and compromises its choice of postal services.

If not, what Bulk Mail services should An Post be required to provide?

AIB has significant internal users of mail involving a large number of different locations. These have different speed-of-delivery requirements and mail characteristics.

The current range of services provides a number of postal options and, in the interests of ensuring THE maximum number of options available, AIB would favour the retention of the current number of discounts.

Should all Bulk Mail services be excluded from the Universal Postal Service (UPS)?

AIB holds the view that all Bulk Mail services remain within the UPS.

Financial institutions are not in a position to reclaim VAT and, should all Bulk Mail services no longer be part of the UPS, A 23% increase in postage costs would consequently be incurred by AIB.

Question 7

What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the UPS?

It is AIB preference that the current range of discounts and Downstream Access remains in its current form to be availed of as per the Terms & Conditions published by An Post.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. O'Connor', written in a cursive style.

Ciaran O'Connor
AIB
Distribution Services
Unit 17 A
Holly Avenue
Stilorgan Industrial Estate
Dublin

2: An Post

**Postal Regulatory Framework
Implementation of the Communications
Regulation (Postal Services) Act 2011**

COMREG DOCUMENT 12/38

**An Post Response
11 June 2012**

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Introductory Statement

An Post welcomes the opportunity provided through this Consultation to contribute its views on the future development of the postal industry in Ireland. In this document An Post submits its response to Consultation 12/38 'Postal Regulatory Framework - Implementation of the Communications Regulation (Postal Services) Act 2011' (the Act).

This Consultation is undertaken by ComReg in advance of it issuing its Strategy Statement on the postal sector reflective of the key provisions of the Act. This Consultation would have been better informed had this Strategy Statement been finalised first.

In the absence of ComReg's Strategy Statement, this Consultation should nevertheless take account of the changed realities of the postal sector both here in Ireland and abroad together with the changing needs of postal users as both senders and receivers.

Given the breadth of the questions posed in this Consultation, it is difficult to present a summary of An Post's responses. In responding to the individual questions posed in the Consultation document, An Post has framed its responses within the terms of both its own and ComReg's statutory objectives under the Act. An Post has been particularly careful to give responses which are designed to address the needs of users of the postal service. It has also endeavoured to highlight to ComReg how some of the proposals outlined in the Consultation document could, if implemented as regulatory policy, result in user detriment and even greater movement away from physical mail towards electronic alternatives ('e-substitution'). Specifically, the proposals relating to Bulk Mail Services would result in a significant increase in prices for businesses in Ireland and the resulting damage to competitiveness would be in conflict with the Government's economic strategy, including its action plan for jobs due to the risk that such policy change needlessly contributing to increased unemployment in the traded sectors of the economy. Moreover, the volume decline likely to arise from this policy change may in turn lead to seriously detrimental effects for senders and receivers of mail due to changes in the features of Bulk Mail Services. In particular, significant losses may be felt by small businesses and vulnerable people in rural areas who cannot switch easily to electronic communications solutions.

While ComReg and An Post are charged under legislation with playing very different roles in the postal sector, they both have a joint interest in ensuring that the postal sector in Ireland remains vibrant, commercially sustainable and that it efficiently meets the needs of Irish business and society. An Post hopes that the ultimate decisions made from this Consultation will advance this joint interest and facilitate achievement of the Department of Communications, Energy and Natural Resources ('DCENR') stated strategic objective;

'[t]o ensure Irish customers, both business and residential, enjoy competitively priced, high quality postal services on a par with the highest quality standards in key comparator EU economies'

An Post notes that this is but the first in a series of Consultations required to implement ComReg's obligations under the Act and trusts that the wider issues of the requirement to assess users' needs for postal services and the financial sustainability of the Universal Service Obligation ('USO') as currently constructed will be addressed both in the decisions arising from this Consultation and in future consultations.

Industry Context

The postal industry worldwide is experiencing very serious challenges arising from severe decline in mail volumes due to increasingly pervasive electronic forms of communications as a substitute and replacement for physical mail. While this switch from physical to electronic communications is essentially being driven by changing consumer and business behaviour, there is no doubt that the ongoing economic downturn has had and continues to exert ever increasing pressure on the rate of e-substitution as businesses and others seeking efficiencies abandon physical mail in favour of perceived cheaper alternatives.

Decline in addressed mail volumes worldwide can be traced back to the year 2000. A recent study jointly published by the International Post Corporation (IPC) and Boston Consulting Group (BCG)¹ indicates that it was in that year that the traditional close link between GDP growth and postal volume growth was broken.

Throughout the Twentieth Century the postal system was the means by which businesses and other organisations communicated with their customers and Government communicated with citizens. The postal service in every developed country was sustained by high volumes of commercial transactional mail and official correspondence. However, the development of the internet and the increasing availability of high speed broadband services is transforming the way people and organisations communicate. Commercial organisations have invested in the development of internet portal sites and online communication systems and Governments throughout the world are actively pursuing e-Government strategies which aim to replace a significant proportion of paper based correspondence with electronic communications.

The precipitous decline in mail volumes in Ireland and elsewhere has serious implications for the provision of the Universal Service. The profits previously made by postal operators from mail delivery in densely populated urban areas were used to subsidise mail delivery in low density high cost rural areas. Falling mail volumes have dramatically changed this situation and in many countries, including Ireland, the USO is generating substantial losses. This situation is not sustainable and is commercially unacceptable as unprofitable domestic mail operations have historically been cross subsidised from

¹ Focus on the Future, IPC, BCG, April 2012

profitable commercial activities. The challenge for operators and An Post in particular, is to find a solution that enables them to continue to operate a national mail delivery network in a cost effective manner so as to meet the reasonable needs of postal service users.

Mail volume decline in Ireland did not commence until 2008 due to the economic growth that prevailed up to that year. From 2008 to 2011 An Post has experienced a decline in mail volumes of 23.5%. Despite this steep volume decline, and as a consequence revenue reduction, An Post has continued to successfully meet its obligations as the Universal Service Provider (USP), albeit at a loss.

Postal industry experts are predicting that mail volume decline will continue into the future with what is termed transaction mail (i.e. utility bills, financial/ bank statements etc.) being particularly susceptible to substitution by electronic means of communications.

An Post is forecasting that mail volumes will decline by 35% from the peak in 2007 through to 2016 and a range of scenarios from a decline of 35% to 47% are used by An Post in planning. An Post has developed a Five Year Plan to address this decline in mail volumes. The key components of the Plan include:

- Significant cost reductions including a forecast reduction in employee Full Time Equivalents ('FTE') of 2,600 during that period. In the period from 2008 to the end of 2011, a reduction of 1,100 FTEs was achieved and an additional 1,500 FTEs will be achieved in the period 2012 – 2016, totalling a reduction of 2,600 FTEs over the entire period. Substantial non payroll savings have also been achieved.
- Development of new revenue streams, mainly in the non USO area.
- Appropriate price increases in Mails services.

In the current environment, maintaining as much volume as possible is vital to securing the economic viability of a self-financing USO. Any action that has the effect of further undermining total mail volumes should not be considered or implemented.

In making decisions about the future direction of the Irish postal industry, An Post is anxious that ComReg fully complies with its statutory objectives as set

out in the Act to promote the development of the postal sector and the availability of the Universal Service at an affordable price for the benefit of all postal users, having understood the needs of postal users and ensuring the ongoing sustainability of the USO, and by extension, the postal sector as a whole.

General Observations

- The overwhelming regulatory requirement is the need to maintain a Universal Postal Service that meets the reasonable needs of Irish postal users – for that to be achieved, it is imperative that there is a properly formulated USO. This is the primary requirement of the Act, of the EC Postal Directive² and of the DCENR's Statement of Strategy³.
- In order to effectively meet this requirement, the definition of the postal services included in the USO must be informed by an evidence-based assessment of (i) the needs of users, (ii) the extent to which these needs would be met by normal market conditions, and (iii) the impact of the defined scope of the USO on the commercial returns and overall economic viability of the designated USO provider.
- More specifically, An Post believes that the following are key considerations in considering the Questions posed by ComReg:

The Relevant Statutory Framework

- The relevant section of the Act in relation to this consultation are:

Section 9 which sets out ComReg's function:

'to ensure the provision of a universal postal service that meets the reasonable needs of postal service users' (emphasis added)

There is also a requirement to develop the postal sector.

Section 10 which sets out ComReg's objectives:

'(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all (emphasis added) postal service users

² 96/67/EC, as amended

³ <http://www.dcenr.gov.ie/Corporate+Units/Press+Room/Publications/Corporate+Publications.htm>

- (ii) *to promote the interests of postal service users within the Community*
- (iii) *subject to sub-paragraph (i), to facilitate the development of competition and innovation in the market for postal services provision'*

The Postal Industry and Postal Users require ComReg to Publish a Clear and Evidence-based Strategy for Postal Regulation

- ComReg should articulate a clear strategy to secure the continued existence and viability of a Universal Service and any decision regarding the services to be provided should be consistent with that strategy. The Universal Services provided must address the needs of users. Before changing the services to be provided within the USO, a detailed investigation into the needs of users should be undertaken. For example, Ofcom (the postal regulator in the United Kingdom) has initiated a review of user needs which it is required to undertake by March 2013 in determining their framework⁴. This review encompasses market research and direct engagement with stakeholders to determine users' needs. Ofcom state that 'we have not yet carried out our review of user needs, and therefore we lack up to date evidence of the costs and benefits of changing the requirements in the way suggested. Accordingly, we do not consider it appropriate to make these changes to the universal service at this point'⁵. This type of detailed research is completely absent from ComReg's Consultation and informed decisions cannot be made in the absence of a review of users' needs.

- The DCENR Strategy Statement 2011-14 states that its objective is:

'[t]o ensure Irish customers, both business and residential, enjoy competitively priced, high quality postal services on a par with the highest quality standards in key comparator EU economies'

In particular, the specific strategies set out for the postal sector include:

- *'In line with the Programme for Government commitment, work to ensure An Post remains a strong and viable company, providing a high quality, nationwide postal service...'*

⁴ Ofcom 'Securing the Universal Postal Service' 27 March 2012 See Section 4.8

⁵ *Ibid* Section 4.51

Performance Indicators are described as:

- *'A well functioning market with universal service provision being delivered in accordance with the statutory framework'*
- *'An Post experiencing a sustainable profitable financial position...'*

Postal Regulation must be Informed by an Accurate Description of Current and Changing Market Conditions

- ComReg must consider the key realities of the postal market as set out in the Industry Context Section to this Response, including:
 - Declining Mail volumes: The USO is currently loss-making which raises questions about its sustainability. The definition of the services within the USO and the funding of same must be seen in this context. Losses will be exacerbated if these proposals are advanced. The Consultation does not make any reference to the challenges facing the industry as described earlier.
 - E-billing: ComReg's separate Consultation on e-billing⁶ which has a significant impact on the postal sector has not yet been finalised.
 - VAT: In the Consultation document ComReg makes considerable reference to VAT. This reference to VAT is in An Post's view seriously flawed and does not reflect the current VAT law (see Responses to Q6 and Q7). If implemented ComReg's proposals would result in substantially more mail items being liable for VAT. In turn this would lead to significant increases in postal rates for customers with limited or no VAT recovery including Financial Institutions, Government Departments, State Agencies and Charities. This increased revenue from the imposition of VAT would go to the State and not to the USO provider. Inevitably there would be a loss of volume as some customers move to electronic alternatives which would lead to a loss in revenue. Users who remain would experience very significant increases in prices. ComReg's justification for this is that '[t]his will put An Post on the same commercial basis as its competing postal service providers'. ComReg's primary objective is

⁶ ComReg document 11/78 of 28 October 2011

the availability of the Universal Service and subject to this overriding responsibility, to facilitate the development of competition. ComReg has not set out anywhere in the Consultation how its proposals will ensure the availability of the Universal Service.

The issue of VAT on postal services is a matter between the postal sector and the Revenue Commissioners and not for the regulator as was recently recognised in the UK⁷.

⁷ *Ibid* See P.32 Section 4.44 'we have no vires to determine VAT policy which is a matter for HRMC'

Response to Consultation Questions

The questions set out in the Consultation are replicated below followed by the An Post response to each question.

The Scope of Regulation

Question 1

Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?

Response to Question 1

Definition of 'Postal Service'

Please note that this response should also be read in conjunction with the An Post letter to ComReg of 23 May 2012 which is at Appendix 1. This letter sets out a request for clarification on key areas of the Consultation document including:

- Reference is made in Section 4.30 and 4.32 of the consultation document to 'common law' without actually explaining the precise common law position as understood by ComReg or citing the appropriate case law references. ComReg's letter of 1 June 2012 in reply to our request also failed to adequately set out the 'common law' to which it referred. In the absence of a full explanation of the common law position as understood by ComReg it is not possible for An Post to engage fully in the response to this Consultation Question or to comment fully on the issues involved beyond noting that ComReg does not appear to have correctly stated the applicable law or set out its position transparently.

That said, we would like to draw attention to the following points:

- "Postal services" are defined in Section 6(1) of the Act as "services involving the clearance, sorting, transport and distribution of postal packets". The "and" must be disjunctive as otherwise Section 33(1) of the Act would not be capable of application such that there would be no "postal service provider" in existence because no one could qualify as a

postal service provider unless he/she had the ability to distribute and if he/she had that ability he/she would not need Downstream Access.

- In Section 4.3, ComReg states that according to Section 6(1) and Section 50 of the Act, the two distinguishing features of a 'postal packet' are that it is addressed and that it has been accepted or intended for transmission by post. A "postal packet" is defined in Section 6(1) of the Act as "an item addressed in the final form in which it is to be carried by a postal service provider and includes a letter, parcel, packet or any other article transmissible by post". The key features are that it is addressed and that it is transmissible by post i.e. capable of being transmitted by post. However, it need never be actually transmitted by post in order for it to come within the definition of "Postal Packet". Section 50 is relevant only to the prosecution of criminal offences and is not relevant to the definition of "postal packet" or "postal service". An Post concurs that a service which involves collection instead of induction at an access point is a "postal service". However, it is not possible to induct mail in a manner which avoids all sorting activity.
- In Section 4.11, ComReg states that the definition of "postal service" in the Act appears to confine the meaning of "postal services" to items deposited at "access points". This is not correct. The plain words of the definition of 'postal service' in Section 6(1) of the Act include "clearance" which is in turn a defined term meaning "the operation of collecting postal packets...".
- With respect to Sections 2.6 and 4.35, while it is a matter of fact whether a document exchange service, express service or a courier service includes all four elements of the definition of a postal service, An Post notes even if all four elements were not part of the service, this does not mean that the provider of document exchange services, express services and/or courier services would not be a provider of postal services. The key point is that the document exchange, express services and courier services are not USO services. Sections 47, 53 and 55 of the Act do, however, apply to those services.

Standard Postal Services (Single Piece Mail)

Question 2

Should the “status quo” i.e. a single tier service offering delivery the next working day, be retained as part of the universal postal service? Please give reasons for your views.

Response to Question 2

An Post is of the view that the “status quo” (i.e. a public single tier service for single piece mail targeting a delivery service on the next working day) should be retained.

This was a topic that was consulted upon in 2005⁸ and the status quo maintained on the grounds that a single service was sufficient.

An Post’s view in this regard is based on the following:

1. There is no legislative basis for a requirement to provide a two tier service. The Act requires that An Post (as the USP) provides certain services⁹. ComReg highlights Recital 11 to Directive 97/67/EC (‘the First Postal Directive’) which states that:

‘it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users’ (emphasis added)

2. ComReg has not identified the existence of a demand for any such two tier service. An Post has not received any complaints or requests from customers seeking such a service. An Post provides a single tier service at one of the lowest tariffs in Europe - in fact in many cases at a lower tariff than the second tier service in other countries. In the absence of

⁸ ComReg document 05/85 ‘The Universal Postal Service - A Working Definition’ November 2005 which stated at Section 7.1.2.2 on page 12: ‘Taking into account the representations received, ComReg is of the view that on balance, the provision of a single tier service is sufficient to comply with the obligations set out in the 2002 Regulations at a minimum level and at present appears to meet the needs of users. Therefore a second tier service will not be included in the working definition of the universal service’.

⁹ Section 16 of the Act

clear customer demand for a two tier service and a detailed Regulatory Impact Assessment, there can be no justification for the provision of such a service.

3. Only 12 of 29 European states (EU27 plus Norway and Iceland) have a first and second class universal service¹⁰. Since that report Belgium has removed its public second tier service. It should also be noted that in most countries where a two tier service exists, the mail volumes per capita are considerably higher than they are in Ireland.
4. The introduction of a second tier service would increase operational costs for both An Post and volume mailers. Operational costs would increase because of the following:
 - a. Additional segregation of mail either by the customer or An Post would be required. Introducing a four way split (Local/Forward/1st class/ 2nd class) would create a huge administrative burden both for customers and for An Post, with no discernable quality benefit.
 - b. The recently installed automation equipment in An Post's Mail Centres would need to be reprogrammed.
 - c. Other Capital costs would be required to put in place appropriate post boxes, additional counter space, and additional mail bag facilities to facilitate the segregation of mail. Additional revenue protection processes would need to be put in place to ensure no cross-over between services occurs. A detailed programme like this would require some time to plan and implement.
 - d. An Post would be required to incur the expense of undertaking a high profile marketing campaign to explain the new service. All current marketing material would have to be withdrawn and re-issued.
 - e. All current stamps would need to be withdrawn and re-issued as first/second tier and would involve a significant retail investment in stamp printing facilities. This would cause a large training and administrative burden (not just for An Post retailers but for convenience stores operating as stamp retailers). This would also increase stamp production and distribution costs on an ongoing basis.
 - f. All meter machines would need to be upgraded to print an identifier for the service level required. There are 13,000 of these nationwide and each owner would have to pay for this upgrade.

¹⁰ Ecorys, Main Developments in the Postal sector 2006-2008, Table 2.3, Page 47

Any second class service needs to be cost oriented. Such a second tier service will cost more than the existing first class service and would be a poor substitute for the range of discounts currently on offer.

5. The introduction of a second tier service could result in An Post incurring a significant dilution in revenue if the second tier service was provided at a discounted rate relative to the First Class rate. Even a modest 5c discount would cost An Post [Confidential] €11¹¹ per annum in lost revenue at a time when the USO is already losing more than €50m per annum. In turn all other prices would have to increase to compensate for this, thus reducing the incentive to post. Furthermore, an additional discount would have to be available to international operators under the terms of the REIMS Agreement.
6. The suggestion to introduce a second tier service would require consideration in relation to the 'de minimis' proposal for Bulk Mail services in the Consultation document. If there is one Bulk Mail service in the USO, some customers who currently avail of a USO bulk discounted service would likely switch to single piece second tier service thereby putting pressure on the postal network and possibly compromising Quality of Service.

At a time when mail volumes are in decline and a detailed five year plan is being implemented to ensure that a viable Universal Service and overall business is ensured, an unnecessary distraction on a significant project such as implementing a second tier service, without any evident customer demand, is not justifiable.

¹¹ Based on internal An Post estimates

Question 3

Do you agree that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “universal postal service”? Please give reasons for your views.

Response to Question 3

An Post agrees that there is no need to mandate the provision of anything other than a basic parcel service, as was decided previously in ComReg Document 05/85.

Question 4

Should ComReg reduce the maximum weight for domestic parcels at the present time, or leave it as is? Please give reasons for your views.

Response to Question 4

An Post is of the opinion that the parcel weight should be left as is, for the reasons ComReg has suggested.

Reducing the maximum weight for domestic parcels in the USO would result in heavier items being classified outside the USO and potentially subject to VAT i.e. this may result in an increase in tariffs for some customer segments. Applying 23% VAT to the price of these postal services would compromise An Post's main growth stream and undermine the sustainability of the Universal Service and the Company.

Question 5

Do you agree that uniform pricing does not require that there be uniform prices for different types of "postal packet" - i.e. "letters", "large envelopes", "packets" and "parcels" - as the costs of processing each type are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.

Response to Question 5

An Post agrees that there is no requirement for a uniform tariff for different types of 'postal packet' i.e. 'letters', 'large envelopes', 'packets' and 'parcels'.

This is for the reasons as set out by ComReg that the costs of processing and delivering such mail are so different.

In fact, if a uniform tariff applied across these very different types of 'postal packets' as opposed to the current arrangements, the rate would be substantially higher than the current letter rate and lower than the current packets rate resulting in the senders of letters being penalised by having to subsidise the senders of packets thus distorting competition in these segments. For example, say for illustrative purposes, a uniform rate for all types of postal packets was set at €1. This would lead to a situation whereby those sending letters would see a significant increase in the cost of the service thereby driving customers to alternatives and hence exacerbating mail volume decline. In addition, An Post would be forced to provide a parcel service at significantly lower rates. Over time a 'letter' volume decline and a 'parcel' volume increase - due to the pricing structure - the average rate would increase again. The net impact would be an acceleration of the decline in letter mail. This would be contrary to ComReg's statutory objectives.

In addition to this, An Post does not see a requirement for stamped and metered mail to be provided at a uniform tariff as again the costs of providing each service are significantly different¹².

¹² As is reflected in the current payment method discount as approved by ComReg

With regard to international mail, An Post does not see a requirement for a uniform tariff by format (letters, large envelopes, packets and parcels) and/or by destination as rates charged by other operators for delivery of mail in the destination country differ.

In conclusion, An Post emphasises that uniform tariffs should only apply to domestic single piece tariffs.

Bulk Mail/Access Products

Question 6

Should An Post be required to provide a single “last resort” Bulk Mail service as described in paragraph 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.

Question 7

What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.

Response to Question 6 and Question 7

At the outset, and before we explain why An Post feels strongly that certain Bulk Mail services must form part of the future definition of the USO, please note that An Post disagrees with the contextual information provided by ComReg in this section, which also includes inaccuracies¹³. In particular:-

1. Of critical importance in this is the fact that An Post does in fact provide nationwide access to all its Bulk Mail services such that all services are undoubtedly “universal in character”, contrary to what is set out in Section 5.35 and Annex 4 to the consultation document.

The fact that An Post does not have automation equipment in every single office in the country is irrelevant to the nationwide availability of Bulk Mail services. The relevant automation equipment is located in four processing hubs and all mail handled by An Post is processed through these hubs. However there are 43 acceptance points throughout the State and An Post accepts mail at these locations for all of its Bulk Mail services. In the event that mail presented at one of the non mails centres acceptance points (39 in total) for conveyance by one of An Post’s “machineable” Bulk Mail services, An Post will simply

¹³ See An Post letter of 23 May 2012 which is at Appendix 1

add an extra day to the service in order to transport the mail to the correct location. It is certainly not the case that some parts of the country are excluded from availing of Bulk Mail services (see Appendix 2 for the full list of Bulk Mail services provided by An Post).

2. In addition, the definition of Bulk Mail from previous ComReg documents¹⁴ has substantially been amended with the introduction of the words 'pre-sort' as a criterion, without any change in the underlying legislation. It cannot be the case that mail can only be classified as Bulk Mail if it is pre-sorted.
3. The tariffs for Bulk Mail services 10 and 11 as set out by ComReg in Annex 4 of their Consultation document are wrong. ComReg cannot expect an informed answer to the question of which service should form the service of last resort with inaccurate information provided.

Substantive Response

The consultation document suggests that Bulk Mail services are somehow inconsistent with the concept of the USO and therefore, in principle, could be excluded altogether from its definition. An Post disagrees vigorously with this analysis. For reasons described below, An Post is highly concerned about the adverse impact on customer interests of removing Bulk Mail from the USO:

Bulk Mail services have distinct characteristics related to their USO status and are not substitutable with single piece mail, for example.

In An Post's experience, the distinctive features of its Bulk Mail service offerings, including the flexibility and choice for the customer depending on their requirements as set out below, clearly distinguish the services from single piece mail and are deemed highly important by customers.

The USO service guarantees of (i) five day collection and delivery, and (ii) ex ante regulatory supervision are also valued by Bulk Mail users, in An Post's experience.

¹⁴ ComReg document 07/06 which defined Bulk Mail as 'a means a substantial number of similar postal items which are deposited with An Post, or any other service provider, at the same place and time, to be conveyed and delivered to the addressees indicated on the items'. This is also the definition set out by ComReg in document 03/50.

What does the customer want?

Currently a customer has options which may be summarised as follows:

Table 1: An Post's current customer offerings

	Next Day	Deferred
No Machineable/Presort Requirement	✓	✓
Machineable/Autosort	✓	✓
Presort	✓	
Meter/Ceadúnas	✓	✓

A full list of An Post's bulk services is provided at Appendix 2.

ComReg is effectively proposing that only one option be made available to the USO customer base and moreover - without any market research or demonstrated understanding of customer needs - that it will determine this single option.

It is not clear how users' needs and the extent of their ability (or lack thereof) to substitute one service with another have been established. In particular, it appears that no market research has been carried out on the specific details of real customers' needs regarding Bulk Mail services and whether these needs are likely to be met in the absence of the legal safeguards of the USO.

Bulk mail services with guaranteed USO features are indispensable requirements for senders and recipients, in particular SMEs and vulnerable recipients

The high usage of An Post's current Bulk Mail services (c.40% of An Post's total mail volume) demonstrates clearly the importance of Bulk Mail services with guaranteed USO features to Irish postal users as both senders and recipients. We focus on two particular customer categories where detriment may arise.

Small Business Senders

From the senders' perspective, small and start-up businesses rely heavily on An Post's current service offerings. These customers may well lack the resources needed to pre-sort mail, such that their Bulk Mail service requirement would fall outside ComReg's suggested definition of Bulk Mail. Thus, ComReg's proposal would result in small business Bulk Mail users (i)

not benefitting from the USO service guarantees set out above and (ii) not being able to afford to use Bulk Mail Services (due to the VAT impact described below). The continuing ability of small businesses to use stamps would be insufficient compensation in this respect.

We note that that supporting small businesses, and in particular reducing their costs, is an essential element of the Government's current economic development strategy. In particular, we would like to draw ComReg's attention to the following excerpts from the November 2011 report of the Government's Advisory Group for Small Business: "The Voice of Small Business – A Plan for Action":

"There are almost 200,000 small firms operating in Ireland today. Over 655,000 people are involved in their operation. That is almost half of all people engaged in businesses in Ireland. They contributed €26.5 billion to Gross Value Added in the economy (2009)....By improving the business environment for small businesses, all businesses in Ireland will benefit, and small businesses will thrive." (Page VI , emphasis added)

In our view, the likely business impact of removing Bulk Mail services from the USO would be inconsistent with users' needs and the above-described Government objectives.

Vulnerable Mail Recipients

From the recipient's perspective, many vulnerable people who would not have access to electronic communications methods place significant value on receiving Bulk Mail / Direct Mail deliveries. If Bulk Mail was taken outside the USO, increased postal prices for senders (in particular charities and banks) and reduced service guarantees might result in (i) deliveries to these customers being terminated or reduced or (ii) senders of Bulk Mail seeking to pass on price increases to those mail recipients living in rural areas (e.g. by virtue of an additional bank service fee for postal correspondence). Vulnerable user detriment would also arise if An Post stopped delivering bulk mail but continued delivering single piece mail in specific rural areas.

The above consequences of removing Bulk Mail from the USO could lead to harmful social exclusion, in particular of older people.

The postal prices of Bulk Mail services will increase if they are removed from the USO

As described in the detailed section on VAT below, the potential VAT impact of removing Bulk Mail from the USO would lead to significant price increases for Bulk Mail services to the detriment of postal users, in particular small businesses and business customers with limited or no VAT recovery.

Although An Post is not advocating that ComReg ought to come to a decision on whether Bulk Mail has the characteristics of a USO service based on its potential VAT treatment only, this issue will obviously impact on the affordability of necessary services, in particular to small businesses and business customers with limited or no VAT recovery, which could in future be up to 23 per cent more expensive.

Moreover, removing Bulk Mail from the USO would remove the possibility of price regulation of these services. This change would be to the potential detriment of small businesses and businesses with limited or no VAT recovery which have limited bargaining powers.

Who will be impacted by the VAT effect of ComReg's proposals?

For some organisations the proposals which result in VAT being levied on postal services may not make a significant difference in that they will be able to claim back the VAT involved and therefore it may only entail a cashflow and administrative impact. But for many key customer groups the impact is likely to be very significant. These include any VAT exempt organisations such as Government, Charities, Banks and other Financial Institutions, Health Care Companies etc. If An Post chooses to continue to provide the existing discount services, these customers would face a significant price rise. Together these customers account for c. 50% of bulk mail volumes. Depending on customer demand An Post might restrict access to such discounted services to large urban areas. Some bulk customers would have no choice but to use single piece mail or (if they could) avail of the proposed service of last resort.

The impact of increased prices on demand for Bulk Mail may lead An Post to cease to provide Bulk Mail services with USO service guarantees

The removal of Bulk Mail services from the USO may leave An Post with no option but to make changes to its Bulk Mail services which may have a detrimental effect on some customers.

For example, the volume reductions that are likely to result from increased prices may make it a commercial necessity for An Post to reduce its Bulk Mail collections or deliveries to fewer days per week, for example, a 3 day service to rural areas.

Notwithstanding An Post's continuing USO in relation to single piece mail items, the incremental costs of providing bulk mail products (in particular rural collections) may outweigh the otherwise attractive additional revenue available from transporting additional Bulk Mail volumes across the "last mile".

Removal of Bulk Mail Will Accelerate Volume Decline and Increase the Cost of the USO and the Current Threat to its Financial Sustainability

An Post believes strongly that removal of Bulk Mail from the USO may ultimately lead to e-substitution, as An Post's current Bulk Mail services are not necessarily substitutable with Single Piece Mail or Bulk Mail services at a higher price or without USO guarantees.

Mail volume losses due to e-substitution will prejudice An Post's ability to continue to cross-subsidise the cost of its single piece USO service through revenue from the more profitable Bulk Mail services. The cost of the USO will therefore increase. An Post does not generate sufficient revenue from its other non-USO activities to compensate for any such increase in the cost of providing the USO. Therefore, the removal of Bulk Mail from the USO presents a serious threat to the ongoing financial viability and sustainability of the core USO service of single piece mail.

Removal of Bulk Mail Services from the USO is likely to have an adverse impact on the affordability of Single Piece Mail

The potential increase in the cost of providing the USO as a result of excluding Bulk Mail services from the USO, as described above, would most likely culminate in price increases for single piece mail services that may conflict with the requirement for those service to be affordable for Irish postal users.

International experience of removal of Bulk Mail from the USO

We note that ComReg has a statutory duty to have regard to relevant international developments in postal regulation. In this respect, it is relevant that Ofcom, the UK postal regulator only took a decision to remove all Bulk Mail services from the USO in August 2011, on the basis that competition had developed sufficiently for it to be assured that users' needs would continue to be met by normal market conditions. At the time of the decision, Royal Mail had a relevant market share of 38% only (in the upstream market in 2010). On 2 April 2011, Royal Mail introduced price increases for its bulk mail products. Price increases averaged 11%, but reached levels of up to 20%¹⁵.

An Post is not aware of any evidence regarding the dynamics of competition in the Irish postal market on which ComReg could base a reasonable assumption that postal users' needs in relation to Bulk Mail will inevitably continue to be met by normal conditions of competition, and therefore do not require the safeguards provided by their inclusion in the USO.

VAT Analysis

The proposal that ComReg outlines in the Consultation document puts customers that cannot reclaim VAT at a significant disadvantage. The application of VAT to the price of An Post's services will far outweigh any price reduction from additional VAT recovery entitlement. Therefore applying VAT at 23% would give rise to a significant price increase on these customers thereby encouraging further e-substitution.

Such an action is contrary to ComReg's objective of promoting the development of the postal sector, for 'all'.

¹⁵ <http://parcelfromchina.com/news/2012/0223/619.html>

The analysis in the Consultation document contains some fundamental errors in relation to the VAT impact for An Post as a result of reducing the scope of the USO. In this regard An Post wishes to make the following points:

- The VAT exemption quoted in Paragraph 5.13 of the Consultation document does not reflect the current VAT law.

Article 132 of Council Directive 2006/112/EC provides exemption from VAT for “the supply by the public postal services of services other than passenger transport and telecommunications services and the supply of goods incidental thereto”.

The amended legislation quoted in Paragraph 5.13, which was introduced following the judgement in the ECJ case of TNT Post UK Ltd¹⁶, has now been superseded by Paragraph 1 of Schedule 1 to the VAT Consolidation Act 2010 which exempts “Public postal services; including the supply of goods and services incidental to their provision, which are provided as part of a universal service, in accordance with Chapter 2 (as amended by Directive 2008/6/EC of the European Parliament and of the Council of February 2008 (OJ No L52, 27.02.2008, p 3)) of Directive 97/67/EC of the European Parliament and of the Council of December 1997 (OJ No L15, 21.01.1998, p 14), by An Post (including Postmasters) or by any other persons designated by the State in accordance with that Chapter (as so amended), but only if that supply is not on terms that have been individually negotiated.”

- ComReg has stated at Paragraph 5.16 of the Consultation document that An Post “should also be able to reduce its prices for [non USO] services as a result of being able to reclaim input VAT”.

This analysis is incorrect. ComReg has not taken account of the fact that staff costs and VAT exempt costs such as insurance constitute approximately 75% of An Post’s operating costs. These costs do not attract a VAT charge. Applying VAT at 23% to the price of An Post’s postal services will significantly outweigh any price reduction arising from An Post’s additional VAT recovery entitlement.

¹⁶ TNT Post UK Ltd v HMRC Case C-357/07

It should also be borne in mind that the proposals present a number of significant additional operational costs for An Post (such as amending IT systems and staff training). These costs would need to be factored into the price of the services thereby diluting or eliminating any input VAT benefits.

- Paragraph 5.39 of the Consultation document states that defining an extensive range of services as coming within the USO would deprive “customers of the ability to negotiate terms and conditions that suit their particular requirements, and where they are registered for VAT to recover the input VAT incurred by An Post”. (emphasis added)

This statement is incorrect. Postal users cannot recover VAT incurred by An Post.

It is also important to note that being registered for VAT does not result in an automatic VAT recovery entitlement for a business. Only those business customers who are engaged in VATable business activities can recover VAT. This is discussed in more detail below.

- The VAT impact on postal customers who are entitled to recover VAT would at best be neutral.
- Paragraph 7.15 of the Consultation document sets out the stakeholders affected by ComReg's proposals. This paragraph distinguishes between VAT registered and unregistered businesses. It is important to note that the assumption running through the consultation document that a business which is registered for VAT can automatically recover VAT is incorrect.
- Paragraph 7.18 of the Consultation document notes that “An Post should also be able to offer lower prices as a result of being able to reclaim input VAT”. This statement is incorrect.
- Paragraph 7.18 of the Consultation document also notes that “An Post's VAT exempt customers would not benefit to the same extent”. This analysis is incorrect. The proposed reduction in the scope of the USO will result in a significant additional cost for customers with limited/no VAT recovery. Approximately 50% of An Post's customers

are not in a position to recover VAT. This includes private individuals, non VAT registered sole traders, non VAT registered companies, Government Bodies, Hospitals and Nursing Homes, Schools and Universities, Charities and those organisations engaged in VAT exempt activities such as financial services.

- Throughout the text of the Consultation document, and particularly at Paragraphs 7.24 and 7.25, ComReg notes that reducing the scope of the USO will facilitate the further development of competition in the postal market by putting competitors on an equal footing from a VAT perspective. The question of fiscal neutrality (that similar transactions should attract the same VAT treatment if they meet the same needs of the customer) in the field of postal services was considered at length in the ECJ case of TNT and later in the ECJ case of Rank¹⁷. In these judgements the court found that in order to assess the comparability of the services it is necessary to not only look at the services being provided but also the context in which those services are supplied. The obligations on the public postal service put it in such a different position from that of a competitor such that the differing VAT treatments did not result in any breach of fiscal neutrality.

The VAT exemption in Article 132 of the Directive must be given its intended aim of protecting the USO and offering postal services which meet the essential aims of postal users at a reduced cost.

The impact of Downstream Access ('DSA')

The Act now provides for the right for other operators to negotiate access to the An Post network because this is the postal network of the universal postal service provider. This obligation is part of the USO. A USO 'off the shelf' solution should be available to facilitate those who require access but who may not have the resources to enter detailed negotiations with An Post. Access is a complex area and individual negotiation is both costly and time consuming. An Post is happy to negotiate with any party in this regard but the option of a simple and transparent 'off the shelf' solution should not be ruled out by ComReg.

¹⁷ HMRC v The Rank Group plc Case C-259/10

Where Bulk Mail is concerned An Post is of the view that ComReg is not sufficiently emphasising the importance of keeping mail in the postal network as a communications medium of choice. Any mail which is lost means that the cost per unit increases, which will result in a situation where all consumers will suffer. Ensuring a financially sustainable USO is ComReg's statutory objective and one which should not be lost sight of.

Bulk Access Services

ComReg appears not to have examined the implications on the Bulk Access Services introduced by An Post on 1 January 2010. These three services were designed to cater for international operators within the European Union, European Economic Area¹⁸ and Switzerland who were unwilling to enter into an agreement with An Post for the delivery of their mail in Ireland. The three services involved are:

- o Standard service (based on the early presentation pre 3pm service)
- o Pre-sorted service
- o Early presentation auto-sort service

These services, which were also available to domestic customers, were welcomed by ComReg in its Information Notice 09/94 (issued in December 2009):

'ComReg welcomes the action being taken by An Post to address the losses it incurs in the delivery of inbound cross border mail'

However, based on ComReg's proposals it is not clear what the impact is on these services. The conditions that gave rise for the need for these services may re-emerge in the future.

The VAT impact on any proposal must also be considered. The application of VAT on international mail services has been the subject of considerable discussion and debate at EU level¹⁹ and among operators. Any change to the tax treatment of these services is a matter for the European Commission, the Tax Authorities and the postal operators to determine.

¹⁸ EU27 together with Norway and Iceland

¹⁹ Reference Value Added Tax Committee Working Paper No. 658

To understand the VAT impact of any proposals in relation to Bulk Access, and to ensure consistent application of the VAT rules in relation to international mail services, ComReg should allow for a detailed review of the matter to be conducted in advance of making any decision.

This is an extremely complex area and ComReg has a “duty of care” to properly consider the full impact of its proposals in making its decisions. A significant amount of uncertainty will arise if ComReg’s ultimate decision is as proposed in its Consultation document. An Post urges ComReg to reflect on its proposals and to increase the number of bulk services to the An Post suggested number.

An Post’s proposed way forward

An Post is strongly of the view based on the analysis above that the following domestic Bulk Mail services should be retained within the USO:

- Fully Paid Bulk Mail
- Bulk Mail Service - Discount 6 (Deferred, +85% auto-sort)
- Bulk Mail Service - Discount 10 (Pre-Sort)
- DSA service as proposed by An Post
- Discounts for volumes of 350 and upwards (Meter Discounts A and B)
- Three Bulk Access Services (as set out above)

The full list of domestic Bulk Mail services which An Post proposes should remain within the USO is listed at Appendix 2.

This is for the following reasons:

- Fully Paid Bulk Mail must remain within the USO as otherwise some customers would seek to avoid the VAT charges arising and items would simply be posted individually into any An Post posting point, thus negating the operational benefits derived from Bulk Mail. This would put pressure on the single piece processing window and would have knock-on implications for Quality of Service.
- Customers need an appropriate mix of deferred/next day, pre-sort and machineable services within the USO to facilitate choice particularly

those customers who cannot negotiate separately.

- Bulk Access services need to be available to cater for situations whereby international operators (from within the European Union, European Economic Area and Switzerland) do not enter into an agreement with An Post
- Meter discounts (discounts for lower volumes) need to remain in the USO as otherwise these customers would be disadvantaged. Also meter machines are not currently set up for collecting VAT and this would create logistical issues.
- If most Bulk Mail services are outside the USO, An Post would no longer have an obligation to deliver this mail on every working day and it may be necessary to only deliver these on a less frequent basis i.e. not on a daily or uniform basis.

Conclusion

An Post strongly urges ComReg to re-consider the impact of the proposals on the postal industry as a whole. The proposal as set out will simply see a decline in volumes which in turn pushes up the cost of providing the service to the remaining customers. This cannot be in line with ComReg's statutory objective to promote the development of the postal sector.

For these reasons, An Post believes that the USO regulatory safeguards are extremely valuable for Bulk Mail users. Even if An Post chooses to continue to provide bulk mail collection and delivery services five days a week at a uniform price in the absence of USO obligations, the retention of a legal safeguard for this is of significant importance in the context of current economic conditions and the pressing needs of vulnerable postal users for these distinct postal services. A set of Bulk Mail services, as set out above, should therefore remain within the definition of the USO.

Registered/Insured

Question 8

Should An Post provide standalone services for registered and insured postal packets? Please give reasons for your views.

Response to Question 8

An Post is not aware of any customer concern with the current arrangement which provides a registered and insured product offering or any unmet customer needs justifying a change to the current position. ComReg previously consulted on this issue in 2005 and was satisfied with the service offering which met customers' needs. No fresh market research has been undertaken by ComReg and provided to the market to justify any change to the current service offering.

The existing services provided by An Post meet the requirements of European, domestic, and UPU regulations²⁰.

The separate definitions of registered and insured services to which ComReg refers is an issue of transposition which refers back to the First Postal Directive and is one that was never intended as these services are clearly linked.

This distinction between registered and insured items is absent in Directive 97/67/EC - therefore it does not appear to be the intention to require separate registered and insured services. The indent added in transposition exists simply to give effect to the optional UPU status attached to insurance (rather than mandatory UPU status attached to registration) and should not be read to require An Post to provide standalone registered and insured services.

Moreover there is a growing acceptance among many leading European operators and within the UPU that the insured service now constitutes little more than an anachronism and that an alternative 'hybrid' service based on registration should be developed. For example, in Germany inbound insured

²⁰ Article 13 of the Universal Postal Convention and Final Protocol (2008 Geneva Acts)

letters are now processed as ordinary registered items and the outbound insured service has been effectively discontinued²¹. One of the reasons for this action is that insured items are highly visible and are therefore easy targets for thieves. Also since April 2011, Royal Mail treat inbound insured letters simply as priority items²². At a global level the trend is towards ceasing a standalone insured product²³.

In the 2008 Congress Resolution C13, a study was mandated into the insured service and whether it should be transformed into a 'basic' or mandatory service. In April 2011 the Product Development and Marketing Group (PDMG) declared that its task in studying this issue was rendered difficult due to a number of factors including "*low volumes in the international network for insured, express and recorded delivery, leading to a general operator lack of awareness of what additional services to provide, particularly for delivery*"²⁴. Consequently the PDMG recommended that the insured service remain optional.

ComReg should also note that a proposal will be brought to the UPU Doha Congress in September 2012 to abolish the POD (or 'Recorded Delivery') only service due to the low level of interest expressed by member countries in offering the product to customers. Among the reasons set out in support of this draft amendment is that the POD service is 'for all practical purposes "invisible" in the UPU network today'²⁵.

It is becoming the norm to offer a single service combining the benefits of both registration and insurance.

If separate services for Registered and Insured were to be provided the following significant issues would arise for An Post:

- Counter acceptance procedures and systems would need to be updated
- Meter machines would need to be re-programmed
- The An Post Guide to Services and Guide to Postal Rates would need to be updated and re-printed

²¹ UPU circular No. 10 of 25 January 2010

²² UPU circular No. 49 of 28 February 2011

²³ Over 100 of the UPU's 190 member countries no longer offer an insured service.

²⁴ Postal Operations Council - POC C1 PDMG 2011.1 - Doc 4 (Page 16)

²⁵ UPU Proposal 20.13.2

- An Post Mails Operations would need to be re-designed to facilitate the processing and delivery of separate registered and insured services
- Customer awareness initiatives would need to be undertaken to explain the separate services.
- International services offered would be different to the domestic service as outbound insured items would be treated in the destination country at the discretion of the Designated Operator in that country
- There is no evidence that providing two separate services would result in lower tariffs compared with the current arrangement.

Other Products and Services

Question 9

Should the services listed in paragraph 5.48 form part of the universal postal service? Should any of these services be excluded, or should any additional services be included? Please give reasons for your views.

Response to Question 9

An Post supports the inclusion, as part of the USO, of the following services (previously consulted on in ComReg's document 05/85²⁶)

- Free postal service for blind and partially sighted persons
- Sending books abroad
- Business Reply/Freepost
- Private boxes/bags
- Certificate of posting (free)

An Post remains of the view that Redirection and Mailminder are value-added services and should not form part of the USO.

²⁶ Subject to each services' terms and conditions

Draft Regulation under Section 16(9) of the Act

Question 10

Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act? Please give your reasons for any such suggestions.

Response to Question 10

The draft Regulations should reflect the comments made above.

In particular the definition of "bulk mail" in Section 2(1) of the draft Regulation is incorrect and its amendment as currently envisaged would run counter to ComReg's own statutory objectives to ensure a Universal Service. As explained above, there should be no pre-sort requirement as this would prevent a significant number of smaller undertakings from having the security of a USO Bulk Mail Service. In addition the words "as marked on each of the postal packets" should be deleted from the definition.

The definition of a "large envelope" in Section 2(1) of the draft Regulation needs to be amended to reflect a maximum weight of 1kg for domestic items rather than 500g. Otherwise anything over 500g would be considered a packet and priced at that rate.

The definition of "postal franking machine" in Section 2(1) of the draft Regulation needs to be amended to provide for the approval of each machine type. Approval is required for revenue protection purposes, for example, to protect against fraud. This approval process has been undertaken by An Post up to now.

Sections 3(1) (v) and (vi) of the draft Regulation should be combined to reflect the fact that the only practical way to provide the insured service is in conjunction with the registered service.

Regulation 3(1)(viii) of the draft Regulation should reflect a much wider availability of Bulk Mail services required within the USO as set out in An

Post's response to Questions 6 and 7 above, including the three bulk access services introduced in January 2010.

Regulation 3(1)(ix) of the draft Regulation also needs to be reviewed as it is not capable of being enforced and would pose a serious threat to international mail revenues.

In addition, Sections 3 (1)(x) (b) and (d) should be deleted.

A revised version of the draft regulation is included at Appendix 3.

An Post's Terms and Conditions for its Universal Services

Question 11

Do you agree that An Post's terms and conditions for its universal postal service should be set out in a single, comprehensive document and in plain language? Please give your reasons.

Question 12

Should An Post be required to publish the terms and conditions of its universal postal service, including its Schedule of Charges, in Iris Oifigiúil and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons.

Question 13

Do you wish to suggest any amendments to the draft Direction to An Post? Please give your reasons.

Response to Question 11, Question 12 and Question 13

An Post has recently published Terms and Conditions for universal services, which involved a detailed consolidation of over 200 different statutory instruments enacted since 1939. These were published on the An Post website on 12 April 2012, having been submitted to ComReg in December 2011.

To service the needs of different customer segments, An Post published one set of terms and conditions for single piece customers, and one set for bulk customers. The needs of these customers are fundamentally different and An Post maintains that it would be confusing, counterproductive and unnecessary to have both in one document. It is important to keep terms and conditions as simple as possible particularly for the consumer and to avoid the situation where a consumer has to “wade through” terms and conditions relating to Bulk Mail services which are not relevant to him or her.

An Post has endeavoured to set out its terms and conditions in plain language. However, as evidenced by this Consultation paper, dealing with postal legislation can be quite complex and this needs to be taken into account by ComReg in making its decision. An Post operates a professional and dedicated Customer Services facility for our customers and contact details (address, callsave number, website address, email address) are widely publicised. The Customer Services team are committed to helping any customers with issues that they may have with any aspect of the service An Post provides.

The two documents containing the terms and conditions of the universal services are available on the An Post website at present (please see www.anpost.ie).

ComReg refers in Section 8(4) of the Consultation document to An Post’s ‘proposed terms and conditions’. As stated, these were published and notified to ComReg on 12 April. The Act requires that these should be approved by ComReg within 6 months from the date the Act was passed into law (see Section 22 of the Act).

As stated previously, the terms and conditions are clearly available on the An Post website. An Post can make these available in Iris Oifigiúil, and to keep a stock of printed versions. It would be impractical for An Post to seek to offer these at all places where stamps are sold - which could be a vending machine or a convenience store.

An Post can make the documents available at all 57 An Post Company post offices and 1,099 postmaster-operated offices. Extending this to 175 postal agents and approximately 2,400 retail premises where the retailer has a contractual relationship with PostPoint to sell stamps would be onerous not

just for An Post but for small independent retailers and could entail contractual difficulties for An Post. An Post has no contractual relationship with many other stamp sellers and so would not be in a position to require them to comply with this requirement. As mentioned already, An Post makes its Customer Services freephone and email details available at locations where copies of the documents could be requested. This number and email address are available on all of An Post's marketing literature, posting points and online.

The Draft Direction (Annex 6) should be amended to reflect these issues.

A revised draft Direction is included at Appendix 4.

Providers of Services within the Scope of the Universal Postal Service

Question 14

Have you any observations to make about ComReg's analysis of the issues involved?

Question 15

Have you any amendments to suggest concerning the proposed guidelines set out in Annex 7? Please give your reasons.

Response to Question 14, Question 15

An Post considers that the Draft Guidelines to be issued under Section 37 of the 2011 Act, at Annex 7 of the Consultation, provide limited guidance to postal service providers in ascertaining whether they are within the scope of the universal postal service.

An Post understands that the key determinant is whether a postal service user would view a particular postal service as being "reasonably interchangeable" with a service provided by An Post as part of its universal postal service. At page 78 of the Consultation document, ComReg suggests that this determination can be made by "comparing and directly assessing the characteristics and similarities of the respective services" which, ComReg

states, “may include consideration of the following characteristics and similarities”. However, no characteristics or similarities are listed. We would suggest that the Guidelines are developed further in this regard.

An Post would also be interested in understanding ComReg’s proposals for the policing and enforcement of these Guidelines and in particular ensuring compliance by postal service providers with inter alia Section 38 of the Act. For example, ComReg²⁷ required that authorised operators provide certain information to it and publish same. An Post is not aware that this has occurred.

An Post also notes the reference in Annex 7 to a performance of a SSNIP²⁸ test in determining whether an entity falls under scope of Section 37 of the Act. An Post would also point out that there is a geographical dimension to be considered - the SSNIP test of 5-10% is not appropriate when a competitor seeks only to deliver in certain areas. For example, another operator may choose to only service Dublin and may charge a lower rate per item. This is within the scope of the USO as under Section 37 of the Act a service can be within the USO even if not provided throughout the State. However, using ComReg’s test as set out, the service may not be classified as being within the scope of the universal service as the differential in prices may be more than 10% compared with the equivalent An Post service.

Regulatory Impact Assessment

Question 16

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.

Response to Question16

Based on the analysis to date An Post considers that the consultation document is flawed given that there has been no assessment of users’ needs and the fact that the consultation contains fundamental errors in terms of VAT

²⁷ Document 07/105 - Complaints and Disputes Resolution Guidelines
²⁸ significant and non-transitory increase in price (SSNIP) test

analysis and hence an examination of the draft Regulatory Impact Assessment ('RIA') is of no real benefit.

At a minimum a RIA should reflect the fact that volumes are likely to decline as a result of effective price increases for some Bulk Mail customers due to VAT being imposed on customers who cannot subsequently reclaim the VAT. This ultimately impacts on all users of the mails service as less volume through the system increases the cost per unit of the remaining items. Also the USO losses will increase if the Bulk Mail services are excluded to a large degree from the USO, with potential implications for all users of the service.

ComReg should be mindful when undertaking its analysis of the VAT impact of the proposals, that any VAT related change arising as a result of ComReg's decision will require significant time and financial investment to implement. This too is a matter for An Post and the Revenue Commissioners.

As none of these issues have been addressed in the RIA, it is therefore incomplete.

Appendices

Appendix 1: Letter from An Post to ComReg



An Post

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Mr George Merrigan
Director – Market Framework
ComReg
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Dublin 1

23 May 2012

**Ref: ComReg Consultation 12/38 ('the Consultation) pursuant to the
Communications Regulation (Postal Services) Act 2011 ('the Act')**

Dear George

I refer to the above Consultation. Please note that this is not a response to Consultation but a request for certain details to be clarified or noted as matters of fact. An Post looks forward to making a full response by the closing date of 11 June.

However in the interim we wish to clarify the following points and seek the necessary additional information to allow us to provide a comprehensive response:

- You refer throughout the document to 'common law' – could you please provide links to these references so as to assist our legal advisers in their review. I refer specifically to Sections 2.2-2.7; 4.30; and 4.34.
- Section 5.6 appears to be incorrect and should refer to sections 21-24 not 22-25. Please confirm our understanding.
- Section 33 is omitted from the list of obligations in Section 5.6. Is this intentional?
- Please note that Annex 4 contains some factual inaccuracies – the tariffs for Discounts 10 and 11 are incorrect.
- The consultation sets out that only 6 bulk mail discounts are available nationwide. All 12 services are, in fact, available as per ComReg document 07/06¹. For example, a large customer presented over 10k

¹ ComReg Document 07/06 'Regulation of Postal Services – Universal Service Obligation - Bulk Mail Access', January 2007



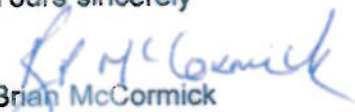
items for Discounts 5 and 6 at Cavan on 10 May, for subsequent processing the following day in Athlone Mails Centre.

- Your definition of Bulk Mail (Annex 5) has changed since your document 03/50 and includes the words 'pre-sorted'. Can you confirm whether this is intended or not as this would clearly limit the services that would qualify as bulk mail and potentially make Question 7 redundant?

We would appreciate your clarification on these points in order to ensure that we can provide as complete a response as possible.

I look forward to hearing from you.

Yours sincerely


Brian McCormick
Services Director

Appendix 2: List of An Post Domestic Bulk Mail Services

Service	Title	Min Quantity	Price (50g Letter)	Machine sortable	OCR readable	Pre-sorted	Delivery Target*	An Post preferred USO service	
				Current					
Fully Paid	Fully Paid Bulk Mail	2,000	54c	No	No	No	D+1	✓	
Disc 1	Presentation before noon auto-processing	2,000	44c	Yes	No	No	D+1		
Disc 2	Presentation before 3pm auto-processing	2,000	45c	Yes	No	No	D+1		
Disc 3	Deferred processing before noon auto processing	2,000	42c	Yes	No	No	D+2		
Disc 4	Presentation before noon 85%+ autosort	2,000	43c	Yes	Yes	No	D+1		
Disc 5	Presentation before 3pm 85%+ autosort	2,000	44c	Yes	Yes	No	D+1		
Disc 6	Deferred processing before noon 85%+ autosort	2,000	41c	Yes	Yes	No	D+2	✓	
Disc 7	Presentation before 3pm	2,000	46c	No	No	No	D+1		
Disc 8	Deferred processing before noon	2,000	44c	No	No	No	D+2		
Disc 9	Pre sorted (151 sorts) before 5.30pm	2,000	44c	No	No	Yes	D+1		
Disc 10	Pre sorted (151 sorts) before noon	2,000	43c**	No	No	Yes	D+1	✓	
Disc 11	Deferred Processing before noon	2,000	48c**	No	No	No	D+2		
Disc 12	Deferred processing before noon auto-processing	2,000	45c	Yes	No	No	D+2		
Disc A	Deferred Manual Processing before noon	350	48c	No	No	No	D+2	✓	
Disc B	Deferred Automated Processing before Noon	350	45c	Yes	No	No	D+2	✓	
Access	Presentation before 3pm 85%+ auto-sort	40kg per format and weight	44c	Yes	Yes	No	D+1	✓	
Access	Presentation before 3pm	40kg per format and weight	46c	No	No	No	D+1	✓	

Access	Pre-sorted before noon	40kg per format and weight	43c	No	Yes	No	Yes	D+1	✓
Proposed DSA		10,000 per mailing with monthly and annual requirements	[Confidential] (Composite)	Proposed Yes	Yes	Yes	Yes	D+1	✓

*Where D is the day of posting and the "+n" is the number of working days after the day of posting

**ComReg quoted the incorrect rates in their consultation paper. The above rates are correct.

Notes:

The definition of "bulk mail" cannot relate solely to "pre-sorted" items as can be seen from above.

Discounts 1-6 and 12 provide cost savings opportunities to An Post at the Mails Centres. However, An Post is and has been more than happy to accept mailings for these customers at any of the non mails centres acceptance points (39 in total spread throughout the country) and adds an additional day to the delivery target to allow An Post time to transport the mail to the correct centre.

Access services are intended for international operators from the European Economic Area and Switzerland where the other operator has not entered into an agreement with An Post for the delivery of their mail in Ireland. They are also available to domestic customers if they wish to avail of these services. These services have limited access points due to mail sampling reasons.



Appendix 3: An Post Suggested Amendments to Draft Section 16(9) Regulation

Changes Highlighted in Bold and underlined

STATUTORY INSTRUMENT

S.I. No. [] of 2012

COMMUNICATIONS REGULATION (UNIVERSAL POSTAL SERVICE)
REGULATIONS 2012

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 16(9) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011) hereby makes the following regulations:

1. Citation and Commencement

- 1) These Regulations may be cited as the Communications Regulation (Universal Postal Service) Regulations 2012.
- 2) These Regulations shall come into operation on [] 2012

2. Interpretation

- 1) In these Regulations –

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

“bulk mail” means a substantial number of postal packets deposited with An Post by a single sender, at the same place and time, for transmission by post

“certificate of posting” means a receipt issued by An Post in respect of a postal packet

“D + n” is a formula in relation to the transit time of postal packets, where “D” represents the “day of posting” of a postal packet and “n” represents the number of working days after the “day of posting” after which the postal packet will be delivered to the addressee in due course of post, and in respect of delivery to addresses within the State “n” is to be replaced by “one” **or in the case of certain Bulk Mail services by “two”**, in respect of delivery to other addresses within the European Union “n” is to be replaced by “three”, and in respect of delivery to all other Foreign addresses “n” is to be replaced by “up to nine”;

"day of posting" means the specific day of the week on which a postal packet is deposited at an access point by a sender for transmission by post;

"designated operator" has the meaning assigned to it by Article 1.8 of the Universal Postal Convention;

"foreign" refers to any postal packet deposited at an access point in the State for transmission by post to an address outside the State;

"franking Impression" means the postal mark printed upon a postal packet, produced by a postal franking machine and setting out the postage paid **and the date of posting**;

"girth" means twice the combined depth and width of a postal packet;

"insurance" means a service insuring a postal packet in the event of loss, theft or damage up to the value declared by the sender of the postal packet;

"large envelope" means a postal packet other than a letter of minimum dimension 90 millimetres ("mm") x 140mm x 0.18mm (with a tolerance of 2mm) and maximum dimension 300mm x 400mm x 25mm, **and with a maximum weight of 1Kg for postal packets for delivery in the State or Northern Ireland and 500 grams for postal packets for destinations outside the State or Northern Ireland**;

"letter" means a postal packet of minimum dimension 90mm x 140mm x 0.18mm (with a tolerance of 2 mm) and a maximum dimension of 235mm x 162mm x 5mm, and with a maximum weight of 100 grams, and includes a postcard;

"Office of Exchange" has the meaning assigned to it by Article 169 of the Letter Post Regulations adopted by the Universal Postal Union;

"packet" means a postal packet other than a Letter or Large Envelope of minimum dimension 70mm x 100mm x 25mm and a maximum dimension of length, width and depth combined of 900mm, with a

tolerance 2mm, with the greatest dimension not exceeding 600mm and with a tolerance of 2mm and a maximum weight of 2 kilograms except in the case of a packet for transmission by post to an address outside the State containing books and pamphlets where a maximum weight of 5 kilograms will apply; when the packet is in the shape of a roll the length and twice the diameter shall not exceed 1040mm and the greatest dimension shall not exceed 900mm;

“parcel” means a postal packet other than a letter, large envelope or packet with of maximum length 1.5 metres provided that the combined length and girth does not exceed 3 metres and the weight does not exceed 20 kilograms;

“postcard” means a card of minimum dimension 90mm x 140mm x 0.18mm and maximum dimensions of 235mm x 162mm x 5mm, with a tolerance of 2mm provided it is sufficiently stiff to withstand processing without difficulties and the length is at least equal to the width multiplied by $\sqrt{2}$ (approximate value 1.4).;

“postage stamp” includes a label produced at a post office or at a sender’s premises;

“postal franking machine” means a machine of any type, approved by [to be determined], designed and used to denote, by means of a franking impression, the payment of postage or any other sum payable to a postal service provider, and includes any meter used in a postal franking machine;

“postal packets for the blind” means letters, large envelopes, packets and parcels (excluding foreign parcels) weighing no more than 7kg and containing material for the use of blind and partially-sighted persons as set out in the Terms and Conditions;

“re-direction” involves the delivery of a postal packet to its addressee at an address other than that shown on the postal packet;

“registration” means a postal service providing the sender with proof of the handing in of the postal packet and/or of its delivery to the addressee, for which an amount determined by An Post is payable by An

Post to the sender or addressee in the event of theft or loss of or damage to it in the course of its transmission by post;

"single piece service" means a postal service involving the transmission of individual postal packets to addressees where the postage paid by the sender is not subject to any discounts based upon -

- (a) the number of postal packets sent;
- (b) the substance, formatting or positioning of the address;
- (c) the use of markings to facilitate sorting by machines;
- (d) pre-sorting into geographical areas for delivery; or
- (e) an obligation to purchase of any other postal service; and

"track and trace" means a facility enabling a postal service user to monitor the progress of a postal packet through the postal network.

2) A word or expression that is used in the Regulations and in the Act of 2011 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 2011

3) In these Regulations, unless otherwise indicated -

- (a) a reference to a Regulation or a Schedule is a reference to a Regulation of, or a Schedule to, these Regulations, and
- (b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

3. The Universal Postal Service

1) The Commission, pursuant to section 16(9) of the Act of 2002, hereby specifies the following services to be provided by An Post relating to the provision of the universal postal service -

(i) A single piece service involving the clearance, sorting, transport and distribution of letters which -

(a) has a transit time objective of $D + n$;

(b) provides for the payment of postage by postage stamp, postal franking machine, or other reasonable methods;

(c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and

(d) does not include any "value added" feature.

(ii) A single piece service involving the clearance, sorting, transport and distribution of large envelopes which -

(a) has a transit time objective of $D + n$;

(b) provides for the payment of postage by postage stamp, postal franking machine, or other reasonable methods;

(c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and

(d) does not include any "value added" feature.

(iii) A single piece service involving the clearance, sorting, transport and distribution of packets which -

(a) has a transit time objective of $D + n$;

(b) provides for the payment of postage by postage stamp, postal franking machine, or other reasonable methods;

(c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and

(d) does not include any "value added" feature.

(iv) A single piece service for the clearance, sorting, transport and distribution of parcels which -

(a) has a transit time objective of $D + n$;

(b) provides for the payment of postage by postage stamp, postal franking machine, or other reasonable methods;

(c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and

(d) **does not include any “value added” feature except track and trace.**

(v) A single piece service for **the registration and insurance** of postal packets tendered to An Post for transmission under any of the services listed at nos. (i) - (iv) inclusive, which -

(a) provides for the **payment** of postage by postage stamp, postal franking machine, or other reasonable methods; and

(b) **does not include provision any “value added” feature except track and trace.**

(c) **provides for additional compensation for the payment of an additional fee.**

(vi) A single piece service provided free of charge to the postal service user for the transmission of “postal packets for the blind”.

(vii) **Services** for the clearance, sorting, transport and distribution of bulk mail **as set out in the Schedule** deposited at any one of the access points designated for the purposes of this service by the Commission under a direction given to An Post pursuant to section 16(10) of the Act of 2011.

(viii) A service for the clearance, sorting, transport and distribution of postal packets deposited with An Post at an Office of Exchange within the State by the designated operator of a signatory to the Universal Postal Convention, acting as such, providing that:

(a) the senders of the postal packets concerned are present in the territory of the relevant signatory to the Universal Postal Convention when the postal packets are deposited at an access point of the Designated Operator for transmission by post; and

[An Post comment: In practice this could not be enforced and would pose a serious threat to international mail revenue]

(b) when the signatory to the Universal Postal Convention is also a member State of the EU subject to compliance with section 29(1) of the Communications Regulation (Postal Services) Act 2011.

(ix) The following special facilities for the delivery of postal packets at the request of the addressee (provided that no abbreviated form of address, such as "PO Box NN", shall be used without such additional information as to enable the sender to ascertain the location of the premises of the addressee)

(a) Private boxes and bags: providing at specified An Post post offices for the rental of private boxes or bags into which postal packets may be placed, where such a private box or bags may be called for by the addressee of such postal packets as are contained therein, or his or her agent, and further providing for the delivery of such private bags to addressees by officers of An Post;

(b) Poste restante: providing free of charge a facility for the address of any specified post office in the State to be used as an addressee's postal address for three months, and for postal packets for that addressee to be held at that post office for three months for collection by the addressee, provided, in relation to any post office, that it is reasonable for the post office concerned to be used to provide the service;

(c) Business Reply: the provision of a facility for an addressee to supply pre-printed envelopes or labels of a design specified by An Post in its terms and conditions so that senders may deposit postal packets for transmission by services (i) to (vi) without pre-payment of postage subject to confirmation by the addressee that he will pay the postage due thereon on delivery.

(d) Freepost: the provision of a facility for an addressee to authorise the inclusion of the word "FREEPOST" in his address so that senders may deposit postal packets for transmission by services (i) to (vi) without pre-payment of postage subject to confirmation by the addressee that he will pay the postage due thereon on delivery.

[An Post comment: Redirection and mailminder services deleted]

GIVEN under the Official Seal of the Commission for Communications
Regulation,
Chairperson
On behalf of the Commission of Communications

Schedule

Bulk Mail Service	Minimum Volume/Weight	Delivery Target
Fully Paid Bulk Mail	2,000	D+1
Deferred Processing before noon 85%+ auto-sort	2,000	D+2
Pre-sorted (151) before noon	2,000	D+1
Deferred Manual Processing before noon	350	D+2
Deferred automated processing before noon	350	D+2
Access – Presentation before 3pm 85%+ auto-sort	40Kg per format and weight	D+1
Access – Presentation before 3pm	40Kg per format and weight	D+1
Access – Pre-sorted before noon	40Kg per format and weight	D+1
Proposed DSA	10,000 per mailing (monthly and annual requirements)	D+1

Appendix 4: An Post Suggested Amendments to Draft Direction to An Post concerning Publication of its Terms and Conditions

Changes Highlighted in Bold and underlined

COMMUNICATIONS REGULATION (POSTAL SERVICES) DIRECTION
No.1, 2012

1. Statutory and Legal Powers

This Direction is made by the Commission for Communications Regulation (“ComReg”):

Having had regard to sections 22(1)b, 24(2) and 24(5) of the Communications Regulation (Postal Services) Act 2011;

Having regard to the reasoning and analysis set out in ComReg Document No.12/38 where relevant and the responses thereto.

Definitions

In this Direction, unless the context otherwise suggests:

“**Act**” means the Communications Regulation (Postal Services) Act 2011;

“**An Post**” means An Post and its subsidiaries, and any Undertaking which it owns or controls, and any Undertaking which owns or controls An Post and its successors and assigns;

“**Charges**” means the charges made by An Post in respect of *universal postal service* provision and published by An Post under section 22 or 23 of the Act as the case may be;

“**Iris Oifigiúil**” is the official Irish State gazette;

“**Terms and Conditions**” has the meaning set out in section 24 of the Act;

“**Undertaking**” means an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Two separate legal entities may be considered to form one economic unit and therefore to be a single undertaking. In this respect the [European] Court of Justice looks at the existence of a controlling share or functional, economic and organic links;

“**Universal Postal Service**” means the postal services as specified in the Communications Regulation (Postal Services) Regulations 2012 SI No XX of 2012 made under section 16(9) of the Act.

Scope and Application

This Direction applies to An Post.

This Direction is binding upon An Post and An Post shall comply with it in all respects.

Publication of Terms and Conditions for Universal Postal Service Provision

An Post is directed to publish the terms and conditions of its *universal postal service* provision and the charges made by it in respect of the *universal postal service* provision in the following manner:

- (i) on the An Post website, as required by 22(b) of the Act
- (ii) by making printed copies of a booklet containing the current terms and conditions and the applicable charges available to postal service users on request and **at every An Post owned post office and sub post office**

(c) To publish the terms and conditions and the applicable charges in *Iris Oifigiúil* and to re-publish in *Iris Oifigiúil* when an amendment to the terms and conditions and the applicable charges is made by An Post.

Statutory Powers Not Affected

Nothing in this Direction shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this Direction) from time to time as the occasion may require.

Maintenance of Obligations

If any section, clause or provision or portion thereof contained in this Direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Direction, and shall not in any way affect the validity or enforcement of this Direction.

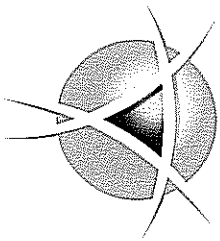
Effective Date

This Direction shall be effective from the date of this decision.

Chairperson

The Commission for Communications Regulation

THE [] DAY OF [] 2012



Commission for
Communications Regulation
Coimisiún Um
Rialáil Cumarsáide

1st June 2012

Mr Brian McCormick
Services Director
An Post
GPO
O'Connell Street
Dublin 1

Ref: Clarification of ComReg Consultation 12/38

Dear Brian

I refer to your letter of 23 May 2012 in which you requested that certain details of ComReg Consultation 12/38 ("the Consultation") be clarified or noted as matters of fact, so as to ensure that An Post can provide as complete a response as possible. To enable this, ComReg's replies to each of the points in your letter are set out below.

At the outset, please note that ComReg will publish your letter of 23 May and this reply as correspondence relating to the Consultation. That being so, I would ask that you please inform ComReg if there is any part of your letter of 23 May that you consider should be redacted prior to its publication, on the basis that it contains information that is confidential to An Post. I refer you in this regard to ComReg's published guidelines on the treatment of confidential information (Doc 05/24).

- References to the common law

The few references in the Consultation to the term "common law" are all in relation to the common law concept of "*transmission by post*" as applied in the past. This common law concept was set out as background, in order to explain the manner in which the Communications Regulation (Postal Services) Act 2011 ("2011 Act") continues to impose a duty of care upon authorised postal service providers in relation to "addressees", as well as to "senders". This duty of care is reflected in various provisions of the 2011 Act including Chapter 7 which provides that postal packets in the course of transmission shall be immune from examination, detention or seizure, except as provided for under that Part. Chapter 7 then sets out the limited range of circumstances in which a postal service provider may refuse, detain, defer, withhold, return, dispose of, or open any postal packet. These provisions protect the intended recipient of any postal packet - the addressee - as much as the sender. That this protection is intended to extend to the addresses is made clearer still by section 53 of the 2011 Act, which establishes the following criminal offence (emphasis added, where it appears):

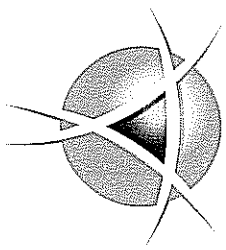
Commission for Communications Regulation

An Coimisiún um Rialáil Cumarsáide

Block DEF, Abbey Court, Irish Life Centre, Lower Abbey St, Dublin 1

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Telephone +353 1 804 9600 Fax +353 1 804 9665 Email info@comreg.ie Web www.comreg.ie



A person commits an offence if he or she, **without the agreement of the addressee** and, in the case of a person who is a postal service provider or an employee or agent of a postal service provider, contrary to his or her duty, intentionally

- (a) delays, detains, interferes with or opens, a postal packet **addressed to another person** or does anything to prevent its delivery or authorises, suffers or permits another person (who is not the addressee) to do so,
- (b) discloses the existence or contents of a postal packet referred to in paragraph (a), or
- (c) uses for any purpose any information obtained from a postal packet referred to in paragraph (a)

One can see from the above that a postal service provider may not delay, detain, interfere with, or open a postal packet **without the agreement of the addressee**, as opposed to the sender. This provision is reflective of the fact that an addressee is not normally party to any legal contract with a postal service provider, in that there is normally no offer or acceptance as between the addressee and the postal service provider, nor does any "consideration" pass between them. An addressee, therefore, normally has no protection or recourse under contract law. The common law concept of "transmission by post" made up for this by extending the postal service provider's duty of care to the addressee and ComReg considers that the 2011 Act does something very similar.

- Claim that section 5.6 of the consultation paper is incorrect

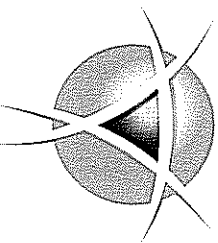
ComReg does not consider section 5.6 of the Consultation to be incorrect though interested parties may read the list in section 5.6 as including reference to Section 21 of the 2011 Act. ComReg does not consider that Section 25 ought to be omitted from the list.

- Was omission of section 33 from the list in section 5.6 intentional?

Section 33 of the 2011 Act is not exclusive to An Post, in that it grants other postal service providers the right to negotiate with An Post with regard to access to its network, while it gives ComReg a dispute resolution role with regard to such negotiations.

- Factual inaccuracies in Annex 4 - tariffs for Discounts 10 and 11 are incorrect

The tariffs for bulk mail products 10 and 11 are set out the wrong way round in Annex 4 of the Consultation, an error which occurred in transposing the data into Annex 4. The tariff for "Service 10" should read "43c" instead of "48c" and the tariff for Service 11 should read "48c" instead of "43c".



- The Consultation sets out that only six bulk mail discounts are available nationwide

Although it is not expressly stated in your letter, ComReg understands An Post's point as being that all of its bulk mail discounts are available nationwide whereas the Consultation states that only four such discounts are available nationwide (separate to the two bulk mail discounts applicable to smaller quantities, between 350 and 2,000).

Having regard to An Post's published material, the Consultation as worded appears to be correct. An Post's leaflet titled '*Bulk Discounts For Mailers - Volumes of 2,000 items upwards*', dated 1st May 2012¹, states on page 3 that only four of the bulk mail discounts (number 9 – 12) are available at all of An Post's "designated mail acceptance offices" while the other eight discounts (number 1 – 8) are only available at An Post's four mail centres (in Athlone, Cork, Dublin and Portlaoise). An Post's leaflet titled '*Bulk Discounts For Mailers - Volumes of 350 items upwards*', also dated 1st May 2012², states that Discounts A and B therein are available at all "designated mail acceptance offices". From this, ComReg understands that six of the fourteen bulk mail discounts are available nationwide, while the other eight are available only at the four mail centres. However, in responding to the consultation An Post may wish to update ComReg as regards the breadth of its current published bulk mail offering.

- Definition of bulk mail has changed since ComReg Document 03/50

There is no connection between the definitions used in ComReg's document of nine years ago (03/50) and those used in Annex 5 of the Consultation. ComReg proposed the draft definition in the Consultation as the two bulk mail products that are available at all bulk mail access points (according to An Post's leaflets) and which have a D+1 delivery target both require pre-sorting. However, the views of respondents and other relevant evidence will be considered before ComReg sets the definition of any universal service bulk mail product(s).

I trust the above responses address the clarifications you sought.

Yours sincerely

J.P. **George Merrigan**
Director, Market Framework

c.c. Mr Brian Fay

¹<http://www.anpost.ie/NR/rdonlyres/B5774F94-F37B-429C-8ED0-8583E63DB288/5515/BulkMailBlueA4WWW1.pdf>

²http://www.anpost.ie/NR/rdonlyres/B5774F94-F37B-429C-8ED0-8583E63DB288/5513/BulkMail_YellowA4www.pdf

3: Aviva

Questions

Page

Q. 1 Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?..	No	22
Q. 2 Should the “ <i>status quo</i> ”, i.e. a single tier service offering delivery the next working day, be retained as part of the <i>universal postal service</i> ? Please give reasons for your views. .	yes, it is already a competitive market	33
Q. 3 Do you agree that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “ <i>universal postal service</i> ”? Please give reasons for your views.		33
Q. 4 Should ComReg reduce the maximum weight for domestic parcels at the present time, or leave it as is? Please give reasons for your views. .	leave as is , it complies with H&S legislation	34
Q. 5 Do you agree that uniform pricing does not require that there be uniform prices for different types of “ <i>postal packet</i> ” - i.e. “ <i>letters</i> ”, “ <i>large envelopes</i> ”, “ <i>packets</i> ” and “ <i>parcels</i> ” – as the costs of processing each type are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.	yes agree	34
Q. 6 Should An Post be required to provide a single “last resort” Bulk Mail service as described in paragraph 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.		36
Q. 7 What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.....		36
Q. 8 Should An Post provide standalone services for registered and insured postal packets? Please give reasons for your views..	No,its need to be a competitive market	37
Q. 9 Should the services listed in paragraph 5.48 form part of the universal postal service? Should any of these services be excluded, or should any additional services be included? Please give reasons for your views.		38
Q. 10 Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act? Please give your reasons for any such suggestions.....		38
Q. 11 Do you agree that An Post’s terms and conditions for its <i>universal postal service</i> should be set out in a single, comprehensive document and in plain language? Please give your reasons.....		40

Q. 12 Should An Post be required to publish the terms and conditions of its *universal postal service*, including its Schedule of Charges, in *Iris Oifigiúil* and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons..... 40

Q. 13 Do you wish to suggest any amendments to the draft Direction to An Post? Please give your reasons. . **as a financial institute we don't charge VAT to our clients so therefore we cannot reclaim Vat. If VAT is added to the service we will incur additional expneses** 41

Q. 14 Have you any observations to make about ComReg's analysis of the issues involved?..... 45

Q. 15 Have you any amendments to suggest concerning the proposed guidelines set out in Annex 7? Please give your reasons. 45

Q. 16 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.
..... 54

4: Barnardos

BY EMAIL

Dear Tom,

I'm writing to you as the person named in the Comreg press release of Monday April 30th last. I understand from that press release that Comreg is presently engaged in public consultation on its proposals for postal regulation in the future.

It has been brought to my attention that there may be an unintended consequence of your efforts to construct a regulatory framework around the new Communications Regulation Act 2011. I've read the document, consultation document 12/38, and paragraph 5.13 on page 29 states:

'First, only the "universal postal service" is exempt from VAT. In 2009, the European Court of Justice decided that the exemption from VAT "only applies to the public postal services acting as such – that is, in their capacity as an operator who undertakes to provide all or part of the universal postal service in a Member State". As a result of that decision, section 130 of the Finance Act 2010 amended Schedule 1 of the Taxes Consolidation Act 1997 with regard to VAT on postal services as follows:

Postal services

1. Public postal services; including the supply of goods and services incidental to their provision, by An Post (including postmasters) or by designated persons in accordance with the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002) but only if that supply is not on terms that have been individually negotiated.'

In my view, the net effect of such a move could leave my organisation and other charities liable to VAT on the postal services we use for communications, campaigning and fund raising.

As you will be aware, charities are exempt from VAT and cannot recoup Value Added Tax. This proposal would put us all at a significant disadvantage and in effect impose a 23% price increase. The consequences for us and other charities would be serious, imposing a heavy burden on our activities and restricting our work.

It is equally my view that the issue of VAT on postal services is a matter between An Post and other postal operators, on the one hand, and the Minister for Finance and the Revenue Commissioners on the other. It does not seem to me to be an issue of regulation, and would therefore be outside ComReg's remit.

I would ask that you consider this letter as a formal response to your consultation process, or that you would pass it to the appropriate person in Comreg.

Yours sincerely,

Fergus Finlay

**CEO
Barnardos
Christchurch Square
Dublin 8**

5: Chambers Ireland



Submission regarding the Postal Regulatory Framework Implementation of the Communications Regulation (Postal Services) Act 2011

Chambers Ireland is pleased to make this submission to the Commission for Communications Regulation regarding this consultation.

As an organisation representing affiliated Chambers and their members around the country, we have a deep interest in competition and maintaining equal access to national services at a reasonable price for all of our affiliated chambers and their members. We note also that approximately 80pc of postal transactions are business related. This illustrates why the postal market is of great interest to our network.

In this context, we have a deep interest in maintaining a viable Universal Service Obligation (USO) that facilitates five day delivery and collection around the state. This interest is similar to our concerns for and interest in the deliver of other types of infrastructure networks serving our members such as

- Electricity,
- Telecoms,
- Water, and
- Gas networks.

In particular, on electricity and gas networks, the need for viability in terms of ongoing network upgrades, maintenance and other investments is accepted and the viability of these networks is assured via a regulated pricing mechanism that delivers a return on investment which assures international bond market and lender support for ESB Networks, Eirgrid and Bord Gáis Éireann's respective business and investment plans.

We believe that the pricing and service offerings available to An Post as the designated USO need to be maintained at a level that assures maintenance of the USO so that our business members have access to the full range of services currently available whether they are based in Connemara or Dublin City Centre. We note also the unprecedented decline in mail volumes and other activity rates in the wider domestic economy at present. It is against this economic background that we make our submission regarding a discrete number of items.

Proposed VAT Changes

Chambers Ireland is very concerned regarding proposals to make a range of new companies and organisations liable for VAT on postal charges. (See section 5.13)

The rationale for this change is questionable especially if it applies to other 'third sector' not for profit organisations such as charities. It will clearly damage the business case for continuing to use postal as a delivery mechanism. It will also increase costs in the economy at a time when all of our stakeholders are seeking to reduce costs.

Adding a further additional price to postal deliveries for organisations whose annual throughput of postal packets acts as a considerable support to the viability of the wider USO could also affect their respective level of interaction with and use of the USO. We fear that such a change would lead to significant increases in postal rates for currently VAT exempt customers that could, in turn, lead to a permanent migration away from mail as a medium for message delivery.

Such a structural change would have an immediate knock on effect on the provision of these services which are valued by our members and the absence of which would be a cause of regret.

The Broader USO

In reviewing to the consultation, it would appear to us that ComReg plans for a minimum service only to fall within the remit of the USO.

We fear that the impact of such a change of circumstances and underpinnings to the USO, would be a very significant restriction or diminution of the services offered to all our members around the country.

This could lead to a consequential impact on the ability of our members to access the full range of postal services that are currently available. Accordingly, we support the case for a relatively broad USO that supports competition and underpins the business case for a profitable five day collection and delivery service for businesses all around the country.

We would be pleased to explore these issues in greater detail if desired over the course of the consultation.

Chambers Ireland

11th June 2012

6: Communications Workers Union

SUBMISSION RE:

ComReg 12/38

June 2012

submitted by

Ian McArdle

Head of Regulatory Affairs

**Communications Workers' Union
575-577 North Circular Road
Dublin 1**

Communications Workers' Union Submission:
Response to the Commission for Communications Regulation on the
Postal Regulatory Framework Document

Introduction

The Communications Workers' Union (hereinafter referred to as "CWU" or the "Union") represents approximately 16,000 workers employed in the communications sector in the Republic of Ireland, of which over half are employed in the Postal & Courier Sectors. The CWU represents staff working in the following postal and courier companies:

- An Post
- UPS
- DPD
- Printpost
- Data Ireland
- IO Systems

As the trade union representing a significant number of workers in the postal & courier markets, the CWU welcomes this opportunity to respond to the Postal Regulatory Framework Document (hereinafter referred to as the "Framework Document") issued by the Commission for Communications Regulation (hereinafter referred to as "ComReg" or the "Regulator"). The CWU notes that this is the first in a series of consultations about the measures that are necessary to implement ComReg's obligations under the Communications Regulation (Postal Services) Act 2011 (hereinafter referred to as the "2011 Act") and the Union looks forward to subsequent consultations, which will provide all stakeholders with a better opportunity to go into greater detail on some of the issues raised in the Framework Document.

It is the view of the Union that a number of issues raised in the Framework Document merit further consultation such is their importance and potential implications for the ongoing development of the postal market. The Union further notes that ComReg intends to publish a draft of its Postal Strategy Statement for the period to June 2014 and this may offer a further opportunity for consultation on the Regulator's plans for the future in relation to postal issues.

In considering the issues raised in the Framework Document it is vitally important to start with the functions and statutory objectives of ComReg, as these should form the basis for all further discussions in relation to the proposals contained in the Framework Document.

ComReg’s revised statutory function, as per Section 9 of the 2011 Act is “*to ensure the provision of the Universal Postal Service that meets the reasonable needs of postal service users*”. In conjunction with this, the statutory objectives that ComReg must meet in exercising this function are now as follows:

- “(i) *to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the state at an affordable price for the benefit of all postal service users,*
- (ii) *to promote the interest of postal service users within the Community, and*
- (iii) *subject to sub-paragraph (i), to facilitate the development of competition and innovation in the market for postal service provision”*

Furthermore, in relation to ComReg’s objectives, Section 10 of the 2011 Act goes on to state that:

“the Commission shall take all reasonable measures aimed at achieving those objectives including -

- (a) *ensuring that postal service users may avail of a universal postal service that meets their reasonable needs*
- (b) *insofar as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality”*

These aspects of the 2011 Act must be the context for any further debate or discussion on matters raised in the Framework Document and indeed, in further consultations into the future. It would not be appropriate for ComReg to go beyond the bounds of the 2011 Act or to reinterpret aspects of the legislation in a manner that is inconsistent with these functions and objectives, as outlined above. It is worth noting that the statutory objectives oblige ComReg “*to facilitate the development of competition and innovation in the market for postal service provision*” but specifically this can only be done subject to “*the availability of a universal postal service within, to and from the state at an affordable price for the benefit of all postal service users*”.

This clearly sets out the paramount importance of the provision of a universal postal service at an affordable price for all users and in regulating the marketplace ComReg must adhere to this objective at all times. To do otherwise would be in breach of its statutory function and objective, and in contravention with the 2011 Act. Therefore,

any course of action that might have an adverse effect on An Post's ability to provide, fund and maintain a universal postal service must be considered as contrary to these functions and objectives, and in contravention of the 2011 Act. It is in this context that the Framework Document must be considered.

De Minimis Postal Services

CWU notes that the Framework Document is intent on examining a "de minimis" set of postal services, in circumstances where there is no obligation to do so in the 2011 Act. The Framework Document makes reference to Recital 11 to the First Postal Directive which states:

*"it is essential to guarantee at Community level a universal postal service encompassing a **minimum range of services** of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community"* (emphasis added in the Framework Document)

The 2011 Act however makes no reference to a minimum range of services and it is unclear why ComReg is looking beyond the legislation that it is obliged to implement for guidance on what approach should be taken in this instance. Rather Section 16(9) states:

"(9) For the purposes of ensuring that the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of postal service users, the Commission shall, following a public consultation process, make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service."

Is it the case that the reasonable needs of postal service users are not being met at the present time? If that is the case, there must be evidence to support this view. The CWU notes that within the Regulatory Impact Assessment (hereinafter referred to as "RIA") contained in the Framework Document the Regulator observes that:

"ComReg has considered the changes to the needs of postal services users and to the wider technical, economic and social environmental changes since ComReg's working definition of universal postal services was published in 2005."

There is no empirical evidence supplied in the Framework Document to support the considerations that ComReg has made in relation to the "technical, economic and social environmental changes" and it is impossible to make informed decisions in this

consultation process without this information. With the exception of the reference to e-substitution at 7.11, there is nothing by way of meaningful insight into the recent changes in the Irish postal market. In the same Section however it is suggested that ComReg intends to carry out some research in this area:

*“In relation to the first policy issue, in identifying the regulatory options for the universal postal services, **ComReg needs to assess postal customer demand and whether this will be met without being set as a universal postal service**” (emphasis added)*

If ComReg needs to make this assessment, it begs the question why such an important consultation as this is taking place without it? If the research has already been done, then equally the question must be asked why it is not being made available at this time.

The scant reference to e-substitution does nothing to reflect the very grave challenges facing mail volumes at this time, but that is not whole story. ComReg, in considering “economic changes”, would do well to take into account the unprecedented collapse in economic activity in Ireland. As research has shown, economic activity, more than innovation or price changes, drives mail volumes, albeit this correlation has diminished with the advent of email.

The collapse in mail volumes in recent years represents a serious threat to the national operators’ ability to provide a universal service. ComReg’s obligation to ensure that there is a universal service will challenge the Regulator to make careful decisions that do not undermine the revenue streams available to An Post, which would simply serve to put the universal service at further risk.

At 7.16 in the RIA Section of the Framework Document in relation to the policy options, it is suggested that *“the “de minimis” set of universal postal services is set by reference to postal customer needs to ensure that only those postal services that postal customers would not otherwise be able to obtain (at affordable prices) are provided”*. Whilst this is a proposed policy option, it is unclear how the Regulator intends to establish which services are those that customers would not otherwise be able to obtain. It is not satisfactory that a RIA simply suggests a course of action, in this case the establishment of a “de minimis” set of universal postal services, without supporting data or research.

This view is supported in the RIA when it refers to Policy Issue 1 Option 2 at 7.2. In considering whether to expand the “de minimis” set of universal postal services to include more bulk mail and/or parcel options, ComReg states that taking this option would *“require robust evidence that these additional mail services, beyond the “de*

minimis” set, are required to be set as universal postal services in order to meet postal customer needs that would otherwise not be met”. If robust evidence is required for additional mail services then conversely the same level of evidence should be required if a reduced set of universal postal services is to be established. The current Framework Document provides no such evidence and therefore this consultation is lacking the necessary data to make informed contributions, and in the absence of this data, it is not appropriate for the Regulator to make recommendations that might affect the marketplace.

Single Tier Postal Services

The Framework Document asks whether the “status quo” – i.e. a single tier service offering delivery the next working day – be retained as part of the universal postal service.

It is the view of the CWU that the status quo should be retained. Without any detail on how the second tier service might be constructed, it is hard to give an adequate response, but regardless, there are a number of concerns around the introduction of a second tier service. There is no evidence presented that a second tier service would do anything to improve mail volumes. In fact, the likelihood is that this proposal would simply serve to dilute the revenues of An Post and put further pressure on the financial wellbeing of the universal service provider. This would run contrary to the statutory objectives as outlined in the 2011 Act.

It is unclear why ComReg believes that the two tier service must “*now be considered afresh*” and it is the view of the CWU that, if this is to be given serious consideration, it should be subject to a comprehensive consultation in its own right. The Framework Document rightfully raises concerns that the introduction of a second tier service would have an adverse impact on the operational efficiency of the national operator and in circumstances where the Regulator has initiated legal proceedings with the threat of a unprecedented €12m fine, which could cause severe financial damage to An Post, it makes no sense to compound matters with the introduction of this service. Furthermore, it seems unlikely that a postal market as small as Ireland could sustain a second tier service.

At 5.24 ComReg states that:

“Where there is a single tier service, such as that currently provided by An Post, it is only possible to meet the requirements of all “postal service users” by providing the priority (and more expensive) service. This means that some “postal service users” have to pay for a higher level of service than they actually require”

This statement merits further consideration. It is suggested that postal users are paying for a service that they don't actually require, but there is no evidence provided to support this view. It is not appropriate, as an industry regulator, for ComReg to make these general statements without any supporting data.

Bulk Mail Services

Bulk mail service should be left within the universal postal service. Bearing in mind the statutory objectives as outlined above, there is a clear obligation on ComReg to exercise extreme caution in making any changes to this service as it could have a profoundly detrimental affect on An Post revenues and consequently put the universal postal service at risk. The importance of the bulk mail service to the funding of the Universal Service Obligation (hereinafter referred to as the "USO") cannot be overstated.

Royal Mail has not won a single bulk contract since full market opening, with the result that an operating profit of £233m in 2006-7 was converted to a £279m loss the following year. This demonstrates just how critical this revenue stream can be. These revenues are crucial to the funding of the USO and an independent government review on the effect of liberalisation on Royal Mail found "*there is now a substantial threat to Royal Mail's financial stability and, therefore, the universal service*". The future of the single price universal service is now at serious risk for the first time in 160 years and this grave threat has come about just two years after full market opening.

As a response to the falling revenues Royal Mail has been forced to increase its tariffs earlier this year with both first and second class stamps increasing by 14 pence sterling. The UK regulator, Ofcom, has already acknowledged that there was a real risk to the universal service and that this increase was necessary in order to try and deal with a £1bn loss in the mail services in the last four years.

At 5.37 ComReg states that:

'In terms of access to the postal network by other postal service providers, Section 33 of the 2011 Act is quite clear that such service providers should "enter into negotiations with a universal postal service provider with a view to concluding an agreement" rather than being required to purchase a universal postal service at a published tariff.'

The CWU does not accept that this amounts to a situation where bulk mail service can be removed from the universal postal services. If An Post has a range of bulk mail services then it is only appropriate for a service provide to enter into negotiations with

the Company to establish which service represents the best value for money in order to maximise the value available to them.

Indeed, in considering Section 33 of the 2011 Act one must consider the context in which it is envisaged that this bulk mail access should take place. To do this one must consider the expected role the Regulator where a postal service provider and An Post cannot agree terms for access. The 2011 Act states ComReg must take into account:

- “(c) the need to ensure and maintain the efficient provision of a universal postal service,*
- (f) the feasibility of granting the access sought,*
- (g) the capital investment in the postal network made by the universal postal service provider concerned”*

Clearly the bulk mail service is considered to be part of the universal postal service in the context of (c) and (g), and any proposed changes to this part of the universal service must be considered in light of its potential effect on the funding of the USO. It is in this context that the proposed “de minimis” approached being mooted by ComReg makes least sense.

As noted in the Framework Document, one of the results of taking bulk mail services out of the universal postal service area will be to have VAT applied to it. Therefore, opting for a “last resort” bulk mail option will effectively add 23% to the cost of the service for a significant number of An Post customers who cannot reclaim VAT, many of whom are among the largest bulk mail customers. In a marketplace that is already under severe pressure from e-substitution and in an economic environment that is highly cost-sensitive, this course of action by ComReg would have a devastating impact on the revenue streams for An Post and consequently the USO. This runs contrary to the statutory objectives and functions of ComReg and as such would be considered by the CWU to be a profound dereliction of duty. As (g) above makes clear, decisions in this area have to be cognisant of the capital investment in the postal network and this is critical to the maintenance of a universal postal service.

Conclusion

ComReg’s statutory function and objectives are clearly drawn in the 2011 Act; to promote, in particular, the development of a universal postal service at an affordable price to all users. Furthermore it must ensure that *‘postal service users derive maximum benefit in terms of choice, price and quality’*. All decisions taken by the regulator must be judged within in this legal context. As such, decisions that have a negative impact on postal revenues, the ability of the universal postal provider to provide the universal postal service and fund this responsibility or indeed the ability

of the postal operator to achieve a fair price for services must be considered to be in contravention of the 2011 Act.

It is the view of the CWU, for reasons outlined above, that the '*de minimis*' approach outlined by ComReg would be a serious setback to the development of the postal sector in Ireland. In addition the introduction of a two tier service is not merited or indeed appropriate in the Irish context.

The RIA contained in the Framework Document is almost impossible to respond to in circumstances where there is no supporting data for the claims contained therein. Proper regulation is based on research and empirical evidence and decisions are made in full view of the facts. That is not the case here and as such the claims made by ComReg cannot be judged in any meaningful way.

All considerations at this time should be made in the context of the very real challenges facing An Post as it struggles to come to terms with falling mail volumes arising from e-substitution and a depressed economy. It should be noted that without a positive decision on the requested tariff increase the company is facing a dire financial future and substantial losses which will further jeopardise the universal postal service and the long term viability of a vital part of the country's national infrastructure which has never required state subvention. If the regulator is serious about its statutory function and objectives it would do well to consider carefully how it proceeds.

7: Concern Worldwide

BY EMAIL

Ms. Sinead Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

June 11, 2012

Dear Ms. Devey

I write a brief note in response to ComReg 12/38 (Postal Regulatory Framework, Implementation of the Communications Regulation (Postal Services Act 2011)).

About Concern

Concern is Ireland's largest overseas relief and development organisation. We enjoy a substantial support base in Ireland. We maintain contact with our supporters in a variety of ways, including through the post.

Consultation

In response to the consultation process identified above, I would like to draw attention to an issue which is of particular importance to Concern (and potentially most charities).

The consultation says that, in principle, it "seems that Bulk Mail ... [is] not entirely consistent with the concept of universal postal service provision" (pp 34, paragraph 5.34) because while An Post provides an extensive range of services for Bulk Mail, "very few of these are universal in nature in that they are only provided at a very limited range of access points... some are not provided throughout the year and are only available if the contents meet certain criteria". The consultation suggests that, of the 17 Bulk Mail services provided by An Post, only six are available nationwide (and could therefore be considered under the

concept of universal postal service provision). The proposal suggests that only one Bulk Mail service (a service of the last resort) should remain under universal postal service provision. Concern wishes to voice its opposition to such a proposal.

VAT

The impact of this would be that all bulk mail services, with the exception of the service of last resort, will be charged VAT at 23%. Charities are unable to reclaim VAT. The addition of 23% VAT to bulk mail services would add €63,000 to Concern's costs (based on an analysis of 2011 costs). In these financially challenging times, such an additional cost would have a detrimental effect on our ability to deliver our charitable services. We ask you to reconsider this proposal.

Yours sincerely

Richard Dixon
Director of Public Affairs
Concern Worldwide

Good nutrition during the 1,000 days from pregnancy to a child's second birthday can save one million lives a year.

Join Concern's **1000 DAYS Campaign**
on concern.net/1000days



8: Docket and Form International Ltd (DAFIL) and IDFA (Quality Printers) Ltd

Questions

Q. 1 Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?

It should be understood that with a small market like the Republic of Ireland, [CONFIDENTIAL TEXT REMOVED] Without this regulation postage prices will rise dramatically.

Q. 2 Should the “*status quo*”, i.e. a single tier service offering delivery the next working day, be retained as part of the *universal postal service*? Please give reasons for your views.

Yes, for single piece mail with a stamp. There should also be the option for Bulk mail to be delivered over an extended period in return for reduced postal charges as is in place at present..

Q. 5 Do you agree that uniform pricing does not require that there be uniform prices for different types of “*postal packet*” - i.e. “*letters*”, “*large envelopes*”, “*packets*” and “*parcels*” – as the costs of processing each type are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.

We agree that there is not a requirement for a uniform price over all different types.

[CONFIDENTIAL TEXT REMOVED]

Q. 6 Should An Post be required to provide a single “last resort” Bulk Mail service as described in paragraph 5.41?

If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.

No (All) bulk mail should not be excluded from universal postal service.

If bulk mail is excluded from universal postal service there will be no obligation for An Post to supply this service and costs would increase.

Q. 7 What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.

At a minimum An Post should have to supply the current bulk mail discounts for bulk delivery, machine readable early presentation mail.

The charges for these services should have the same % discount which is presently in force between bulk mail and single mail piece as a minimum discount.

Q. 8 Should An Post provide standalone services for registered and insured postal packets? Please give reasons for your views.

They should have to supply this service and they should have to give discounts to volume users

Q. 9 Should the services listed in paragraph 5.48 form part of the universal postal service?

Yes

Should any of these services be excluded,

No

or should any additional services be included? Please give reasons for your views.

Bulk Mail should be included

If bulk mail is excluded from universal postal service there will be no obligation for An Post to supply this service and costs would increase.

Q. 10 Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act? Please give your reasons for any such suggestions.

We suggest the following

"bulk mail" means a substantial number of similar, ~~pre-sorted postal~~ packets deposited with An Post ~~by a single sender~~, at the same place and time, to be transported and distributed to the addressees as marked on each of the postal packets;

There is no requirement at present to sort mail to receive bulk discount.

The phrase single sender is ambiguous

Q. 11 Do you agree that An Post's terms and conditions for its *universal postal service* should be set out in a single, comprehensive document and in plain language? Please give your reasons.

Yes It must clearly state what An Post is committing to.

Q. 12 Should An Post be required to publish the terms and conditions of its *universal postal service*, including its Schedule of Charges, in *Iris Oifigiúil* and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons.

Yes

They should only have to make them available in printed form at post offices.

9: Department of Social Protection

BY EMAIL

Dear Sinead Devey,

I refer to the Consultative document ComReg 12/38 regarding the Postal Regulatory Framework - Implementation of the Communications Regulation (Postal Services) Act 2011.

The Department of Social Protection welcomes competition in the market place. I note section 6.4 of the document which refers to EU law and suggests that certain categories of postal services cannot be considered to be 'universal postal services', including services with Value Added Features (such as the collection from the sender's address, etc.) and services provided under individually negotiated contracts. ComReg needs to consider whether these categories of services do in fact fall within the definition of 'postal services' as set out in the 2011 Act, and can they be considered to be postal services within the scope of the universal postal service.

While some of the post from the Department of Social Protection is collected from the sender's (our) address, An Post does collect post from some of our premises. I don't know whether this service can categorically be considered as a Value Added Feature. Given the scale of our post, there would be little benefit to An Post, or indeed most other postal service providers if we were to deposit our vast quantities of post at a local post box or post office - where there would be capacity issues. It is more practical solution, rather than Value Added solution, that the post is collected in bulk from some of our premises. We would argue that such a service could be considered as postal services within the scope of the universal postal service.

In relation to Section 7.18 we note that An Post should be able to offer lower prices as a result of being able to reclaim Vat, but that An Post's Vat exempt customers would not benefit to the same extent. We would envisage that this has the potential to impose a very significant cost implication on the Department of Social Protection, where our current annual budget for postal services is of the order of €12 million plus per annum. On this basis, the VAT payable from our Department could be in excess of €2.7 million, at a time when we are being asked to provide cost efficiencies and streamline operations. As there currently is a single, inseparable price covering collection and transmission then ComReg should take the view that these are postal services that would fall within the scope of the universal postal service. The collective implication of such a move across all Government Departments should be considered as part of the Regulatory Impact Assessment process.

Regards,

Eoghan Ryan, P.O,
Head of Facilities Management Unit,
Department of Social Protection,
Aras Mhic Dhiarmada,
Store Street,
Dublin 1.

10:DX

Ms Sinead Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

By email: marketframeworkconsult@comreg.ie

08 June 2012

Reference: Submission re: ComReg 12/38

Dear Ms Devey,

Thank you for the opportunity to contribute to the Commission's consultation on the implementation of the Communications Regulation (Postal Services) Act 2011. The consultation clearly demonstrates the conscientious manner in which the Commission addresses its duties whilst presenting its analysis in a clear and concise manner.

Q1. Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?

The Commission has presented a thorough analysis of the combined effect of various legislation on the definition of what comprises a postal service.

DX agrees with the Commission that document exchange and express and courier services should not be deemed postal services in the context of the Commission's regulatory duties. DX would add to the Commission's analysis the observation that at the time of the first Postal Directive the key issue under consideration was whether services could be reserved to the universal service provider and it was therefore more important to legislate that these services were not within the scope of the universal service than to determine whether they should be subject to regulation at all. The Commission's analysis brings welcome clarification to this matter.

We would encourage the Commission to reconsider its analysis of whether network access is part of the universal postal service, taking account of the distortionary effects of VAT. Network access appears to us to be a variant of bulk mail that only differs from other bulk mail services in that the points of injection are further down the postal value chain. Network access therefore provides a means by which An Post can potentially avoid upstream costs and is therefore able to offer access users correspondingly lower prices. DX believes that it would be logically inconsistent for the Commission to determine that one or several bulk mail services should be within the universal service whilst similar access services should be outside it. A likely consequence of such a decision would be that some bulk mail customers (primarily in the important financial services sector) would

not be able to avail of cheaper access services because of the imposition of VAT on non-universal services. It would also be the case that the market would not benefit from the presence of alternative upstream service suppliers who would be unable to operate in a market where the incumbent benefited from an unassailable VAT advantage. In a market which exhibits growing levels of electronic substitution it is important that the universal service provider be able to offer new services with lower prices without having to have regard to the distortions created by the tax regime. It is equally important that there should be a level playing field that allows alternative suppliers to introduce new products that better meet customer requirements.

Q2. Should the “*status quo*”, i.e. a single tier service offering delivery the next working day, be retained as part of the *universal postal service*? Please give reasons for your views.

DX welcomes the Commission’s reinitiation of a discussion about the need for a second *tier* of service in the form of a cheaper non-priority service. We would observe that the provision of a non-priority service might stimulate demand for mail services and thereby protect the universal service. However, we suspect that rather than mandating a second service the Commission would do better by relaxing the QoS standards for the existing service. In any case, this matter is of substantial importance to the mail market and warrants a substantial and separate consultation in its own right.

Q3. Do you agree that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “*universal postal service*”? Please give reasons for your views.

Q4. Should ComReg reduce the maximum weight for domestic parcels at the present time, or leave it as is? Please give reasons for your views.

We agree that there is no need to mandate the provision of anything other than a basic parcel service because it is evident that the market is providing for customer needs. DX would like to draw the Commission’s attention to the risk that An Post might bundle added value services together with the basic parcel service in order to extend universal service protections to them and maintain the VAT exemption for them. The Commission needs to address this risk directly.

We do not believe that it is necessary for the Commission to mandate the provision of a parcels service up to 20kg weight. An Post would surely provide such a service voluntarily in order to meet its UPU obligations.

Q5. Do you agree that uniform pricing does not require that there be uniform prices for different types of “*postal packet*” – i.e. “*letters*”, “*large envelopes*”, “*packets*” and “*parcels*” – as the costs of processing each types are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.

DX believes that it is very important to distinguish between “products”, “formats” and “payment channels”. By “product” we mean an offering that differs from another offering in respect to a different level of quality of service (e.g. priority v. deferred) or the amount of work performed by the customer (e.g. pre-sorted v. OCR readable). “Format” refers to the physical characteristics of the item being conveyed (“letter” etc.) and “payment channel” refers to the method used to pay for the product (i.e. stamps, stamp printer, meter - franking or Ceadunas). Whilst it is reasonable that the prices for different products should vary and that the prices for different formats within those products should also vary it would be wrong to charge different prices depending on the payment channel used. Such a practice would be a clear abuse of the non-discrimination principle whereby all customers should pay the same price for the same product. The Commission needs to ensure that such an abuse is not allowed.

Q6. Should An Post be required to provide a single “last resort” Bulk Mail service as described in paragraph 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.

Q7. What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.

DX agrees with the Commission’s assessment that, in the absence of any Bulk Mail service from the universal service, some (probably, in DX’s view, most) users would not have sufficient bargaining power to secure provision of the postal services they require and that it therefore makes sense to mandate the provision of a “last resort” Bulk Mail service. This topic could be revisited if and when competition develops. Furthermore, we think it is necessary for the Commission to mandate the provision of a corresponding access service in order to ensure that users can avail of the cheapest possible service, thereby protecting the postal service against electronic substitution.

Q8. Should An Post provide standalone services for registered and insured postal packets? Please give your reasons for your views.

DX has not seen any evidence of market failure that would lead to the conclusion that it is necessary for An Post to provide standalone services for registered and insured postal packets. Neither do we agree with the Commission’s conclusion that the legislation forces it to mandate the provision of unbundled registered and insured services for postal packets. We are sure that the introduction and continuing provision of such new services would burden An Post with substantial additional costs and would also cause confusion in the postal market. We therefore do not agree that An Post should provide standalone services for registered and insured postal packets.

Q9. Should the services listed in paragraph 5.48 form part of the universal postal service? Should any of these services be excluded, or should any additional services be included? Please give reasons for your views.

DX believes that the products listed in paragraph 5.48 cover the market's needs for additional universal services.

Q10. Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act. Please give your reasons for any such suggestions.

DX believes that amendments are necessary in order to accommodate the observations made in the forgoing paragraphs i.e. inclusion of a provision ensuring uniform pricing of payment channels, requirement to provide an access service, removal of requirement to provide standalone services for registered and insured packet.

Q11. Do you agree that An Post's terms and conditions for its *universal postal service* should be set out in a single, comprehensive document and in plain language? Please give your reasons.

It might be more cost effective to have separate documents for personal and business customers.

Q12. Should An Post be required to publish the terms and conditions of its *universal postal service*, including its Schedule of Charges, in *Iris Oifigiúil* and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons.


It might be better to replace "wherever postage stamps are sold" with a formulation that reflects the fact that stamps can be sold through machines and retail outlets other than post offices.

Q13. Do you wish to suggest any amendments to the draft Direction to An Post? Please give your reasons.

It would be necessary to amend the draft Direction to reflect our answer to Q12.

We do hope that these observations help you finalise the implementation of the Communications Regulation (Postal Services) Act 2011. If you have any questions please contact me immediately.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Galligan'.

Kevin Galligan
Regional Director

11: Freight Transport Association Ireland



Freight Transport Association
Delivering safe, efficient, sustainable logistics

11th June 2012

Ms. Sinead Devey,
Commission for Communications Regulation,
Irish Life Centre,
Abbey Street,
Dublin 1
Ireland

Your reference: ComReg 12/38

Dear Ms. Devey,

**Postal Regulatory Framework: Implementation of the Communications
Regulation (Postal Services) Act 2011**

Freight Transport Association Ireland (FTAI) is a not for profit membership trade association for the freight and logistics industry in Ireland being wholly owned and governed by its members.

FTAI's purpose is to help its members to develop safer, more efficient and sustainable supply chains and transport operations. FTAI will work to enhance the influence and image of the freight and logistics industry in Ireland by promoting high standards in compliance and safety.

FTA Ireland on behalf of its members is grateful for the opportunity to submit their views on the above consultation. The Association would also like to note that we are in full support of the content of the submission from the Irish Association of International Express Carriers (IAIEC) and their members.

It is the opinion of FTA Ireland that the relevance of this consultation (as with IAIEC) is confined to the "scope of the regulations" and the Provisions of postal services "within the scope of the universal postal service".

In relation to the "scope of the regulation", there is a clear differential between the postal service and the service provided by express couriers. Some of these would include more time specific delivery requirements for domestic and international services, as well as tailored services for specific customers with an agreed service level contract between the service provider and their customers.

It should also be noted that there is a willingness within the industry to pay a premium rate for these added value services provided by express couriers. This would support the view from the industry that postal services and express courier services are operating in a different industry space, and therefore supporting the argument that they should not be part of the scope of these regulations.

The guidelines to be issued under Section 37 of the 2011 Act include the requirements for services provided by a universal postal provider which is set out in section 16. It also states that services can be interchangeable, providing that these are compliant with section 16. However, Section 37 (1) (c) clearly states that this does not include “express or courier services”. FTA Ireland is in agreement with this assessment because of the reasons already laid out.

In conclusion, FTA Ireland, on behalf of its members is of the opinion that express and courier services are providing a different service to the requirement of the postal service and should not be considered as part of the scope of the new regulations.

Yours Sincerely,

Declan McKeon
Head of Policy – FTA Ireland

Freight Transport Association Ireland
Office 5
104 Coolmine Business Park
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Tel : 01 8220040
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12: Irish Association of International Express Carriers

11th June 2012

Ms. Sinead Devey,
Commission for Communications Regulation,
Irish Life Centre,
Abbey Street,
Dublin 1
Ireland

Your reference: ComReg 12/38

Dear Ms. Devey,

**Postal Regulatory Framework: Implementation of the Communications Regulation
(Postal Services) Act 2011**

We would like to submit this response to the ComReg consultation on the Postal Regulatory Framework on behalf of the Irish Association of International Express Carriers (IAIEC) whose members are DHL, FedEx, TNT and UPS. IAIEC members are responsible for transporting a significant proportion of exports by value. It is this export volume that will help Ireland's economic recovery over the coming years.

Although this consultation deals with the following three important issues:

- the scope of regulation;
- An Post's role as the designated "*universal postal services provider*"; and
- the provision of postal services "*within the scope of the universal postal service*";

Express Carriers in Ireland are most interested in the scope of regulation and the provision of postal services "*within the scope of the universal postal service*" as these have the most most relevance to the express sector.

The scope of regulation

We would agree with ComReg's opinion that value-added express and courier services should not be counted as postal services as they lack some of the key features to be deemed postal services.

It is clear that express services are essentially distinct from postal services through:

- greater speed and reliability in collection, distribution and delivery (day-definitive and often time-definite);
- some supplementary service features such as the capacity to track and trace; and
- the extra price customers are willing to pay for the service.

This is exemplified by the European Commission's definition of express in its 1998 "Notice on the application of the competition rules to the postal sector":

"Express mail services: a service featuring, in addition to greater speed and reliability in the collection, distribution, and delivery of items, all or some of the following supplementary facilities: guarantee of delivery by a fixed date; collection from point of origin; personal delivery to addressee; possibility of changing the destination and addresses in transit; confirmation to sender of receipt of the item dispatched; monitoring and tracking of items dispatched; personalised service for customers and provision of an à la carte service, as and when required. Customers are in principle prepared to pay a higher price for this service."

ComReg is right that express services are not the same as postal services and we believe it is correct that express carriers (which operate in a highly competitive market) are not postal service providers and should be exempt from postal-specific regulation.

The provision of postal services "within the scope of the universal postal service"

We have always been supportive of the Postal Services Act 2011 (section 37(1)) which excluded express from the scope of the universal postal service and we would agree that this reflects the specific provisions in the First Directive (Recital 18) and EU case law (Corbeau) that express services are "essentially distinct" from universal services through the value added perceived by customers, and reflected in the higher price they are willing to pay.

The arguments for excluding express from the scope of the universal postal service are also relevant in why express should not be considered to be a postal service.

Yours sincerely,



Bernard McCarthy
Managing Director
DHL Ireland



Trevor Hoyle
Managing Director, Ground Operations
FedEx Express & FedEx UK Ltd



Ronnie Judge
Managing Director
TNT Ireland



Rob Burrows
Managing Director
UPS Ireland

**Please address all correspondence to: Rob Burrows, Managing Director, UPS,
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13:Irish Banking Federation



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Ms. Sinéad Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

Friday, 15th June 2012
[By e-mail]

Re: Consultation on the Postal Regulatory Framework - Implementation of the Communications Regulation (Postal Services) Act 2011

Dear Sinéad,

The Irish Banking Federation (IBF) and its members welcome the opportunity to input to certain aspects of the consultation on the Postal Regulatory Framework, and to provide comment on some of the questions raised in the paper.

Q6. Should An Post be required to provide a single "last resort" Bulk Mail service as described in Para. 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.

It is our view that the provision of a single "last resort" Bulk Mail service as outlined in paragraph 5.41 would be restrictive and would serve to compromise the services currently available to IBF members.

IBF members are significant users of the postal service across a number of different locations. The current range of services provides a number of postal options and, in the interests of ensuring the maximum number of options available, members would prefer the retention of the current number of discounts. Furthermore, IBF members are currently experiencing increasing requirements, as a result of a number of statutory codes introduced by the Central Bank, to provide more information to customers via the postal service, by way of increased mailings or more detailed individual envelopes. There is concern amongst our members that as this demand grows any such cost increase associated with VAT on postage will be further increased.

In that context, we query the proposal to narrow the *universal postal services* to exclude Bulk Mail, as this may lead to a broadening of the Bulk Mail services that are subject to VAT. We note that a recent, similar change in the UK resulted in an additional 20% to postal charges for banks in that jurisdiction. Financial institutions are not currently in a position to reclaim VAT and in the event of all Bulk Mail services no longer being a part of the *universal postal services*, a 23% increase in postage costs would be incurred by IBF members with respect to postal services, the majority of which relate to the provision of information

designed to inform and protect consumers. There is no indication presently that removing certain services from the *universal postal service* would result in a price reduction for those services, that could offset the impact of the VAT cost burden, as there is little or no competition to An Post in the Irish market

Q7. What type of "last resort" Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.

As in our response to Q.6, it is our view that the provision of a single "last resort" Bulk Mail service as outlined in paragraph 5.41 would be restrictive and would serve to compromise the services currently available to IBF members.

In addition to the above, it is our understanding that the Act driving this framework also included the legislative basis to implement postcodes. We would query the reasons for this not being included within the consultation paper, as we believe that the introduction of postcodes in Ireland would facilitate greater competition, efficiency and cost reduction in the postal sector.

We look forward to publication of the findings of the consultation in due course.

Yours sincerely,



Eimer O'Rourke
Director, Retail

14:Irish Business and Employers Confederation

The voice of Irish business and employers
connections knowledge influence



Ms. Sinead Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

11 June 2012

Reference: Submission re ComReg 12/38 - Postal Regulatory Framework: Implementation of the Communications Regulation (Postal Services) Act 2011

Dear Ms. Devey,

The Irish Business and Employers Confederation (IBEC) welcomes this opportunity to make a submission to the consultation process on the implementation of the Communications Regulation (Postal Services) Act 2011. The IBEC Postal Group brings together the experience and expertise of companies who are postal providers, logistics companies and large postal users. We have been paying close attention to the passage of the Communications Regulation (Postal Services) Act and the development of the national postcodes system.

The Universal Service Obligation:

The legislation provides for full liberalisation of the postal services market (including mail below 50 grammes) and maintains the responsibilities of the Universal Service Obligation (USO). The clearance and delivery of post to the home or premises of every person five days a week is important to business continuity in Ireland.

The consultation document appears to be suggesting that a sort of minimum service only exist within the USO, which would mean a severe restriction on the services available to all customers, not just businesses and in some cases actually drive customers to opt for alternatives to mail. Not only could this impact the current USO provider and the future provision of services, it could also impact on postal rates for VAT exempt large postal users such as financial institutions and charities, not to mention public sector bodies as well (further increasing the push to alternative communication channels other than mail services). Certainty needs to be given to the model of 'one mail delivery, five days a week, at one price' and we encourage ComReg to address this important issue.

Express and courier services:

IBEC welcomes ComReg's opinion that value-added express and courier services should not be counted as postal services; this is in keeping with the European Commission's view. Express services are not the same as postal services and it should be recognised that they operate in a highly competitive market. Section 37(1)(c) of the Postal Services Act 2011 specifically states that document exchange or express or courier services are not within the scope of the universal postal service, further relevance in why express should not be considered to be a postal service. In short, they are not postal service providers and should be exempt from postal-specific regulation.

IRISH BUSINESS AND EMPLOYERS CONFEDERATION

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EXECUTIVE MANAGEMENT TEAM
DANNY McCOY (DIRECTOR GENERAL)
BRENDAN BUTLER PAT DELANEY
BRENDAN MCGINTY LIAM O'DONOGHUE
MAJELLA FITZPATRICK

IBEC remains eager to participate in the consultation process and we believe that member companies can assist ComReg with the successful implementation of its obligations under the Act. However, we would stress that relevant stakeholders be consulted on an on-going basis and not just once consultation milestones set out in chapter 8 are reached.

My colleagues and I would welcome the opportunity to discuss this proposal in greater detail with you and/or your officials.

Thank you for your consideration and I look forward to your reply.

Yours sincerely,



Aidan Sweeney
Executive - Enterprise and Innovation

15:Irish Charity Sector



Providing Leadership and Support
within the Irish Charity Sector

11th June 2012

Ref: Submission on ComReg 12/38

Ms. Sinead Devey
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1

Email: marketframeworkconsult@comreg

Dear Sinead

On behalf of the board and membership of ICTR I would like to address some of the questions you raise in the consultation document ComReg 12/38.

Introduction

ICTR is a membership organization of charities that is committed to creating the conditions for a vibrant independent charity sector that commands public confidence. The focus is on creating a policy climate in which philanthropy can thrive - through a combination of taxation and regulatory reform. A list of member organisations is available at <http://www.ictr.ie/content/membership-list>

As our focus is on taxation, we will confine our remarks to that specific aspect of the consultation paper, and specifically Q. 16.

The Importance of Bulk Postal Services for Charities

We note with agreement the requirement “to safeguard the postal services which postal customers need” and to provide certainty for these customers as to what services the universal service provider is obliged to provide for them.

Despite “the increased use of electronic media by advertisers and government bodies”, direct and bulk mail services remain, and are most likely to remain, very important to charities in the administration and development of their organizations and services. This is a reality not only in Ireland but internationally where electronic communication is more advanced. With the exception of fundraising for relief services following major natural disasters, only about 2% of donations are made electronically. Growth in that figure is expected to be slow.

Most charities that engage in fundraising directly from citizens use outward direct mail bulk services to communicate their message, and many use An Post’s bulk early presentation / pre-sortation services for acknowledging donations.



Providing Leadership and Support
within the Irish Charity Sector

The cost of fundraising is significant. Charities use bulk postal services where possible in order to avail of more cost efficient rates. Hence, the cost of postage – which is the largest cost element in direct mail – is a very significant cost factor in fundraising. This has been well documented in several submissions to ComReg over the past decade.

Impact of VAT on postage for charities

As indicated in the consultation paper, under existing law, charities cannot reclaim the VAT they pay. This is a huge financial burden. In effect what it means is that fundraised money, given for charitable purposes, has to be used to pay VAT to the state.

The EU proposal to apply VAT to postage has been on the agenda for some years now. We regard this as another creeping tax and, along with counterparts in other EU member countries, have advocated strongly against such further tax imposition. Whilst no decision has been made, or is likely to be made in the near future, it is reasonable to suggest that the voice of the sector has been heard by policy makers.

We note at 7.26 in the consultation paper that: “the preliminary view of this draft RIA for Policy Issue 1, setting the universal postal services, is that Option 1, a “*de minimis*” set is best to address the policy issue of setting universal postal services pursuant to Section 16(9) of the 2011 Act as it is the most effective and least burdensome regulatory option”. We disagree strongly with that view, and suggest that direct and bulk mail services should be retained within the universal service. Our rationale for its inclusion are:

1. VAT on direct and bulk mail services would impose a further cost of 23% on the operating costs of charities which are not-for-profit organizations working for the public good and recognized as such by the state and by the EU. This imposed additional cost would be penal in an existing high cost economy.
2. There is no evidence available to suggest that alternative / similar bulk mail services will be provided by other suppliers in competition with An Post which has a national network of convenient access points for postal customers.
3. Retaining direct and bulk mail within the universal service will provide greater regulation and control of rates by ComReg, and rates are critically important to charities.
4. Charities are finding it extremely difficult to fundraise during the current economic recession. The current prolonged decline in giving by citizens is very likely to diminish the spirit of donating, and is most likely to make it even more difficult for charities to fundraise into the future. At the same time the demand for their services – locally, nationally, and internationally – is growing as cut-backs in state provided services impact on beneficiaries of those services. Extra taxation through VAT on bulk mail services will impose additional hardship on charities and the people to whom they provide a wide range of services at personal and community levels.



Providing Leadership and Support
within the Irish Charity Sector

5. Citizens make voluntary donations for a specified cause. They question more and more the administration costs of charities to whom they donate, i.e. they want the maximum amount of their donation to be allocated to the cause which they are supporting. Under charity law and best practice, charities have become much more transparent in how they are administered. We submit that citizens would resent their donations being used to pay for VAT on postal services that have always been free of VAT.
6. The VAT rate in N. Ireland and the UK is 20%. Many Irish charities are also registered in N. Ireland for fundraising purposes. Those doing large direct mail campaigns will see advantage in mailing from their branches in that jurisdiction in order not only to avail of lower postal rates but also 3% lower VAT rate. Such mailing will add further to the decline in mail volumes being handled by An Post, and put additional cost pressures on the funding of the universal service obligation.

We believe that the RIA by ComReg does not take adequate account of the severe financial hardship that imposing VAT on direct and bulk mail services would create for charities now and into the future. We are not aware of what consultation, if any, ComReg undertook with the charity sector in drafting this RIA. Its understanding of the impact burden on the sector is not obvious from the consultation paper.

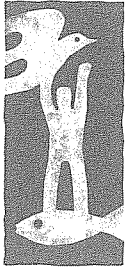
With a membership of 160 registered charities, we are strongly opposed to the imposition of VAT by excluding direct and bulk mail services from the universal service, and we ask ComReg to consider the un-necessary damage that such imposition would cause to the charity sector.

ICTR will be happy to be of assistance to you and your staff in relation to the issues raised in this submission.

Yours sincerely

Sheila Nordon
Executive Director

16:Irish Life



Ms. Sinead Devey,
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1.

Investments

Illness cover

Life assurance

8 June 2012.

Savings

Re: Submission reference Com Reg 12/38.

Pensions

1. In response to the consultation document "Postal Regulatory Framework Implementation of the Communications Regulation (Postal Services) Act 2011" please find set out below our response to same.

Mortgages

2. Having studied this document it is our belief that the "Universal Postal Service" obligation must have a bulk mail aspect, or aspects.

3. The criteria for the bulk mail should be wide ranging in order to include as many users as possible.

4. In Chapter 7 of Com Reg 12/38 you lay out the two options and their impacts on the stakeholders and competition. In response to same we would opt for Option 1.

5. Should you have any queries based on this response, please do not hesitate to contact the undersigned directly.

Yours truly,

Peter G. Gibbons
Manager Post, Print & Filing.
Customer Services Division.

Directors:
Alan Cook (British)
Chairman
Kevin Murphy
Tom Barry
Brian Forrester
David McCarthy
Pat Ryan
Irish Life Assurance plc
A tied mortgage branch agent
of Irish Life & Permanent plc
Registered Office:
Irish Life Centre,
Lower Abbey Street,
Dublin 1
Registered in Ireland
number 152576

17:Irish Postmasters' Union

Submission by the Irish Postmasters' Union in response to the ComReg Consultation in the Postal Regulatory Framework

The Irish Postmasters' Union

The Irish Postmasters' Union represents Postmasters in Ireland who operate a network of almost 1100 Post Offices under contract throughout the Country. These Post Offices provide employment for over four thousand people at local level within the community. Post Offices provide a highly valued service to 1.7 million customers every week across a wide range of Government and Commercial services. The provision of over the counter mails services is a significant part of the business of Post Offices.

The Post Office Network – its importance to Irish Society

The Post Office Network is the largest Retail Network in Ireland. We are accessible, highly trusted by the Public and Government and we form an integral part of the Communities we serve. Indeed, in many cases, with banks, health centres, district veterinary offices, libraries and welfare offices closed, the local Post Office represents the last remaining piece of public infrastructure in many rural communities.

Implications of the Postal Regulatory Framework for Postmasters

Although run independently by Postmasters, the sustainability of Post Offices is inextricably bound with the fortunes of An Post. If An Post becomes less profitable as a result of the loss of a significant part of its mails business, then this, in turn, will create further pressure on Post Offices in terms of the sustainability of the Network.

ComReg's Function and Objectives under the 2011 Act

We note that ComReg's function is "to ensure the provision of a universal postal service that meets the reasonable needs of postal service users". We also note that the objective of ComReg is "to promote the development of the postal sector and, in particular, the availability of a universal service within, to and from the State at an affordable price for the benefit of all postal service users". Additionally ComReg has, as an objective, "to facilitate the development of competition and innovation in the market for postal service provision", although it is important, in our view, to highlight the fact that this role is subject to its main objective as mentioned above. In this context, we would suggest that some of the proposals made in the consultation document may serve to undermine the viability and sustainability of An Post generally, and in discharging its role as a provider of a universal postal service.

Equally, given the major part that the Retail Network of Post Offices plays in the access to, and provision of postal services, we are concerned that the Commission's proposals do not adequately recognise the importance of ensuring that the implementation of the Regulatory Framework does not damage the Network of Post Offices in Ireland.

Access Points

As previously stated, the Post Office Retail Network is highly trusted by the 1.7 million customers who use the Post Office every week. The Network is also secure and operated by

staff who are trained and who have also been properly vetted. This means that, when a customer uses a Post Office as an access point for mails services, they can be confident of receiving a secure, reliable service of the highest integrity. We are concerned that the Post Office Retail Network is not specifically designated as an access point and we would suggest that the Network should be specifically included in the Commission's proposals for the provision of a universal postal service.

Classification of Non-USO Mail

We would have a serious concern at the extent to which the Commission proposes to "declassify" USO mail, particularly bulk mail. One of the implications of reclassifying mail as "non-USO" would be to make the items concerned liable to vat. This would, in effect, increase the cost of mail to many of An Post's customers such as charities, banks, Government Departments and agencies etc., by 23%.

This would, of course, be unsustainable for the organisations concerned, and could drive them towards seeking electronic alternatives. While this would be at odds with the Commission's objectives of the promotion of the postal sector and the sustainability of the universal postal service, it would also significantly undermine the financial viability of An Post, and this, in turn, could lead to the closure of many Post Offices resulting in the loss of many access points in the system.

Introduction of a Second-Class Postal Service

The Union would see the introduction of a two tier system as adding cost unnecessarily where there does not appear to be a strong customer demand. The introduction of a "second-class" service would have serious revenue dilution issues for An Post and would also, in our view, pose significant operational difficulties for the Company. For Postmasters the knock-on effect would be to reduce the margin being paid to them by An Post, and this would undermine the viability of Post Offices, especially in rural areas.

Parcel Services

We do not agree with the Commission that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the universal postal service. In our view, this would be contrary to the Commission's obligation to provide a universal service that meets the reasonable need of users. A significant part of An Post's share of the parcels market involves the provision of services that are not easily accessible for many postal users. While the market is very competitive, there are many customers who cannot, without considerable difficulty, access other providers. This is especially true for postal service users in rural communities.

Maximum Weight for Domestic Parcels

We do not believe that the maximum weight for domestic parcels should be reduced at the present time, for the reasons outlined by the Commission in its consultation document.

Stand Alone Services for Registered and Insured Postal Packets

We do not believe that An Post should provide stand-alone services for registered and insured postal packets. In our view, this could lead to confusion arising at access points especially at Post Offices. We believe that the status quo should remain.

Conclusion

We have a grave concern that services outside of the universal service obligation will, in practical terms, ultimately become unavailable to many ordinary citizens and will, in turn, lead to the USO being undermined. This undermining of the USO will further disadvantage rural businesses and individuals that the Post Office Retail Network depends on to remain financially sustainable.

We believe that many of ComReg's proposals if implemented as currently proposed, will lead to pressure on An Post's financial viability and, consequently, on the viability of the Retail Network of Post Offices as an important access point. Equally, we are concerned that An Post may not be adequately compensated for providing a universal postal service.

Ultimately, the question must be asked, are the Commission's proposals sufficient to ensure that its statutory objective and functions are met. In our view, in their current format, the proposals do not meet this criteria.

18:Irish Rural Link

“Reference: Submission re ComReg 12/38”,



**Postal Regulatory Framework: Implementation of the
Communications Regulation (Postal Services) Act
2011**

**Comreg grants extension to consultation period for
Comreg document 12/38**

June 11 2012

Contact : Seamus Boland

Irish Rural Link
Moate Business Park
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Moate
Co. Westmeath

Tel: 090-6482744 Fax: 090-6481682 086 2491153
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Introduction.

Irish Rural Link has for many years expressed its huge concern at what it terms the continuous reduction of many public services to rural and regional areas. In this regard the monthly downgrading of post offices coupled with closures continues to disadvantage rural communities and in particular people who live in isolated areas. We have also expressed our concerns at any reduction of the postal service's delivery system in rural areas; on the basis that it contravenes obligations that public services must be available to all citizens of the state.

We welcome Comreg's involvement in a consultation process on the implementation of the Communications Regulation (Postal Services) Act 2011.

Main Concerns

1. That the trend to reducing services in rural areas is not properly addressed by the Act or consultation process.
2. That a definition of principles, outlining Comreg's understanding of adhering to the Public Service obligations is required in the determination of any policy which affects the delivery of such services. In this case the delivery of postal services to all areas of the country.
3. In particular we are concerned that Comreg are suggesting that that a type of minimum service only exists within the USO. This would mean a severe restriction on the services available to all customers, particularly rural isolated areas.
4. It is our contention that Comreg must protect the USO and must outline how this will be done.
5. It is our belief that such a change to the service will disadvantage customers, particularly in low population density areas in terms of; significant increases in postal rates for VAT exempt customers like Financial Institutions, Government Departments and Agencies and Charities.
6. It will also disadvantage small rural based businesses by raising the overall cost of the services
7. We believe that Comreg must clarify their understanding of the model of 'one mail delivery, five days a week, at one price'.

Social Exclusion in a Rural Context

'The overall strategy for rural development in the White Paper endorses and supports the objectives contained in the National Anti-Poverty Strategy and is committed to ensuring that rural development policy is underpinned by a socially inclusive dimension.'

(White Paper on Rural Development, 1999)

In order to begin to tackle many of the deficiencies felt by rural communities, it is key that we start to deal with social exclusion in a rural context and provide the opportunities needed by rural communities to full participate in our modern society.

For the purposes of this submission it is worth looking briefly at what it means to be socially excluded from a rural context. A working definition of Rural Social Exclusion as described by the national Economic & Social Forum (NESF, 1997) is that rural social exclusion has a number of distinct features such as:

- High level of invisibility
- Depopulation
- Higher dependency ratios
- Small and nonviable farm holdings
- Lack of alternative employment
- Greater dependence on social welfare
- Poor transport or limited access to information and public services
- Weak community based structures and development mechanisms.
- Culturally Different

It is also characterised by regional imbalances, such as the Border and Midlands as well as many parts of the West. However it is not totally based on geography. Some regions within highly developed parts of the country are also affected. Examples include parts of the South east, mid-Leinster and within the Golden Vale.

Invisibility

Unlike urban areas where social exclusion and poverty is for the most part obvious by the physical appearance of large sprawling urban estates and without much effort it is easy to ascertain the levels of unemployment, social welfare, and determine the level of education attainment. Whereas in rural areas social exclusion and poverty are not always visible or detectable - it is experienced at the individual level, or it is dispersed over large geographical areas.

A significant proportion of rural residents experiencing social exclusion often are living in local authority estates in villages and towns. While they may have been traditionally dependent on the rural economy (agricultural), they are now more than likely dependent on employment that is available closer to the larger population outlets. In essence we have a phenomenon of 'chasing' rural people into urban areas that is not always easy to detect or ascertain the level to which it is happening.

Irish Rural Link – The Organisation

Irish Rural Link (IRL), formed in 1991, is a national network of organisations and individuals lobbying for sustainable rural development in Ireland and Europe. IRL, a non-profit organisation, has grown significantly since its inception and now directly represents over 1200 community groups with a combined membership of 25,000.

The network provides a structure through which rural groups and individuals, representing disadvantaged rural communities, can articulate their common needs and priorities, share their experiences and present their case to policy-makers at local, national and European Level.

It is one of 17 community organisations who continue to participate in the dialogue with Government on all aspects of policy.

Currently in partnership with the Wheel it is delivering the “Digital Switch Over Programme to reach communities living in rural isolated areas. This is at the request of the Department of Communications and energy. Other programmes include:

- The Delivery of Computer training to older people
- Rural Farm Safety
- Solutions re the conservation of bogs in terms of fuel poverty

Irish Rural Link is represented on NESC and The European Economic Social Council

‘Our vision is of vibrant, inclusive and sustainable rural communities that contribute to an equitable and just society’

Irish Rural Link’s aims are:

To articulate and facilitate the voices of rural communities in local, regional, national and European policy arenas, especially those experiencing poverty, social exclusion and the challenge of change in the 21st century.

To promote local and community development in rural communities in order to strengthen and build the capacity of rural community groups to act as primary movers through practical assistance and advice.

To research, critique and disseminate policies relating to rural communities including issues such as sustainability, social exclusion, equality and poverty

To facilitate cross-border networking between rural communities

‘Our mission is to influence and inform local, regional, national and European development policies and programmes in favour of rural communities especially those who are marginalised as a result of poverty and social exclusion in rural areas.’

‘Rural development has a major social equity dimension. Unemployment, educational disadvantage and inadequate income are common to those at risk of, or living in, poverty in both urban and rural areas. However, the problems of rural poverty and exclusion frequently manifest themselves in a significantly different manner from those in urban areas.’

(White Paper on Rural Development, 1999)

Some would say that inequality is more pronounced in times of wealth and high economic growth. The relatively large investment in our overall infrastructure has transformed the country, and brought us almost on par with what a modern country should look like. In a country the size of Ireland it should be straightforward to assume that such development should benefit all of the country in equal measures. However the intense growth experienced in the Dublin and Eastern region has led to the widening of the gap in terms of income and opportunity between the East and West, as was confirmed in the recent Combat Poverty report ‘Mapping Poverty’.

As a means of ensuring fairness in regional terms, the publication of the National Spatial Strategy (NSS) was generally welcomed, and seen as an acknowledgement by government that deficiencies in regional development will, if not corrected, result in huge inequality within our society.

The current transformation of rural Ireland and rural development in terms of attitudes to farming, still its main economy, is posing serious challenges to the long term sustainability of rural communities as we know them. Until recently, rurality was synonymous with agriculture.

The dramatic changes within the rural economy in the past decade as well as the changes that need to take place in the rural economy must be taken into account when devising changes to the delivery of public services.

Irish Rural Link believes that policy makers, planners and practitioners have to date failed to fully comprehend the differences between urban and rural areas thus failing to grasp the need to devise varying solutions that are required for these very different areas. Indeed, it is worth noting that a typology of rural areas have been identified in the National Spatial Strategy which themselves pose different challenges and require different approaches and solutions when dealing with such issues as the eradication of poverty and promotion of social inclusion, developing sustainable rural communities, etc.

Spatial Trends – Uneven Distribution of Economic Activities

‘Commonly used measures of disadvantage, deprivation and socio-economic imbalance are labour force participation rates, unemployment rates and levels of economic dependency.’

(Mapping Poverty: National, Regional and County Patterns, 2005)

Government reports have consistently showed some startling data in relation to what are considered very rural counties. It highlighted a rural population that is older, more dependent, less well educated and at a greater risk of unemployment which has resulted in a rural population that is excluded from the fruits of a thriving economy that have accrued to many. It showed that the West, Border and the South West regions have the oldest age profiles. This results in a higher age dependency in the likes of the counties of Donegal, Roscommon, Leitrim, Cavan and Mayo. This report, in general, has found that there are also a greater percentage of persons over 65 who are living alone.

This, combined with the fact that labour force participation is lowest and unemployment rates highest in the Border, Midlands and Western region, leads to the conclusion that many rural areas have and continue to be at a greater risk of suffering poverty and social exclusion than other regions. It is crucial that we put in place a comprehensive strategy that will begin to nurture and develop sustainable rural communities and will deliver the services that rural populations need and deserve.

19: Lettershop Postal

BY EMAIL

Hi Sinead,

Please find below my answers to the questions raised with regard to the current consultation process. Let me know if there are any queries.

Thanks

Ross

Lettershop Postal
Unit 5, Grattan Business Park
Clonshaugh Industrial Estate
Clonshaugh
Dublin 17

Subject: Re: Submission Re Comreg 12/38

- Q.1 I agree with Comreg's understanding.
- Q.2 I agree that a Single Tier service should be retained as part of the Universal Postal Service.
- Q.3 I agree that there is no need to mandate the provision of anything but a basic Parcel service.
- Q.4 There is no evidence to justify reducing the Parcel weight to 10kg. This would make An Post uncompetitive in this area and deny other postal service providers access to a service up to 20kg.
- Q.5 I agree that Uniform Pricing does not require uniform prices for different type of postal packets. However, there is a case for uniform pricing if the rate structures were changed to a kilo and Piece rate for Bulk Mail
- Q.6 An Post should provide a "last Resort" domestic ONLY bulk mail service as part of the Universal Postal Service for all the reasons described in section 5.41. However, Bulk International Mail services should not form part of the Universal Postal Service as International Postal Services can be adequately met from other Postal Service providers. An Post are also not responsible for, nor do they have control of, the final mile delivery costs so this service could not be used when trying to calculate any net financial burden to An Post for the purposes of applying a levy to fund the Universal Postal Service.
- Q.7 The "Last Resort" domestic bulk mail service should have the following features and be set aside from the other bulk service solely by incorporating a unique low minimum volume. This service could be characterized as follows but roughly resembling Bulk Discount 11.

- Priced not more than 10% under the Standard tariff

- Be priced at least 10% over the next highest Bulk tariff (all of which should not form part of the Universal Postal Service)
- be an unsorted product
- be available Nationwide
- No restriction on the time of posting
- Deferred Delivery
- Low Minimum volume
- Can be either stamped, ceadunas or franked

Q.8. For Ireland, I don't believe a standalone Registered or Insurance service is required as the main features of a registered and insured service (including Price) are fairly well covered in the Express Post service. For Great Britain the same could apply although the price differential is not quite so close. I agree that there should be a standalone service for Registered and Insured postal packets for the Europe and ROW and this should be included in the Universal Postal Service.

Q.9. I agree that all services listed in paragraph 5.48 should be included in the Universal Postal Service, **with the exception of Sending Books Abroad**. In the Working Definition document 05/85 the only reason for inclusion was due to charities. However, with the advent of e-Commerce, selling books on-line is now a commercial enterprise and should not be subject to special rates. I would like to suggest that a more equitable arrangement would be for An Post to offer specially negotiated rates for charities but only if it feels the need to support charities.. This should not form part of the Universal Postal Service. Also, the specific weight bands and rate structure of the Sending Books Abroad service does not seem to make any commercial sense.

- Q.10.
1. The meaning of "Trace & Track" should be clarified in terms of whether it also means "Proof of Delivery" (hard copy or not) or "With Signature" etc.
 2. The Draft Regulation does not cover the proposal of having a single "last Resort" Bulk Mail service . Nor is there any reference to International Bulk Mail being included in the "last resort" Bulk mail service
 3. The Draft regulations make no reference to Sending Books Abroad yet this is included in the list in Paragraph 5.48. I assume that this service is therefore NOT included in the Universal Postal Service?
 4. Part (ix) needs clarification. This appears to refer mail given to An Post from an Office of Exchange within Ireland. I see no reason why this should be part of the Universal Postal Service as An Post negotiates individual contracts with UPU members.
 5. Clarification is required on what activities could be construed as "Adding Value"

Q.11. I agree

Q.12. I agree

Q.13. No Amendments required

Q.14. The analysis by Comreg is very thorough and very sensible in its approach. However, the implications relating to funding of the Universal Postal Service are not sufficiently covered. Without knowing what the cost implications, this represents a barrier to expansion or entry to the Postal sector. Without knowing this cost, it is unreasonable to

expect a Postal Service Provider to provide Notification under section 38 until this is clarified. This point also applies to the plan to impose fees on authorized Postal Service Providers to cover the cost of Comreg's activities. It is not clear how this cost will be allocated and what the cost is likely to be. Can we look to see if there are other examples of a specific Industry sector paying for the cost of the relevant state organizations?

The need to maintain separate accounting (paragraph 6.14) is, on the face of it, clearly unworkable for all Postal Service providers, including An Post. The difference between the services provided within the scope of the Universal postal service and those outside the scope are considerable, yet the resources required to provide all services are interchangeable and probably apply to all services. Each Postal Service provider will have different operational cost and pricing models, so applying percentages of revenue and cost to services within, and outside, the scope of the universal service, will be impossible. In fact, many of the fixed costs involved in providing a Postal Service may, in part, be used for other products and services that have nothing to do with Postal services. The cost of such an accounting system would further threaten the viability of any competition, either new entrant or existing Postal Service providers.

Q.15 The provision of the need to fund the Universal Postal Service should be dropped entirely. Section 9 of the Act states that the Act is designed "to facilitate the development of competition and innovation in the market for postal service provision - subject to the provision of a universal postal service that meets the reasonable needs of postal service users." Therefore, there is an open ended provision which could effectively remove the financial viability of any competition to the Universal Postal Service provider at the stroke of a pen. That being the case, I cannot any way to proceed with Regulation until this is clarified.

Clarification should be made as to whether the International Bulk Mail (IBMS) is considered to be inside the scope of the Universal Postal Service and, if so, is it part of the "last resort" bulk mail service. In theory, this service would still be available to postal users from other Postal Service providers so it should be outside the scope of the Universal Postal Service.

Q.16.

Section 7.15. Postal Users should ALSO include Other Postal Service Providers.

Section 7.18 Although the majority of the services will not be in Universal Postal services, the vast majority of the VOLUME of mail will be in the Universal Postal Service. Therefore, An Post will still have a significant advantage by being VAT Exempt. This will continue to ensure that An Post enjoy a substantial advantage over any competition. This further emphasizes the issue as to why the other Postal Services providers should fund the Universal Service provider when competing in an area where the playing field is far from level.

It should also be noted that An Post, as the Universal Service Provider has been allowed to develop its service and infrastructure over 100 years without competition. Therefore, it is starting off with a massive advantage over the competition who will NEVER be in a position to match their coverage and range of services. On this basis, it is unfair that the Universal Service provider should receive any funding from competitors who have no chance of ever providing a comparable service.

20: Liberty Insurance



Liberty Insurance

Dublin Road, Cavan, Ireland

Tel: 1890 89 1890 / 1850 85 8530 (claims)

Fax: 049 436 8101

Email: info@libertyinsurance.ie

Web: www.libertyinsurance.ie

11th June 2012

Ms. Sinead Devey
Commission for Communications Regulation,
DEF, Abbey Court,
Irish Life Centre,
Lower Abbey Street,
Dublin 1.

Reference: Submission re ComReg 12/38

Dear Ms. Devey,

Following review of above mentioned material I ask that consideration is taken regarding enclosed comments.

Introducing pre-sorted mail to avail of bulk mailing discounts would prove extremely difficult and expensive. The cost along would be colossal. Consideration would have to be made regarding development of such a request, infrastructure, space capacity, headcount and efficiencies within the Document processing department.

We avail of a number of services from An Post which are VAT except, the introduction of VAT would automatically generate an additional 23% increase on current spend. As a business, we would have to review avenues were we could recoup this additional spend. Some options available to us would be to reduce our mailings or pass the cost onto our customers. Both options would be difficult to deliver considering how extremely competitive the insurance market is and regulatory requirements.

I appreciate if de-classification of some services where to occur, it would give us the powers to negotiate price with our postal provider, however how effective would this negotiations be considering mailing volumes are declining and postal providers have tight margins as it is.

The current An Post universal service provides us with choice and flexibility. This proposal would limit the choice of services we could avail of.

I thank you for considering this request and look forward to your response in due course.

Yours sincerely

Aine Donnelly
Documentation Manager

21:Nightline

Response by Nightline to ComReg Consultation 12/38 - Postal Regulatory Framework Implementation of the Communications Regulation (Postal Services) Act 2011

Nightline welcomes the steps taken by ComReg in initiating this Consultation. We expect that successful and timely implementation of ComReg's multi-step process, as outlined in section 8 of the document, will result in the creation of a clear regulatory framework for Ireland's postal sector that will benefit businesses and residential customers alike. By actively promoting competition within the postal sector, ComReg can enable Ireland's postal service providers to:

- grow mail volumes across the market as a whole
- generate operational efficiencies
- improve work practices
- stimulate commercial flexibility and service innovation, and
- increase the competitiveness of the Irish economy overall.

We note that a core purpose of the present Consultation, as summarised in section 3.11, is to give stakeholders such as Nightline the opportunity **"to comment on ComReg's understanding of its statutory remit"**.

We believe that ComReg has a vital role to play in the development of Ireland's postal sector. We note in particular that ComReg has a statutory duty under the Act to promote competition in the sector:

- Section 10 a) of the Act requires ComReg **"...to facilitate the development of competition and innovation in the market for postal service provision"** *[emphasis ours]*, and
- Section 10 b) of the Act requires ComReg **"...in so far as the facilitation of competition and innovation is concerned, [to] ensur[e] that postal service users derive maximum benefit in terms of choice , price and quality"** *[emphasis ours]*

We also note that Section 34 (3) of the Act stipulates that:

- "The Commission [ComReg] may give a direction under subsection (2) [of the Main Act] where it considers that it is necessary for either or both of the following purposes:
 - (a) to protect the interests of postal service users;
 - (b) to promote effective competition** *[emphasis ours]*

Thus we believe that ComReg has considerable discretion and powers available to it in setting the ground rules for all market participants and in creating a viable and sustainable competitive framework for the postal sector in Ireland.

We note that this Consultation is intended as first in a series of measures which ComReg will undertake over the coming months, to include Publication of a Postal Strategy and separate Consultations on the Postal Levy, a Price Cap, and on Financing of the USO. We believe that these subjects are intrinsically interlinked, and that none can be considered in isolation. Market participants cannot proceed to make investments and develop their businesses for the benefit of consumers until all the rules have been agreed. Hence we would urge ComReg to proceed with its proposed timetable of consultations as expeditiously as possible. If there are delays in putting the framework in place, ultimately it is the end-users who will lose out.

From Nightline's perspective the key issues in this process are twofold:

- a) **Provision of regulated, cost-based Downstream Access (DSA) for other service providers to the network of An Post:** We believe that a mandated wholesale DSA service is crucial for proper functioning of the market, and that it is ComReg's role to put this in place. We believe that the current requirement under the Act for An Post as incumbent owner of the "postal network" to "enter into negotiations" with access

seekers is not likely to lead to any practical result unless the process, timeline and technical and commercial terms are explicitly defined by ComReg at an earlier stage and in greater detail than is set out in Section 33 of the Act.

- b) **Correct and timely assessment of the financial impact (if any) of the Universal Service Obligation on An Post:** We note that a number international studies, using methodology in line with that required in the 3rd Postal Directive, have found that the USO in postal services constitutes a net benefit rather than a net cost to the USO operator¹. We call upon ComReg to ensure that a similar approved methodology will be applied to the calculation of costs and benefits relating to the USO of An Post in the Irish postal market. Given the stipulation in the Act that any net additional costs of the USO shall be borne by other service providers via a “sharing mechanism”, Nightline and other alternative service providers require either:
- a) clear indication of the magnitude and timing of such a sharing mechanism or common fund, if it is to be sanctioned by ComReg, or alternatively
 - b) assurance that no such sharing mechanism would apply, on the grounds that the USO will indeed have been deemed to constitute a net benefit, rather than a net cost, to An Post.

Clearly it is unreasonable to expect operators such as Nightline to make business decisions involving any significant capital or operating costs without full visibility of what may be a key component of our input costs.

Questions

Q. 1 Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?

We note that in section 4.1 of the consultation document (under the sub-heading “Definition of Postal Services”) ComReg addresses a wide range of topics related to the definition of postal services. The topics addressed include Network Access, which Nightline believes is the single most important issue to be resolved in order to develop a fully functioning and efficient postal market in Ireland. The majority of our comments below relate to the issue of Network Access and the role to be played by ComReg in facilitating it.

Regarding the three specific services listed by ComReg - namely i) “*Document Exchange*” ii) “*Express and Courier services*” and iii) the delivery of unaddressed advertising material - Nightline agrees with ComReg’s view that these services are not “postal services” as defined in the Communications Regulation (Postal Services) Act 2011 (“the Act”), as these services lack certain key constituent features which need to be present for a service to be deemed a “postal service”. Hence a provider of any of these three services would not require an authorisation from ComReg to provide them, nor would a levy apply with respect to the provision of these services.

Similarly Nightline agrees with ComReg that a service such as Direct Mail should be considered to be a “postal service” for the purposes of the Act, even though the sorting element is missing and thus Direct Mail does not strictly fall within the legal definition of “postal service”, which is now defined as “services involving the clearance, sorting, transport and distribution of postal packets”. Hence a provider of these services would require an authorisation from ComReg to provide them, and a levy would apply with respect to the provision of these services.

In sections 4.23 to 4.28 ComReg addresses the question of Network Access – that is, access by other postal service providers to the network of An Post – in the context of its definition of Postal Services:

¹ See for example the 2008 study by Copenhagen Economics ‘The cost of Post Danmark’s Universal Service Obligation’ <http://www.copenhageneconomics.com/Web/Publications/Postal-services.aspx?M=News&PID=1043&NewsID=219>

4.25 An Post also allows other “postal service providers”, and in particular the “Designated Operators” of the Universal Postal Union (“UPU”) and members of the European Parcels Group (“EPG”), access to its “postal network”. By this arrangement both “postal service providers” and An Post, as owner of the network, should benefit from the further economies of scale, density and scope that should arise.

4.26 Some “postal service providers” may wish to access An Post’s “postal network” in order to provide their “postal services”. Section 33 of the 2011 Act gives them “the 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” and makes provision for ComReg to provide a dispute resolution function. **It appears to ComReg that while such negotiated access is a type of “postal service”, as defined, it is distinct from the provision of the “universal postal service”** [emphasis ours]. This view is supported by the wording of section 33 “with a view to concluding an agreement” rather than including provision for same within the definition of the “universal postal service” in section 16.

4.27 On the other hand, other “postal service providers” may chose to simply purchase a “universal postage service” to ensure delivery of “postal packets” in areas where they do not have a delivery network. [emphasis ours].

4.28 Either way these “postal services” enable both “postal service providers” and An Post, as owner of the network, to benefit from the economies of scale, density and scope that should arise.

We note that “postal service providers”, such as Nightline, under section 33 of the Act, have the right to “enter into negotiations” with An Post “with a view to concluding an agreement” and that there is provision for ComReg to provide a dispute resolution function and even to mandate the terms of access in this respect.

However, we believe that the process as described falls short of what is required in order to construct a robust regulatory framework governing access to An Post’s network. This is because:

- a) There is no explicit requirement on An Post to reach any agreement with access seekers on foot of such negotiations in a timely fashion.
- b) No standard timeframe is set for the progress of such negotiations between An Post and the access seeker before the intervention of ComReg is required. It is true that there is provision under Section 33(2) of the Act for the access seeker to request ComReg to “specify a period within which the negotiations...shall be completed”, but there is no certainty as to what this period would be.
- c) Reference is made in Section 33 (5 and 6) to “procedures” which ComReg shall follow in the resolution of any disputes between An Post and an access seeker which might arise from negotiations. Nightline agrees that such procedures are vital, and that - for them to be effective – they need to be as explicit and detailed as possible. Experience in other markets shows that the absence of such detailed procedures is likely to lead to delays for the access seeker. Without clear guidelines, and in the absence of regulation around this issue, the incumbent is in a position to extend the process of negotiation and dispute resolution ad infinitum, i.e. “to walk back slowly”. This will result in a delay to the onset of competition, which is contrary to ComReg’s statutory remit. We note that Section 33(6) of the Act states that:

*The Commission shall publish the procedures referred to in subsection (5) and, **on a request being made for that purpose** [emphasis ours], make the procedures available to a postal service provider free of charge.*

Nightlines wishes ComReg to take our response to this Consultation as a formal request to publish the procedures referred to in Section 33(6) as soon as possible. This should enable us to have full visibility of all phases of the access negotiation process as proposed. We note that Section 33(8) of the Act explicitly highlights “the development of competition in the market for postal services” as one of the factors to be taken into account by ComReg in “reaching a decision pursuant to the procedures referred to in subsection (5)” [in relation to a dispute],

- d) We note that the process set out in Section 33 of the Act assumes that ‘negotiated access’ (and not mandated access) is the solution which will be adopted in the Irish market. However, we note that ***in the event of a dispute between the parties*** ComReg does have full discretion to establish and impose the technical and commercial terms of access. Section 33(7) states:

In making a decision in relation to a dispute, the Commission may impose or amend the conditions relating to access to a universal postal service provider’s postal network and such conditions may include—

(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,

Nightline believes that ComReg does not need to wait until a dispute occurs before it specifies items (a), (b) and (c) above. Calculation of these elements will take time, and will involve consultation between multiple parties – for this reason we strongly believe that this process of consultation and information-gathering needs to begin **now**. If these conditions are to be determined by ComReg on an ad-hoc and case-by-case basis - between An Post on one side and individual postal service providers on the other, with ComReg as arbiter - there is no incentive on An Post, as access-giver, to reach agreement with individual access seekers in a timely fashion. In the meantime the market will have moved on – either to an equivalent non-postal service (e.g. e-mail) or back to the incumbent. This result would be contrary to ComReg’s explicit mandate to promote competition in the postal sector.

Nightline urges ComReg to proceed immediately to define a set of baseline or default values for the price, terms and conditions of downstream access, so that the market is not waiting for a dispute process to trigger such a definition. That is, prior to any negotiations between the parties, parties would already have a set of standard or baseline commercial and technical parameters regarding access to An Post’s network which could be used as the framework for agreement. The set of standard technical parameters should ensure non discriminatory treatment of wholesale mail from a quality of service targets perspective. In our view this would greatly speed up the whole process, to the benefit of all market participants – especially end-users.

We believe that the term “matters other than price” under Section 33(7)(b) of the Act should be taken to include the timeframe within which An Post will be required to implement the access conditions imposed by ComReg as part of resolution of any dispute. Clearly we need to have certainty not only as to the terms of agreement, but when that agreement will actually be implemented so that our customers can have real-time access to services based upon it.

To summarise: in order for end-users in Ireland to benefit from full market opening, as intended by the EU’s Third Postal Directive, we believe that ComReg must proactively intervene to promote competition by:

- Stipulating a finite and reasonable timeframe within which An Post must:
 - a) offer a formal contract for Downstream Access to qualified access seekers, and
 - b) implement the DSA service at the operational level:

By ‘reasonable timeframe’ we mean, for example, that a formal commercial offer and draft contract should be provided to the access seeker within 30 days of receipt of request; technical implementation of project plan (go-live date with access seeker) within 90 days of contract signing.
- Stipulating a finite reasonable timeframe and defining the specific mechanism for resolution of disputes which may arise between An Post and access seekers. As explained above, unless this is put in place from the outset, there is an incentive for the incumbent to delay provision of access. Nightline welcomes the earliest publication of ComReg’s procedures in this regard, as per Section 33(6) of the Act.
 - Nightline believes that the entire dispute process should last no longer than 30 days, after which time the mandated solution process specified under Section 33(7) of the Act should commence.
- Defining from the outset a default standard set of commercial and technical terms which An Post can propose to access seekers, in the event of any dispute, as per Section 33(7) of the Act. These terms would be:
 - Cost-plus, not retail-minus
 - Priced per individual incremental item
 - For presentation and injection at various levels, and at various locations, into An Post’s network.

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. The terms and conditions (including price) offered by ComReg to 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. This reflects the difference in service requirements between these two categories of customer. There must however be clear non discriminatory treatment of wholesale mail from a quality of service targets perspective. In general terms, wholesale pricing should be cost-based (“cost-plus”), as distinct from the discounts which An Post makes available to large retail customers, e.g. banks, which should be “retail-minus”. If this distinction is not observed, ComReg will be unable to fulfil its mandate to promote competition within the sector.

There is a clear analogy here between the postal sector and telecommunications and electricity supply sectors – two sectors in which this distinction between ‘wholesale’ and ‘retail’ has been made clear, and where the regulator – ComReg and CER respectively – controls the prices for those wholesale inputs required to create and maintain a competitive market.

- In telecommunications, alternative network operators purchase from Eircom (as the fixed network operator with Significant Market Power in the relevant wholesale market) a number of regulated input products, including fixed termination, at cost-base prices which are regulated by ComReg. These wholesale prices are used by alternative network operators as the inputs on which they base their retail offerings².

² Ireland’s telecommunications market framework is based on strategic policy and subsequent legislation co-ordinated at an EU-level, as per http://www.comreg.ie/about_us/legislation.501.html and http://www.comreg.ie/about_us/telecoms.537.401.html

- In electricity supply, alternative electricity suppliers purchase distribution and supply services from ESB Networks, which is a separate wholly-owned subsidiary of ESB. ESB in turn is the licensed owner of Ireland’s electricity distribution system assets. ESB Networks, as licensed Distribution System Operator (DSO), earns revenue through charges which are regulated by the Commission for Energy Regulation (CER). Thus CER is responsible for regulating the wholesale prices which are used by alternative network operators as the inputs on which their retail offerings are based. Similarly in electricity transmission, ESB is required to build and maintain the transmission network which is operated by Eirgrid. Electricity generators pay to the ESB Transmission Use of System Charges (TUoS). These TUoS charges are regulated by CER³.

Similarly in the postal sector Nightline expects to avail of wholesale pricing and access conditions, which recognise the particular status of Nightline as a ‘postal service provider’ and not a retail customer. Clearly this pricing would be different to those which An Post makes available to retail customers, who would be injecting mail into the An Post network under different conditions, and typically in lower volumes than would be the case for a service provider.

This distinction between retail and wholesale terms of access does not appear to have been accepted by An Post. For example we note the proposal made by An Post in 2009, as summarised by ComReg, to replace the various settlement systems then in place for incoming cross-border mail with “three Access Services, each of which will offer **the same prices and terms and conditions as are available under the corresponding service offered to its domestic customers...**” [emphasis ours]

“The three Access Services will be:

- Standard service (based on the early presentation pre 3pm service)
- Pre-sorted Service (152 selections)
- Early Presentation auto sort service

The new services will also be available to any domestic operator”.⁴ [emphasis ours]

By way of justification for the proposed change, now already implemented, to the system of terminal dues then prevailing, An Post says that “UPU rates represent approx. 50% of full domestic tariffs when applied to the incoming traffic from Royal Mail, and would contribute to endangering the financial position of An Post”. The An Post documentation suggests that the corresponding UPU rate for a single letter would be around €0.35, (“remuneration based on 64% [2007] of the charge for a 20g priority letter in the domestic service”⁵) which Nightline believes would be a reasonable absolute ceiling rate for DSA. No evidence has been provided by An Post that such a rate does not adequately cover the marginal costs of injecting wholesale mail of this type into its network from these sources.

An Post specifies that these three Access Services are to be based on “existing discount schemes” – Scheme 78 (2007) and Scheme 79 (2008). However, the proposed price for a single letter under these schemes is in the range €0.43 - €0.46. This does not appear to be a wholesale price based on marginal cost. It seems to derive rather from the terms of the REIMS III agreement, which applies between An Post and other European USPs whereby “remuneration [is] based on 75-80% of domestic tariff⁶”.

It will be impossible for ComReg to fulfil its brief to promote competition in the postal market unless this distinction between ‘wholesale’ and ‘retail’ aspects of the postal market is implemented. We call upon ComReg to consider implementation of functional separation between retail and wholesale

³ [Competition in the Electricity Sector](#) - report by The Competition Authority (Ireland), December 2010

⁴ [ComReg 09/94 “Information Notice - An Post’s compliance with obligations in respect of inbound cross-border mail”](#) (published 17-Dec-09)

⁵ ComReg 09/94 p.6

⁶ ComReg 09/94 p.7

arms of An Post, similar to that which exists between ‘Royal Mail’ and ‘Royal Mail Wholesale’, ‘Eircom’ and ‘Eircom Wholesale’, ‘ESB Electric Ireland’ and ‘ESB Networks’ etc.

Regarding the basis for commercial terms for DSA to be proposed by An Post, we note that Section 33 (9) of the 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.

We understand this to be a reference to the approach which ComReg shall use in setting access prices. Nightline believes that ComReg has considerable discretion in this regard, and should select a methodology which best enables the creation of full competition in the postal market. Crew and Kleindorfer (2008) identify three main types of possible rules to govern access pricing, as follows:

- **Avoided cost pricing (ACP, a top-down approach, also known as retail-minus pricing:** Charge for access according to discounts off the price for the corresponding E2E service, based on the avoided cost of bypassed activities provided by the WSP [alternative postal operator]
- **Delivery-area access pricing (DAP), a subset of cost-based or bottom-up pricing:** Charge for access not only according to the work that is bypassed, but also according to the work yet to be performed in delivering the mail to be reposted by the WSP and delivered by the PO
- **Negotiated access pricing (NAP):** The outcome here is whatever price the PO and WSPs agree through negotiations. NAP may be subject to additional constraints on non-discriminatory treatment across WSPs, as well as floors and ceilings set by the regulator”⁷.

We do not believe that the wording of Act necessarily requires ComReg to adopt Avoided cost pricing (ACP) as the method by which to set access pricing in Ireland’s postal market. We note the hybrid method used in the UK, where in 2004 Royal Mail entered into DSA agreements with UK Mail, TNT and Deutsche Post on a ‘geographically averaged cost-recovery basis’, supplemented by ‘geographically de-averaged access pricing’ at a later stage, and – from 2006 – a requirement to maintain ‘headroom’ between access and retail pricing, as compared with equivalent E2E products, for a defined period. Crew and Kleindorfer explain geographically averaged pricing as follows:

This meant that licensed operators were required to present mail to Royal Mail in a form that reflected the overall letter volume of Royal Mail’s business, on the basis of individual postcode areas. Should volume vary from Royal Mail’s by more than 7.5% but less than 15% in any ‘reference period’ (each such period being approximately three months) Royal Mail had the right to levy a surcharge. If volume in any outward postcode area varied from Royal Mail’s by more than 15% in any ‘reference period’ Royal Mail had the right to levy a higher surcharge, ask the customer to transfer to a zonal agreement or, if all else fails, terminate the agreement.

Effective from October 2004, Royal Mail added to its set of generic agreements (described above) access contracts based on geographically de-averaged access prices. These de-averaged access contracts are negotiated freely between Royal Mail Wholesale, the access arm of Royal Mail and different operators and users, subject only to being offered on a non-discriminatory and non-preferential basis⁸.

⁷ Michael A. Crew and Paul R. Kleindorfer (2008) “Pricing for Postal Access and Worksharing” in the “Handbook of Worldwide Postal Reform”, p. 32-66.

⁸ Crew and Kleindorfer (2008) pp. 50-51 ‘Worksharing and Access at Royal Mail’

As a general market model we favour adoption of a similar system to that which has evolved in the UK, where Royal Mail Wholesale operates at arm's length to incumbent retail operator Royal Mail in offering cost-based DSA to other service providers. We note also the findings of the 2 reports, from 2008 and 2010, by Richard Hooper into the UK postal sector which are supportive of the DSA regime introduced after the Postal Act of 2000⁹.

We note that the UK Postal Act 2011 contains explicit provision for the regulator Ofcom to impose price controls on the USO operator regarding network access if it believes that "the provider concerned... (b) might otherwise impose a price squeeze with adverse consequences for users of postal services"¹⁰.

Thus Nightline's preference is for ComReg to provide immediate certainty and definition around the mechanism for 'negotiation' of Network Access outline in Section 33 of the Act, so that it will actively promote competition in the sector by resulting in cost-based access for other postal service providers to An Post's network, under acceptable technical and commercial terms, and in a timely manner. We would stress that time is of the essence here.

If it is not possible to arrive at this level of certainty, then Nightline would propose that ComReg should instead mandate a basic set of specific, regulated DSA access products, similar to the geographically averaged pricing introduced by Royal Mail Wholesale in the UK in 2004, or equivalent to the Fixed Termination Rates (FTRs) which ComReg sets for termination of telecommunications traffic to the fixed network of incumbent Eircom in the telecommunications sector. This would obviate the need for potentially lengthy negotiations between parties in establishing network access, as the basic framework would be a given. Furthermore it reduce the call on the dispute resolution process – which will save ComReg, as well as market participants, considerable time and resources. We believe that ComReg already has the statutory remit to mandate an access product without any need to make changes to the Act.

Q. 2 Should the "status quo", i.e. a single tier service offering delivery the next working day, be retained as part of the universal postal service? Please give reasons for your views.

Yes. Nightline does not believe that Ireland's postal market has sufficient economies of scale to support a two tier service for single piece mail as part of the universal postal service. A single-tier service is sufficient. If An Post wishes to offer a D+2 (slower) service, then it can do so – but outside the scope of the Universal Service, on regular commercial terms (i.e. VAT would apply, and no 'net costs' attributed to the service could be recouped from other service providers via a "sharing mechanism").

In general we agree with ComReg's overall approach to the scope of the USO in Ireland's postal market: namely that the USO should include only a basic core set of services sufficient to meet the reasonable needs of postal users, at an affordable price, and irrespective of geographical location¹¹. Outside of this core set of services, normal competitive market rules should apply.

However, we do not agree with the statement made in section 7 of ComReg's 2005 Consultation Paper on Formulating a Working Definition for the Universal Postal Service that limiting the set of

⁹ First Report (December 2008): "Modernise or decline: Policies to maintain the universal postal service in the United Kingdom" www.bis.gov.uk/files/file49389.pdf, subsequently updated by Second Report (September 2010): "Saving the Royal Mail's universal postal service in the digital age" <http://www.bis.gov.uk/assets/biscore/business-sectors/docs/s/10-1143-saving-royal-mail-universal-postal-service>

¹⁰ [Schedule 3 of the UK Postal Services Act 2011](#) specifies what terms may be specified by OfCom once an "Access Condition" is imposed on the USO operator. 'USP Access Conditions' and 'General Access Conditions' are defined in [section 38](#) and [section 50](#) of the Act respectively.

¹¹ As set of in sections 5.17-5.18 of the Consultation document.

services within the scope of the USO necessarily means that the cost of providing the USO will be higher as a result. ComReg states that:

“A restricted definition of the universal service could result in excessive network costs being apportioned to the universal service. If all network costs incurred as a result of specific regulatory requirements (e.g. daily deliveries) are apportioned to the universal service(s), the apparent profitability of the universal service will be reduced. Defining the universal service in a narrow fashion will not therefore necessarily mean that the ‘cost’ is reduced. By omitting profitable elements, the cost of providing the universal service would increase rather than decrease¹²”.

To resolve this point Nightline believes that it will be crucial to agree on a suitable model for calculating the true net costs (if any) to An Post of providing the USO – whatever the scope of services it is ultimately deemed to entail. It appears that ComReg in its 2005 paper is assuming that some form of the NAC (Net Avoidable Costs) method will be used. However, Nightline believes that this would yield a result which is counter-intuitive and incorrect.

Nightline believes that the best way of calculating the true cost (if any) to An Post of the USO would be to create a model of how An Post would behave if it was subject to no USO at all. This model would answer the question: “What would An Post commercially choose not to do that it is now currently doing (because it feels it is forced to)?”

This will yield a far different answer to one which emerges from a simple NAC calculation. We believe that An Post would continue to deliver mail 5 days a week, and would continue to service ‘thin’ routes, because its customers would demand it. If An Post ceased to provide these services, overall demand for An Post’s services would fall (on other routes, and on other days), there would be a huge negative impact on An Post’s revenues. Thus revenues would fall by an amount far greater than the cost savings engendered by ceasing these so-called ‘unprofitable’ parts of the service. So An Post would never take the step of discontinuing these services in the first place. In fact, based on studies conducted in other markets¹³, we believe that the postal USO can be demonstrated to be a net benefit to An Post (and not in any way a net cost), especially when intangible benefits such as national branding are factored in.

Thus in our view the scope USO should only extend to include those postal services, reasonably demanded by end-users and defined as basic by ComReg, which the market – including the incumbent postal operator – **would not choose to provide in any case**, were it was not obliged to do so. We note that Germany has no USO in postal services – the Regulator in Germany is satisfied that all end-user demands for basic postal products will be met by market participants, without intervention, and without cross-subsidy of any one market participant by other participants with respect to any particular services.

The concept of “universal service”, as defined by the European Commission, quoted by ComReg in section 5.2 of the Consultation, applies in contexts where “public authorities consider that [the services] need to be provided even where the market may not have sufficient incentives to do so”.

We note that ComReg has discretion under section 16(9) of the Act to decide which services will be provided by An Post under the heading of “universal postal service”, but that ComReg must take into account “the technical, economic and social environment and the reasonable needs of postal service users” when doing so.

Where ComReg makes a determination that a particular service forms part of the Universal Service, this affects other service providers such as Nightline in 2 ways:

¹² ComReg 05/16, p. 24

¹³ For example, the 2008 study by Copenhagen Economics “What is the cost of Post Danmark’s universal service obligation?” <http://www.copenhageneconomics.com/Web/Publications/Postal-services.aspx>

- i) Such a service is exempt from VAT: this gives it a commercial advantage over any similar service provided by an alternative service provider, which would not be VAT-exempt.
- ii) The net costs (if any) incurred by An Post in providing such a service are to be borne by other service providers, not An Post, via the Sharing Mechanism or Common Fund outlined in the Act.

We believe that the adoption of a minimal – rather a broad – set of USO services is good for the development of Ireland’s postal market. It provides incentives to competitive service providers, by creating a level playing field (regarding application of VAT on equal terms to a broader range of services), and it reduces the scope for cross-subsidisation via a ‘sharing mechanism’ or ‘common fund’, which we believe to be anti-competitive.

Q. 3 Do you agree that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “universal postal service”? Please give reasons for your views.

Yes. We agree with ComReg that a basic parcel service is sufficient for inclusion within the “universal postal service”.

As ComReg has pointed out in 5.30 of the Consultation document, the parcels market is already very competitive. Where postal users are requiring something more than a basic parcel service, this demand is being adequately met by the market. There is no need for further intervention.

Please see our response to question Q2 for our reasoning on the competitive benefits of a setting a limited scope to the postal USO.

Q. 4 Should ComReg reduce the maximum weight for domestic parcels at the present time, or leave it as is? Please give reasons for your views.

Nightline agrees with ComReg that the maximum weight for domestic parcels should be left at 20kg, as it is at present, in order to maintain consistency for Cross-border and UPU services and simplicity for end-users.

Q. 5 Do you agree that uniform pricing does not require that there be uniform prices for different types of “postal packet” - i.e. “letters”, “large envelopes”, “packets” and “parcels” – as the costs of processing each type are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.

Yes, we agree that ‘uniform pricing’ does not require uniform prices for different types of postal packet: format-based pricing is an accepted principle at this stage.

We note that ‘uniform pricing’ does require that the same price must be charged irrespective of where in the State the postal packet is posted and where in the State it is to be delivered.

However, we do not believe that there are any other attributes which should be outside the uniform pricing principle

Q. 6 Should An Post be required to provide a single “last resort” Bulk Mail service as described in paragraph 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.

As per our answer to Q 2 above, Nightline is generally in favour of keeping the number of services offered within the scope USO to a minimum.

With respect to Bulk Mail services, however, we believe that a single Bulk Mail service offering of last resort is appropriate for inclusion as part of the Universal Postal Service. This will provide the safety-net required by those customers who are unable “to deposit mail at one of An Post’s four mail centres which are the only access points it currently offers to users of its most popular Bulk Mail services¹⁴”. Such users are unlikely to be in a position to negotiate a bespoke agreement with An Post in a timely manner, and may not be able to avail of the services provided by an alternative operator availing of a Downstream Access product. For this reason a USO service of last resort is appropriate to address the requirements of these users.

We note that the price point chosen for this ‘bulk mail service of last resort’ will provide a benchmark for the price below which An Post will be required to offer network access to other services providers, as per Section 33 of the Act, and as described in our answer to Q1 above. The price of the ‘bulk mail service of last resort’ in this offering will, however, be a VAT inclusive, retail price. We note that the price proposed for a 50g letter is 45c subject to a minimum quantity of 350.

Nightline submits that the pricing offered as part of the Downstream Access Product must be set substantially below it, to avoid anticompetitive behaviour and margin squeeze. It is our understanding that the price set for DSA will be exclusive of VAT. Nightline believes that it is part of ComReg’s regulatory remit to ensure that the DSA price for the 50g letter is set at levels which allow alternative operators to use it as an input to a competitive retail product offering.

The reason that end users will no longer demand a wide range of bulk mail services within the scope of the USO is that alternative service providers will be able to meet their requirements by means of commercially-based offerings. Of course this presupposes the establishment of a non-discriminatory, cost-based DSA regime, as per Section 33 of the Act and as commented on by Nightline in our response to Question 1 above.

In general we would point out that a number of reference points already against which ComReg can benchmark a standard DSA price offering, as per our response to Q2 above. These include:

- An Post’s existing Postaim service. This provides us with a retail proxy price point. The ‘wholesale’ DSA price needs to be set well below it in order for a competitive market to develop.
- The principal of access is already in place for signatories to the UPC. Terminal dues paid by UPU member companies and/or international bilateral partners of An Post for delivery in Ireland of mail which originates outside the state. Clearly this is already a wholesale product with strong similarities to DSA, in that An Post avoids many of the costs – including collection – which are included within its standard end-to-end retail service. We note that “a service for the sorting, transport and distribution of postal packets deposited with An Post at an Office of Exchange within the State by the designated operator of a signatory to the Universal Postal Convention” is included within the scope of USO services as per ComReg Annex 5 to the present consultation (Draft section 16(9) regulation)¹⁵.

We reiterate our conviction that fair DSA pricing is the single most important element in the development of healthy competition in Ireland’s postal service. We believe it will lead to significant growth in mail volumes across all service providers, by promoting competition and giving end-users a wider choice of service providers and service offerings - thus stimulating the market as a whole.

[Q. 7 What type of “last resort” Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.](#)

¹⁴ ComReg 12/38 Section 5.41

¹⁵ ComReg 12/38, Annex 5, Section (ix), p. 70

As to whether a new composite service should be created as the 'Bulk Mail Service of Last Resort' , or one of the existing 6 An Post services should be selected, Nightline recommends current service option B, as summarised in Annex 4 to the Consultation.

To recap, the specification of this service would be as follows:

- *General description of service:* Deferred automated processing before noon
- *Minimum quantity:* 350
- *Price for 50g letter:* 45c [note: VAT-exempt]
- *Latest time for acceptance:* before noon
- *Machine sortable:* Yes
- *OCR readable address:* No
- *Presorted:* No
- *Delivery target:* D+2, where D is day of posting and the "+n" = the number of working days after the day of post

This would appear to offer an optimal middle-ground to end users in terms of specifications regarding presentation (must be machine sortable) and minimum quantity (350).

[Q. 8 Should An Post provide standalone services for registered and insured postal packets? Please give reasons for your views.](#)

Nightline believes that neither a "registered items service" nor an "insured items service" should be included within the scope of USO, as separate commercial options, other than the bundled service offered by An Post, are already available.

[Q. 9 Should the services listed in paragraph 5.48 form part of the universal postal service? Should any of these services be excluded, or should any additional services be included? Please give reasons for your views.](#)

We would like to restate our understanding of the purposes of the USO, as per our response to Q2 above: the USO exists in order to protect certain essential elements of the Postal Service that cannot otherwise be guaranteed in a competitive market; thus it needs to include only a basic core set of services sufficient to meet the reasonable needs of postal users, at an affordable price, and irrespective of geographical location¹⁶. Outside of this core set of services, normal competitive market rules should apply.

In our view a "Free Postal Service for blind or partially sighted persons" should be protected by and it should be included within the USO. This is because there is a risk that this service for the blind might not otherwise be provided by market participants acting of their own free will.

However, all other services listed at 5.48 (viz. Sending books abroad, Business Reply/Freepost, Redirection, Mailmainder) are not basic services but commercial services and as such do not need to be part of the USO. We agree with An Post's comment cited in ComReg 05/85 that Certificate of Posting (Free) is not a service per se, but a receipt for a service, so it is not relevant for inclusion here¹⁷.

We do not believe that any additional services should be included within the scope of the USO.

¹⁶ As set out in sections 5.17-5.18 of the Consultation document.

¹⁷ ComReg 05/85 Section 7.4.2 p.21

Q. 10 Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act? Please give your reasons for any such suggestions.

Consistent with our responses to Q2, Q6, Q7, Q8 and Q9 above, we recommend excluding the following services from the draft regulations as set out in Section 3 of Annex 5:

- (v) registered service
- (vi) insurance service
- (x) (a) Private boxes and bags
- (x)(b) Redirection
- (x) (c) Poste restante
- (x)(d) Mailminder
- (x) (e) Business reply
- (x) (f) Freepost

For the reasons stated above, we do believe that the above services belong within the scope of the USO.

In addition, as per our response to Q9 above, reference to ‘certificate of posting’ should be removed from 3 i) c), 3 ii) c), 3 iii) c) and 3 iv) c).

Q. 11 Do you agree that An Post’s terms and conditions for its *universal postal service* should be set out in a single, comprehensive document and in plain language? Please give your reasons.

Yes. Nightline agrees that it is in the best interest of all postal service users that An Post should be obliged to set out clearly and unambiguously the services, prices and service level guarantees available to them under the terms of USO, so that end users can easily understand An Post’s obligations in this regard.

Q. 12 Should An Post be required to publish the terms and conditions of its universal postal service, including its Schedule of Charges, in Iris Oifigiúil and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons.

Yes, we agree that An Post should be required to publish the terms and conditions of its universal postal service, including its Schedule of Charges, in Iris Oifigiúil and should make them available in printed form on request and also at each Post Office.

However, we believe that it is unnecessary to require that these terms and conditions be made available at all outlets where Postage Stamps are sold, but which are not Post Offices. This would be onerous on An Post, and is beyond the reasonable expectation of users of USO services.

We also agree that the Terms and Conditions should be posted on the An Post website, but they must be displayed in a prominent position, with a clear link to them from the An Post ‘home page’.

Q. 13 Do you wish to suggest any amendments to the draft Direction to An Post? Please give your reasons.

As per our response to Q12 above, we recommend amending to a) limit distribution of terms and conditions of USO to Post Offices only (rather than all Postage Stamp outlets), and b) ensure that the terms and conditions of the USO are posted in a prominent position on the An Post website, with a clear link to them from the An Post ‘home page’.

Q. 14 Have you any observations to make about ComReg’s analysis of the issues involved?

In sections 6.1 to 6.12 of the Consultation document ComReg sets out its analysis of which services do and which do not fall within the scope of universal services, and thus require or do not require notification by a service provider under section 38 of the Act.

Nightline agrees with ComReg that new and value added services as set out in section 6.4 should be deemed to be “postal services” as defined in the Act.

We also agree with ComReg that such services are not “postal within the scope of the universal services”, provided that a premium price is charged for these services and that they are not otherwise interchangeable with services which are deemed to be within the scope of the universal service.

Q. 15 Have you any amendments to suggest concerning the proposed guidelines set out in Annex 7? Please give your reasons.

Nightline does not have any amendments to make regarding those sections of the draft guidelines set out in Annex 7 which relate to the interpretation of sections 37 and 38 of the Act regarding the nature of postal services – including services within the scope of universal service – to which persons shall have regard when making a notification to ComReg.

However, we do have some comments on the early parts of the Draft of Guidelines (p. 75-76) which summarises the provisions by which:

- i) According to the Act, An Post may seek funding for the net costs (if any) of providing the universal service
- ii) According to the Act, ComReg may apportion that net cost amongst “providers of postal service providers within the scope of the universal service” by setting up a “sharing mechanism” consisting of a common fund into which all service providers other than An Post would pay, and
- iii) According to the Act, ComReg may impose a levy on all service providers (including An Post) to cover the costs incurred by ComReg in the course of discharging its regulatory function.

We understand that the reason ComReg has included this analysis in the preamble to the Annex is to make authorised providers of “postal services”, as defined, aware of their potential future obligations in the event that they are deemed to provide postal services within the scope of the universal postal service or outside it. It is indeed possible that such providers may be liable to pay into a ‘sharing mechanism’ or common fund, as per ii) above; and it is possible that such providers may be obliged to pay a levy to ComReg as per iii) above.

However, Nightline believes that it is important at this stage not to prejudge the results of the process referred in i) above, whereby An Post may seek to recover the costs of USO provision. We believe that it is highly likely, based on experience in other European markets, that it will be demonstrated that no net cost is incurred by An Post as a result of providing the postal USO in Ireland.

Evidence from Denmark suggests that USO in Ireland is not the burden suggested by An Post and is on balance likely to be a net benefit. Copenhagen Economics, in 2008 study referred to in our answer to Q2 above, concluded as follows:

On the one hand, we estimate USO costs for Post Danmark to DKK 150 million [approx. €20m at May 2012 exchange rate], or 1.5 per cent of its total costs. The costs are primarily driven by two requirements: the obligation to deliver mail six days per week and the obligation to provide free services for the blind.

On the other hand, we conclude that Post Danmark also has a number of competitive advantages as a result of both the USO and Post Danmark's historic monopoly status. These advantages have not been included above. However, they do have a considerable impact on competition. If Denmark follows the example of other countries in which the old monopolies have already been exposed to competition without being compensated for the USO, Post Danmark will maintain a market share of over ninety per cent for many years to come. This indicates that the USO will not weaken Post Danmark, even if it is not compensated for.

We conclude that the burden of the USO is not unfair for Post Danmark. Hence, there is no need to compensate Post Danmark for the USO, neither financially nor by imposing special obligations on other players on the market¹⁸.

Nightline believes that it will be crucial for ComReg to factor in all the net benefits, including marketing and branding, accruing to An Post by virtue of its historical monopoly and current USO position, and that when this is done no 'net cost' of USO will apply.

In this case the 'sharing mechanism' or 'common fund' referred to in ii) above would not apply, as there would be no net cost of USO to be compensated for or shared.

Accordingly we request ComReg to amend this section of the guidelines to acknowledge explicitly that it may find to be the case that there is no net cost to An Post of providing the USO, and in that case no sharing mechanism or common fund would need to be set up.

In any case, Nightline believes that such a 'sharing mechanism', if ever implemented, would be detrimental to the operation of a free and competitive postal market in Ireland. It is potentially subject to abuse, given the myriad complex issues which arise around the definition, allocation and apportionment of expenses. There is a risk, if such a fund is put in place, that inefficiencies in the USP will be perpetuated. It is an unreasonable burden for new market entrants to bear. Such a fund would add an unreasonable and potentially unquantifiable level of cost to the business models of these alternative service providers. The lesson from markets such as Finland, where such a system has been implemented, is that only the incumbent derives advantage from it. End-users and alternative service providers lose out – owing to higher costs, in each case.

Nightline reiterates our support for the principle of a minimum USO with consequent minimum cost impact for An Post and a minimum regulatory burden on other postal service providers. This approach will also minimise the potential distortion caused by different VAT treatment for alternative suppliers of similar services.

Q. 16 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.

We note ComReg's position, as stated in section 7.4 that the only topics addressed by the present consultation to which an RIA may apply are:

- The draft regulations "specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service"¹⁹
- The draft Direction setting out how An Post's terms and conditions (which includes its charges) for its universal postal services should be published²⁰

¹⁸ Copenhagen Economics "What is the cost of Post Danmark's universal service obligation?" <http://www.copenhageneconomics.com/Web/Publications/Postal-services.aspx> p. 7

¹⁹ ComReg 12/38, section 5.2 and Annex 5

ComReg states that this is because “the rest of the consultation concerns matters of interpretation or fact in relation to the 2011 Act and are therefore not within the scope of a RIA assessment”.

This means that Policy Issue No. 1 is to “make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service”, and Policy Issue No. 2 is “whether publication by An Post of its terms and conditions on its website is sufficient or should there be additional publication methods to ensure that all customers are fully aware and certain of An Post's terms and conditions.”

Nightline believes, however, that – in addition to the above - the RIA should make specific reference, as a ‘policy issue’, to that part of ComReg’s regulatory remit, as set out in the Act, which requires it to promote competition in the postal sector. Nightline has already indicated the basis for this obligation in the Act, in our response to Q1 above. The policy issue is thus that ComReg, whilst it is required to “make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service”, is also required to promote competition in the postal sector, as per our response to Q1 above.

Regarding Policy Issue No. 1, we note the 2 options identified by ComReg in Step 2 (section 7.12), namely:

- Option 1 – A “de minimis” set of universal services to be provided by An Post, and
- Option 2 – A wider set of universal postal services to be provided by An Post. “This will be in addition to the services set out in Option 1 above by including more bulk mail and/or parcel services”

Nightline proposes to add a third option, as follows:

- Option 3 – A “de minimis” set of universal services to be provided by An Post, supplemented by a basic downstream network access product, as defined by ComReg, which shall be offered automatically by An Post to suitably authorised access seekers, as determined by ComReg.

Regarding Policy Issue No. 2, we note the 2 options identified by ComReg in Step 2 (section 7.14),

- Option 1 - Only publication on An Post's website
- Option 2 - Publication on An Post's website together with a printed single comprehensive document available to postal users on request and at every place where postage stamps are sold. The terms and conditions will also be published in Iris Oifigiúil as a journal of record.

Nightline believes that the 2 options listed by ComReg above will deal adequately with Policy Issue No. 2. No further factors need to be considered.

Regarding Steps 3 & 4 (“Determine the impacts on stakeholders and competition”), with respect to Policy Issue No. 1, Nightline agrees with ComReg’s list of stakeholders to be affected by the options outlined, as per section 7.15. We note that this list includes “other postal service providers”, that is, it includes Nightline, as both a stakeholder and a competitor to An Post and other service providers.

We recommend, however, that ComReg expand its analysis of the impacts of Policy Issue 1: Option 1 (as set out in 7.16 to 7.19) to include an analysis of the impact of the availability (or not) of a basic downstream access product, as proposed in Nightline’s Option 3, above.

We note with approval the wording of 7.19, which states that “it will be only in respect of these specified universal postal services that An Post would be able to seek financial support for universal postal service provision under Section 35 of the 2011 Act, if such provision would involve “net costs” for an **efficient** service provider and if that “net cost” was an unfair burden on An Post.” (emphasis ours). We agree that the calculation of ‘net costs’ (if any) of the USO must be based on a

²⁰ ComReg 12/38, section 5.3 and Annex 6

comparison between ‘the net costs of an efficient operator with USO’ and the ‘net costs of an efficient operator without USO’, as per our answer to Q15 above.

We agree with the impact analysis provided by ComReg of Policy Issue 1: Option 2, as set out in 7.20.

Regarding Steps 3 & 4 (“Determine the impacts on stakeholders and competition”), with respect to Policy Issue No. 2, we agree with the impact analysis provided by ComReg for both options, as set out in sections 7.23 and 7.24. However, as per Nightline’s response to Q12 above, we favour the inclusion of the requirement to display the terms and conditions in a prominent place on the An Post web site.

Regarding Step 5 (“Assess the impacts and choose the best option”), with respect to Policy Issue 1, we agree in broad terms with how the impacts are present, except that we would prefer to see the explicit mention of downstream network access, as per our proposed Option 3. Thus we also agree with the conclusion arrived at in 7.26, namely that a ‘de minimis’ set is best to address the policy issue of setting universal postal services pursuant to Section 16(9) of the 2011 Act as it is the most effective and least burdensome regulatory option” – except that we believe that this ‘de minimis’ set needs to be complemented by a basic or default (downstream) network access service for alternative service providers, and that this should be stated explicitly as it derives from ComReg’s pro-competitive regulatory remit.

Regarding Step 5 (“Assess the impacts and choose the best option”), with respect to Policy Issue 2, we agree with the impact analysis and conclusions presented by ComReg in the draft RIA, subject to our comments re prominent display of the terms and conditions of universal service on the web-site of An Post, as per our response to Q12 above.

Response prepared by:

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22: TlCo Group Limited



23 May 2012

Ms. Sinead Devey
Commission for Communications Regulation
Irish Life Centre, Abbey Street, Freepost, Dublin 1,

“Reference: Submission re ComReg 12/38”,

Dear Ms Devey

On behalf of the TICo Group Limited, I refer to the Consultation Com Reg 12/38 in regard to the Postal Regulatory Framework, Implementation of the Communications Regulation (Postal Services) Act 2011.

The TICo Group has the following comments to make on the Consultation document

1 Statutory basis for the Com Reg Consultations

It would be useful if the Consultation 12/38 stated at the outset of the document the precise statutory basis for the current and for future consultations.

In the current consultation it appears from references in the text that the consultation is being undertaken, only in accordance with sections 16(9) and 37(2) of the 2011 Act. It would be useful if Com Reg could confirm if this is the case.

2. Sustainable Postal Services

We are somewhat disappointed that the Consultation document does not address the question of sustainable postal services. We would strongly urge that the planned Com Reg Postal Strategy Statement deals in detail with this key topic. In short, if we do not have a strategy for maintaining postal services on a sustainable footing, regulation of the industry will not arise as it will cease to exist.

Minimum requirements for State and other critical sectors, such as the banking industry, on the provision of information and other services to citizens by post is one area which Com Reg could usefully address.

3. Postcodes

Section 66 of the 2011 Act makes provision for the development, implementation and maintenance of a system of postcodes. Such a system is essential for the survival and growth of postal services in the State. In the past, Com Reg has been to the fore in addressing this requirement and it is surprising that the question has not now been mentioned. We would urge you to address this important provision of national and postal infrastructure in the forthcoming Postal Strategy Statement.



[CONFIDENTIAL TEXT REMOVED]

Yours sincerely

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23:Ulster Bank



Comreg Consultation

'Postal Regulatory Framework'

**'Implementation of the Communications Regulation
(Postal Services) Act 2011'**

Ulster Bank response

June 2012

Prepared by:

Jimmy Cleary

Ulster Bank

Background

- Ulster Bank is part of the Royal Bank of Scotland Group and provides Banking Services within the Republic of Ireland. The Group also includes The Royal Bank of Scotland and Natwest brands and other organisations in well known in financial circles, including Coutts Group, Direct Line, Churchill, Green flag, Lombard and ABN Amro.

Context

- Mail continues to be a key communication channel for Ulster Bank
- The price of mail strongly influences the policy behaviour within Ulster Bank and therefore the volume of mail that is manufactured

Consultation Response

Mail is an important communication channel between Ulster Bank and its customer base and is core to our existing communication strategy.

With regard to ComReg's Postal Regulatory Framework Consultation, reference ComReg 12/ 38 Ulster Bank's response is as follows:

Question 6

Should An Post be required to provide a single "last resort" Bulk Mail service as described in paragraph 5.41?

Ulster Bank sees no reason to change the current range of postal services provided by An Post and strongly disagrees with the Comreg statement that they are "minded to only require a single bulk mail service of "last resort".

If not what Bulk Mail services should An Post be required to provide?

Ulster Bank firmly believes that the current range of Bulk Mail services should remain. We produce mail at various locations and we require a mail service that provides postal delivery and cost options as is currently provided.

Should all Bulk Mail services be excluded from the universal postal service?

Ulster Bank would be significantly impacted by the application of VAT to mail as a result of bulk mail being removed from the USO. The implication of this is a significant threat to the USO on the basis that this would trigger significant activity within the Bank to mitigate the increase by migrating customers away from physical mail to paperless solutions.

Question 7

What type of "last resort" Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service?

Ulster Bank's position is that we see no need to change the postal service offerings currently provided by An Post in their published Terms and Conditions