



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Postal Universal Service Provider Designation Procedures Consultation and Draft Procedures

Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

All responses to this consultation should be clearly marked:

“Reference: Submission re ComReg 19/25”, and sent by post, e-mail or online at www.comreg.ie (current consultations) to arrive on or before 5.p.m, Friday 19 April 2019 to:

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Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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1 Introduction

1. The Commission for Communications Regulation ("ComReg") is the national regulatory authority for postal services in the State and its functions and objectives are set out in the Communications Regulation Act 2002, as amended ("the 2002 Act"). In August 2011 the Communications Regulation (Postal Services) Act 2011 ("the 2011 Act") took effect in Ireland. It established a new statutory framework for the regulation of postal services in the State¹.
2. ComReg is mandated to ensure the provision of the universal postal service for the State. The universal postal service consists of a basic but high quality service for the collection, sorting, transport and delivery of universal postal service postal packets.
3. An Post was directly designated under the 2011 Act as the sole universal service provider ("USP") for postal services in the State, for a period of 12 years following the passing of the 2011 Act (i.e. from 2 August 2011 – 1 August 2023), subject to review by ComReg after 7 years has expired (i.e. after 1 August 2018).² Therefore, this is the first time that ComReg has been required to review the USP designation and to consider whether a USP designation is required and whether it is appropriate to designate An Post or other postal service providers as USP(s) for all or part of the universal postal service in all or parts of the State.
4. ComReg is responsible for conducting reviews of, and making decisions on, the USP designation(s)³ for the State⁴. The 2011 Act provides⁵ that any such review must be conducted in accordance with procedures established and maintained by ComReg ("the Postal USP Designation Procedures").
5. This consultation seeks views on ComReg's proposed Postal USP Designation Procedures which are set out in draft form at Annex 1 to this consultation paper.
6. Chapter 2 sets out ComReg's considerations in proposing the Draft Postal USP Designation Procedures.

¹ The 2011 Act transposed into Irish law the harmonised EU framework for the regulation of postal services under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC.

² Prior to the 2011 Act, An Post was also designated as sole USP for the State under the previous regulations, the European Communities (Postal Services) Regulations, 2002 (S.I. No. 616 of 2002). Before that, the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983) gave An Post exclusive privilege in respect of certain postal services in view of its primary purpose of providing a national postal service.

³ The phrase "USP designation decision" includes any decision that no designation of USP is required, any decision to designate a USP or USPs, and any decision to continue the designation of An Post as USP.

⁴ Pursuant to section 17 and section 18 of the 2011 Act.

⁵ Section 19

2 Designation Procedures, Reviews and Decisions

2.1 Postal USP Designation Procedures

7. This consultation paper sets out ComReg's considerations in preparing the draft Postal USP Designation Procedures which ComReg is proposing to establish, maintain and implement, as set out in Annex 1.
8. These procedures have regard to ComReg's functions and objectives relating to the regulation of postal services. In particular, the draft Postal USP Designation Procedures have regard to ComReg's function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users⁶ and its objective in exercising its functions in relation to the provision of postal services 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"*⁷. The proposed procedures also take into consideration the relevant statutory requirements as set out in the 2011 Act and in particular the requirement of section 19(2)(b), which provides that these procedures be *"efficient, objective, transparent, non-discriminatory and proportionate"*.

2.2 Designation Reviews

9. In accordance with section 17, ComReg will review the postal USP designation after the expiration of 7 years from the passing of the 2011 Act (i.e. after 1 August 2018) and following this it may make a USP designation decision. Prior to making a postal USP designation decision pursuant to section 17 or section 18, ComReg must first conduct a review in accordance with the Postal USP Designation Procedures (established and published by ComReg under section 19). Thereafter, postal USP designation reviews must be conducted by ComReg in accordance with its Postal USP Designation Procedures and following a review ComReg may make a postal designation decision pursuant to section 18 of the 2011 Act.

⁶ Section 10(1)(ba) of the 2002 Act

⁷ Section 12(1)(c)(i) of the 2002 Act

2.3 Decisions under Section 17 or Section 18 of the 2011 Act

10. Following a designation review conducted in accordance with the Postal USP Designation Procedures, ComReg may decide, under section 17(2) or section 18(1)(b) of the 2011 Act either:

- (i) that no postal USP designation is required⁸; or
- (ii) to designate one or more than one postal service provider as USP(s) for such period as ComReg considers appropriate⁹.

11. When making a decision under section 17(2), ComReg has the additional option to continue the designation of An Post¹⁰ until 1 August 2023. ComReg does not require the prior consent of the Minister for this decision. When conducting a designation review and making a decision under section 17(2) ComReg will give all three options (summarised in the table below) full consideration.

Table 1: Differences between designation decisions under Section 17 and Section 18 of the 2011 Act

Decision Options	Applicable to decisions made under Section 17(2) after 1 August 2018	Applicable to all decisions made under Section 18 (1)(b) subsequent to section 17(2) decision
<p>Decide that no postal USP designation is required for an appropriate period</p>	<ul style="list-style-type: none"> • ComReg can only make this decision with the Ministers prior consent. • If the Minister consents the designation of An Post under the 2011 Act ceases to have effect • If the Minister refuses consent An Post’s designation continues until 2023 	<ul style="list-style-type: none"> • No Ministerial consent required

⁸ A decision by ComReg under section 17(2)(b) of the 2011 Act is subject to the prior consent of the Minister for Communications, Climate Action & Environment (“the Minister”).

⁹ A decision by ComReg under section 17(2)(a)(ii) of the Act is subject to the prior consent of the Minister.

¹⁰ Under section 17(1) of the 2011 Act.

Decision Options	Applicable to decisions made under Section 17(2) after 1 August 2018	Applicable to all decisions made under Section 18 (1)(b) subsequent to section 17(2) decision
<p>Designate one or more than one postal USP for an appropriate period</p>	<ul style="list-style-type: none"> • ComReg can only make this decision with the Minister’s prior consent. • If the Minister consents the designation of An Post under the 2011 Act ceases to have effect. • New designation(s) come into effect 14 days after the approval of the terms and conditions of the universal postal service • If the Minister refuses consent An Post’s designation continues until 2023 	<ul style="list-style-type: none"> • No Ministerial consent required
<p>Continue designation of An Post under the 2011 Act as sole USP for the State until 2023</p>	<ul style="list-style-type: none"> • No Ministerial consent required 	<p>N/A</p>

2.4 Who may be a designated USP under Section 17 and Section 18?

12. A postal service provider is defined by the 2011 Act as “any person providing one or more than one postal service”. It is a requirement that any person who is providing or intending to provide a postal service shall, before doing so, make a notification to ComReg¹¹. A register of all authorised postal service providers is publically available on ComReg’s website¹².
13. Under section 17 or section 18 of the 2011 Act ComReg may choose to designate one or more than one postal service provider(s) as USP(s). Entities not yet authorised as a postal service provider may seek designation as USP, however only postal service providers authorised by ComReg under section 38 of the 2011 Act can be designated.

¹¹ By completing and submitting a notification form (ComReg Document 12/81n) to ComReg.

¹² <https://www.comreg.ie/industry/postal-regulation/authorised-postal-providers/authorised-postal-providers-register/>

2.5 What is the Universal Postal Service?

14. Section 16(1) of the 2011 Act sets out the requirements for the provision of the universal postal service. It requires that, on every working day, there is at least one clearance and one delivery to the home or premises of every person in the State, except in such circumstances or geographical conditions as ComReg considers to be exceptional.
15. Section 16(1)(b) of the 2011 Act stipulates the following minimum universal postal services are to be provided for the State:
 - (i) the clearance, sorting, transport and distribution of postal packets¹³ up to 2 kilograms in weight;
 - (ii) the clearance, sorting, transport and distribution of parcels up to 10 kilograms in weight;¹⁴
 - (iii) the sorting, transportation and distribution of parcels from other Member States up to 20 kilograms in weight;
 - (iv) a registered items service;
 - (v) an insured items service within the State and to and from all Universal Postal Union (“UPU”) member countries;
 - (vi) postal services, free of charge, to blind and partially-sighted persons.
16. Section 16(9) of the 2011 Act further requires ComReg to make regulations specifying the universal postal services to be provided for the purposes of ensuring the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of postal service users. In 2012, following public consultation, ComReg made regulations under section 16(9) specifying the universal postal service in the Communications Regulation (Universal Postal Service) Regulations 2012¹⁵ which were reviewed and amended in 2018¹⁶, following a further public consultation. It should be noted that the existing requirements may be subject to change over the course of a designation period following ComReg’s periodic reviews of the universal postal service specifications or following any changes to the legislation at EU and/or national level.

¹³ Defined in the 2011 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”

¹⁴ From 1 January 2019 the universal postal service parcel weight limit has been reduced from 20kg to 10kg by ComReg for domestic parcels and all outbound international parcels (S.I. No.534 of 2018). The 20kg weight limit remains in place for Inbound International parcels from other Member States.

¹⁵ S.I. No. 280 of 2012

¹⁶ S.I. No. 534 of 2018

17. In addition, there are several other obligations under the 2011 Act relating to the provision of the universal postal service by designated USPs, such as, among others; quality of service, tariff requirements, publishing of regulatory accounts, publishing of terms and conditions, and the right of other postal service providers to negotiate access to a designated USPs postal network and postal infrastructure.
18. Certain special rights also apply to designated USPs, the majority of which are set out in the 2011 Act. For example; a designated USP may claim for the cost of efficient provision of the universal postal services, where there is found to be a net cost which constitutes an unfair financial burden on the USP, and under the EU VAT Directive¹⁷ there is a VAT exemption granted to public postal services¹⁸.
19. It should be noted that designated USPs are also entitled to provide other postal services which are not universal postal services and they have full flexibility with regard to those non-USO services in terms of prices, quality of service and contract terms. They can also provide non-postal services.

¹⁷ Directive 2006/112/EC (VAT Directive)

¹⁸ ComReg has no remit in relation to taxation.

3 Regulatory Impact Assessment (RIA)

20. ComReg has published RIA Guidelines¹⁹, (Doc 07/56a), in accordance with a policy direction to ComReg²⁰, which state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
21. In this case, for establishing its Postal USP Designation Procedures, ComReg considers that a RIA is not required as a new regulatory obligation is not being imposed. ComReg is simply elaborating in its proposed Postal USP Designation Procedures on the requirements already mandated by sections 17, section 18 and section 19 of the 2011 Act. Therefore, a RIA is not being undertaken on this occasion.
22. ComReg will separately consider if a RIA is required for each of the designation reviews and USP designation decisions it may conduct in the future.

¹⁹ Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

²⁰ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

4 Conclusions and Next Steps

23. ComReg will consider all submissions to this consultation, together with any other relevant evidence, in finalising the Postal USP Designation Procedures, which ComReg will publish.
24. Following publication of the final Postal USP Designation Procedures ComReg will then proceed to conduct a review in accordance with the Postal USP Designation Procedures for the purpose of making a decision pursuant to section 17(2) of the 2011 Act.
25. Thereafter, when required, ComReg will conduct a review in accordance with the Postal USP Designation Procedures for the purpose of making a decision pursuant to section 18(1) of the 2011 Act.
26. After the Postal USP Designation Procedures are finalised and published, ComReg may from time to time amend the Postal USP Designation Procedures following public consultation.

Q. 1 Do you agree or disagree with ComReg's draft Postal USP Designation Procedures as set out at Annex: 1? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

Annex: 1 Draft Postal USP Designation Procedures

Introduction

- A 1.1 The Commission for Communications Regulation (“ComReg”) has responsibility for conducting reviews of, and making decisions on, the designation of a universal service provider (“USP”) for postal services in the State. Section 19 of the Communications Regulation (Postal Services) Act 2011, as amended (“the 2011 Act”) provides that any such review must be conducted in accordance with procedures established and maintained by ComReg (“the Postal USP Designation Procedures”).
- A 1.2 The purpose of these Postal USP Designation Procedures is to provide information to all stakeholders on how ComReg will conduct reviews (in accordance with section 19 of the 2011 Act) for the purposes of making USP designation decisions (which phrase for the purpose of these procedures includes any decision that no designation of USP is required, or any decision to designate a USP or USPs, or any decision to continue designation of An Post as USP pursuant to section 17 or section 18 of the 2011 Act). These procedures have regard to ComReg’s functions and objectives relating to postal services²¹ and are designed to be efficient, objective, transparent, non-discriminatory and proportionate.
- A 1.3 In conducting reviews of and making decisions on the designation of USP, ComReg will take account of ComReg’s published Regulatory Impact Assessment (“RIA”) Guidelines. Where it considers it appropriate, ComReg will publically consult prior to making a USP designation decision.
- A 1.4 ComReg fully intends to follow the Postal USP Designation Procedures when conducting a review of and making USP designation decisions. However ComReg reserves the right to deviate from these procedures if it considers that a different approach is warranted.

²¹ In particular ComReg’s function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users (Section 10(1)(ba) of the Communications Regulation Act, 2002, as amended (“the 2002 Act”)) and its objective in exercising its functions in relation to the provision of postal services 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*” (Section 12(1)(c)(i) of the 2002 Act)

Interpretation

- A 1.5 Unless the context otherwise suggests, the definitions in the 2011 Act and the Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. No. 280 of 2012), as amended (“USO Regulations”), apply in the Postal USP Designation Procedures.
- A 1.6 “Universal postal service” means the universal postal service as set out in section 16 of the 2011 Act and in the USO Regulations and all other decision documents imposing obligations on a USP under the 2011 Act.
- A 1.7 “The Minister” means the Minister for Communications, Climate Action and the Environment.
- A 1.8 To the extent that there may be any difference between the Postal USP Designation Procedures and the relevant provisions of the 2011 Act, the 2011 Act takes precedence.

Designation Periods and Frequency of Designation Reviews

- A 1.9 When making a decision to designate one or more than one USP under section 17(2)(a)(ii) or section 18 of the 2011 Act, ComReg must determine the designation period which it considers appropriate (section 18(4) of the 2011 Act). This period should be of sufficient duration to ensure return on investments.
- A 1.10 ComReg considers that, in general, a period of between two years and five years would appear to be an appropriate designation period. However, for each designation ComReg will set the appropriate designation period based on the information it has before it and the particular circumstances at the time.
- A 1.11 ComReg will aim to conduct and complete a new USP designation review well in advance of the expiry of each designation period, having regard to; the required time to fully conduct a review and make a designation decision, any changes which may be required to regulatory requirements, and the need to provide sufficient time for newly designated USP(s) to prepare for provision of the universal postal service. However, it may be necessary to carry out a designation review in a shorter period than anticipated, depending on the circumstances.
- A 1.12 In circumstances where ComReg decides that no designation is required, ComReg will review that decision at appropriate intervals as it considers appropriate.

- A 1.13 Subsequent to making a designation decision, during the designation/non-designation period ComReg will keep the USP designation (or no designation) under review and it may take appropriate action to ensure continuance of the universal postal service should circumstances arise that ComReg considers might threaten the provision of the universal postal service.

Step 1 - Is there a requirement for a USP Designation?

A. Information gathering

- A 1.14 ComReg will write to all postal service providers to request detailed information on their existing postal products and services²².
- A 1.15 ComReg will identify what postal service providers are operating in the State²³ and which postal services are being provided in the State.
- A 1.16 ComReg will gather information on the reasonable needs of postal service users.

B. Assessment

- A 1.17 ComReg will consider the information gathered.
- A 1.18 ComReg will assess the extent to which the market for the provision of postal services is meeting the reasonable needs of postal service users²⁴.
- A 1.19 ComReg will review and assess whether each of the universal postal services required by section 16 of the 2011 Act would be provided by the market without a USP designation.
- A 1.20 This assessment will include, but is not limited to:
- a) an assessment of the postal products and services provided by the current USP(s) (if any) and other postal service providers to ascertain the markets' capability to provide the universal postal service for the entire State and to the required levels of accessibility, quality and affordability, and

²² Where appropriate, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act in order to obtain the required information from any postal service provider.

²³ As listed on the Register of Authorised Postal Service Providers published on www.comreg.ie.

²⁴ As required by section 19(2)(a) of the 2011 Act.

- b) an assessment of any potential negative impacts on the postal market resulting from not designating a USP or USPs, including the possible actions which may be taken by the current USP(s) if no designation is applied.

A 1.21 If ComReg is of the view that any part of the universal postal service would not be provided by the postal market without a designated USP ComReg is required to proceed with its process to designate a USP (or USPs) to provide the entire universal postal service for the State.

A 1.22 Following the above assessment, if ComReg is of the view that a USP designation may be required, it will proceed directly to Step 2 of the Postal USP Designation Procedures to assess which postal service provider(s) should be designated as USP(s) for the period decided by ComReg.

C. ComReg Decision

A 1.23 If ComReg forms the view, following the above assessment, which may include a consultation on a draft decision, that no USP designation is required ComReg will make a decision pursuant to either section 17(2)(b) or section 18(1)(b)(ii) of the 2011 Act (as appropriate) that no USP designation is required.

A 1.24 If ComReg proposes to make a decision under section 17(2)(b) of the 2011 Act that no USP designation is required, ComReg must prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent, must be provided within 4 months of the date on which ComReg seeks consent.

A 1.25 If ComReg's decision is that no USP designation is required, it will publish this decision which, at a minimum, will include:

- ComReg's reasoning for its decision that no USP designation is required; and
- The date on which the prior USP designation ceases to be effective and the no USP designation period commences.

Step 2 - Which Postal Service Provider(s) should be designated as USP(s)?

A. Information gathering

- A 1.26 If ComReg forms the view that a USP designation may be required it will then invite submissions from postal service providers²⁵ who are interested in being considered as the designated USP(s) in the State, and capable of providing all or part of the universal postal service for the upcoming designation period.
- A 1.27 These submissions should contain proposals for the efficient provision of all of the universal postal service for the entire State and/or for different parts of the universal postal service and/or in respect of all or any part or parts of the State. Postal service providers should indicate if they are interested in their proposed solution being split up (i.e. that they would consider being designated for only a certain part or parts of their proposed solution). ComReg may hold discussions at its assessment stage in this regard with such postal service providers.
- A 1.28 All postal service providers interested in being considered for designation as a USP will be required to demonstrate in their submission their capacity and capability to provide the universal postal service. Postal service providers in their submission should, where appropriate, provide details of past performance (in the provision of the universal postal service or in the provision of postal services or in equivalent services). In addition postal service providers should provide details of their proposed solution, which should include at a minimum the following:
- **Products and Services** - Full details of the universal postal service or part of the universal postal service (including proposed products and services) which the postal service provider proposes to provide. A completed ComReg Document 12/81n form will be required as part of the submission for each of the universal postal services proposed to be provided;

²⁵ Under section 17 or section 18 of the 2011 Act ComReg may choose to designate one or more than one postal service provider(s) as USP(s). Entities not yet authorised as a postal service provider may seek designation as USP, however only postal service providers authorised by ComReg under section 38 of the 2011 Act can be designated.

- **Postal Network and Resources** - Full details of the proposed postal network, including systems and resources, which it intends to implement and operate (including an appropriate Business Continuity Plan). These details should demonstrate the postal service provider's capability to continuously provide the universal postal service and should include the necessary access and delivery arrangements for all postal service users²⁶. These details should also demonstrate how the geographic location of the addresses marked on the postal packets will be identified to ensure correct delivery of the postal packet to the addressee. Details of the customer service facilities that will be provided, sufficient for dealing with universal postal service users needs, should also be demonstrated. Where it is proposed that there be more than one postal service provider providing the universal postal service, the inter-operator arrangements that will be put in place should be specified;
- **Cost-efficiencies** – Full details demonstrating how the service will be provided in a cost efficient manner, including details of operations management processes that will continuously oversee cost efficiency. As dedicated parcels networks and letters networks have distinct differences, submissions from postal service providers that currently operate a predominantly parcels network or a predominantly letters network must provide evidence demonstrating how their network will be operated to efficiently provide the service which they don't currently predominantly provide (if applicable);
- **Price** – Full details demonstrating that the postal service provider will meet the tariff requirements in section 28 of the 2011 Act;
- **Quality of Service** – Full details demonstrating that the postal service provider will meet the requirement for the universal postal service to be provided to the specified quality levels²⁷;
- **Confidentiality and Security of USO** – Full details demonstrating that the postal service provider will have sufficient protections for confidentiality of correspondence and security of the network as regards the transport of dangerous goods and security of the network²⁸;

²⁶ At the time of publication in ComReg Document 03/50. These requirements may change over time.

²⁷ At the time of publication in ComReg Document 15/126 which provides for a quality standard of 94% for next day delivery and 99.5% for delivery within three days of posting for single piece priority mail within the State. These requirements may change over time.

²⁸ Article 5(1) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and

- **Draft Terms & Conditions of USO** – a draft version of the proposed terms and conditions of the universal postal service²⁹;
- **Annual projected costing of provision of services** - evidence demonstrating the projected costs of providing the proposed universal postal services and how the proposed pricing and efficiencies will ensure that these costs will be covered; and
- **Financial standing** – evidence demonstrating that the postal service provider is in a stable financial position and capable of ensuring continued provision of the universal postal service proposed for the entire designation period.

A 1.29 ComReg may also request information³⁰, including information in relation to the above details, from postal service providers that have not made submissions to be considered for USP designation but in ComReg's view may be capable of providing all or part of the universal postal service for the upcoming designation period.

A 1.30 ComReg may request further information³¹ from postal service providers. ComReg may contact postal service providers to discuss their submissions and proposed solutions and all potential options ComReg may consider with a view to identifying the best solution for provision of the universal postal service for the upcoming designation period.

B. Assessment

A 1.31 ComReg will review and assess the submissions and all information it has gathered from postal service providers as part of its designation review process and all other relevant information in its possession. ComReg's assessment will be based upon;

- the solution which will best ensure the provision of the universal postal service covering the entire State with the least market distortion;

the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC.

²⁹ At the time of publication, ComReg's recommendations for drafting terms and conditions of the universal postal service are set out in ComReg Document 14/24a. These requirements may change over time.

³⁰ In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

³¹ In this regard, ComReg may exercise its information gathering powers under section 13F(1) of the 2002 Act.

- the solution that meets the reasonable needs of postal service users; and
- the solution which represents the most efficient and cost-effective way to provide the universal postal service for the State.

C. ComReg Decision

A 1.32 Following the above assessment, which may include a consultation on a draft decision, ComReg will make its final decision pursuant to section 17(2)(a)(i), section 17(2)(a)(ii) or section 18(1)(b)(i) of the 2011 Act.

A 1.33 If ComReg proposes to make a decision under section 17(2)(a)(ii) that one or more than one postal service provider should be designated, ComReg must prior to making that decision, obtain the consent of the Minister whose decision to consent, or to refuse consent, must be provided within a 4 month period of the date on which ComReg seeks consent³².

A 1.34 ComReg may make a decision to designate one or more than one postal service provider, even if they have not asked to be considered for USP designation, where considered appropriate.

A 1.35 ComReg will publish its decision which will include (where appropriate):

- ComReg's reasoning for its decision on the choice of postal service provider(s) for USP designation(s);
- the parts of the universal postal service to be provided by the designated USP(s);
- the part or parts of the State for which the designated USP(s) must provide the relevant part of the universal service;
- the date by which the designated USP(s) must submit its final set of terms and conditions of its universal postal service for approval by ComReg under section 23 of the 2011 Act; and
- the effective date of the new designation(s)³³, subject to approval of the universal postal service terms and conditions.

³² For a decision made under section 17(2)(a)(i) to continue An Post's designation or under section 18(1)(b)(i) to designate one or more postal service providers, there is no requirement for ComReg to seek the prior consent of the Minister.

³³ New designations of USP become effective 14 days after the designated USP(s) universal postal service terms and conditions are approved by ComReg under section 23(2)(a) of the 2011 Act. The prior USP designation will cease to have effect on the date that the new designation decision takes effect.

Step 3 - Notification of Decisions

A 1.36 In accordance with its obligations under section 20 of the 2011 Act, ComReg will notify the Minister and the European Commission of decisions under section 17 or section 18 of the 2011 Act and will publish notice of decisions in the Iris Oifigiúil.

Annex: 2 Legal Basis

ComReg's functions and objectives relating to the postal sector

A 1.37 ComReg's statutory functions in relation to the postal sector are set out in section 10(1) of the Communications Regulation Act 2002, as amended, ("the 2002 Act") and are as follows:

- *"(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,*

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services."

A 2.1 ComReg's statutory objectives, in exercising the above functions, are set out in section 12(1)(c) of the 2002 Act, and are 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 interests of postal service users within the Community, and

(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision".

A 1.38 The European Postal Directive³⁴ and national legislation have set down the requirements for a "universal service" which guarantees, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.

Designation of An Post as USP

A 1.39 Section 17 "Designation of An Post as universal postal service provider." provides:

"(1) Subject to subsection (2), An Post is designated as the universal postal service provider for a period of 12 years beginning on the passing of this Act.

³⁴ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council.

(2) After the expiration of 7 years after the passing of this Act, and following a review under section 19 by the Commission of the designation of An Post under subsection (1), the Commission may—

(a) decide to—

(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period of the designation specified in subsection (1), or

(ii) with the prior consent of the Minister, designate one or more than one postal service provider as a universal postal service provider for such period, subject to section 18 (4), as the Commission considers appropriate,

or

(b) with the prior consent of the Minister, decide that no such designation is required.

(3) Where the Commission proposes to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister, following consultation with such persons as he or she considers appropriate having regard to the proposal concerned, shall give notice in writing to the Commission of his or her decision to consent, or to refuse consent, within 4 months of the date on which the Commission seeks consent.

(4) When giving or refusing consent in relation to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister shall require to be satisfied as to whether or not the Commission's proposal ensures the provision of a universal postal service.

(5) Where the Minister refuses consent to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the designation of An Post shall continue for the duration of the unexpired period of the designation specified in subsection (1).

(6) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(a)(ii), the designation of An Post under subsection (1) shall cease to have effect on the date on which that decision takes effect.

(7) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(b), the designation of An Post under subsection (1) shall cease to have effect on the date of that decision.”

Designation of USPs - General

A 1.40 Section 18 “Designation of universal postal service providers – general provisions.” provides:

“(1) Before the end of the period for which the designation of An Post is continued under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, before the end of the period for which a universal postal service provider is designated under subsection (2)(a)(ii) of that section or, in a case where a universal postal service provider is designated under this section, before the end of the period for which the provider is so designated, the Commission—

(a) shall conduct a review of the designation, and

(b) may with effect from the expiry of that period—

(i) decide to designate one or more than one postal service provider as a universal postal service provider for such period, subject to subsection (4), as the Commission considers appropriate, or

(ii) decide that no such designation is required.

(2) Where the Commission makes a decision—

(a) with the prior consent of the Minister, under section 17 (2)(b), or

(b) under subsection (1)(b)(ii), it shall, at such intervals as it considers appropriate, conduct a review under section 19 for the purpose of deciding whether a designation of one or more than one postal service provider as a universal postal service provider is required and may decide that—

(i) no such designation is required for the time being, or

(ii) such designation is required for such period, subject to subsection (4), as the Commission considers appropriate,

and this section applies to a decision made under subparagraph (i) or (ii), as the case may be, as it applies to a decision made under subparagraph (i) or (ii) of subsection (1)(b).

(3) The Commission may determine that different universal postal service providers, the subject of a designation made by the Commission under section 17 (2)(a)(ii) or this section, shall provide different parts of the universal postal service or provide that service in respect of all or any part or parts of the State, or both, having regard to the need to ensure that there is no duplication of the obligations imposed on each universal postal service provider so designated.

(4) The designation of a universal postal service provider by the Commission under section 17 (2)(a)(ii) or this section—

(a) shall be for such period as the Commission considers appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments,

(b) shall take effect 14 days after the date on which notice of approval of the terms and conditions of its universal postal service provision is published under section 23 (2)(a), and

(c) shall cease to have effect—

(i) on the date on which the designation of a universal postal service provider takes effect under paragraph (b), or

(ii) on the date on which the Commission decides that no such designation is required.”

USP Designation Reviews

A 1.41 Section 19 “Review by Commission” provides:

“(1) A review by the Commission for the purposes of section 17 or 18 shall, subject to subsection (2), be conducted in accordance with such procedures as may be established and maintained by the Commission having regard to its functions and objectives under the Communications Regulation Acts 2002 to 2011 relating to postal services, in particular the need to ensure the provision of a universal postal service and compliance with the requirements specified in section 18.

(2) The procedures referred to in subsection (1) shall—

(a) make provision for the carrying out of an assessment of the extent to which the market for the provision of postal services in the State is meeting the reasonable needs of postal service users,

(b) be such as the Commission considers to be efficient, objective, transparent, non-discriminatory and proportionate, and

(c) be published by the Commission.”

Notification of USP Designations

A 1.42 Section 20 “Notification of designation” provides:

“(1) The continuance of the designation of An Post under subsection(2)(a)(i) or (5) of section 17 or, as the case may be, the designation of a universal postal service provider under subsection (2)(a)(ii) of that section, or the designation of a universal postal service provider under section 18 , shall be in writing, and the Commission shall—

(a) publish notice of the such continuance or designation in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing—

(i) the European Commission of such continuance or the identity of any universal postal service provider so designated, and

(ii) the Minister of the identity of any universal postal service provider so designated.

(2) Where the Commission makes a decision under section 17 (2)(b) or subsection (1)(b)(ii) or (2)(i) of section 18 , as the case may be, that no designation is required, it shall—

(a) publish notice of such a decision in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing the Minister and the European Commission.”

Questions

Section

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Q. 1 Do you agree or disagree with ComReg's draft Postal USP Designation Procedures as set out at Annex: 1? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view..... 13