



Commission for
Communications Regulation

Response to Consultation on Draft Postal Strategy Statement 2018 – 2020

Response to Consultation

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Additional Information

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1 Introduction

- 1 In Document 17/72, ComReg commenced a public consultation on its draft Postal Strategy Statement for the period 2018-2020. ComReg sought written responses from interested parties on the preliminary strategy outlined in the consultation and received four responses¹.

Respondents
An Post
Citypost
Communications Workers' Union ("CWU")
Tico Mail Works ("Tico")

- 2 Within this document, ComReg has summarised the four responses received and set out its assessment of views expressed in those responses, but does not seek to respond to each individual comment.
- 3 In concluding the consultation and its final Postal Strategy Statement (Document 17/113) which is published in tandem with this document, ComReg has had regard to its statutory functions and objectives, the four responses submitted as well as to other relevant information before it. Following consideration of certain views expressed by the respondents, as discussed herein, some adjustments have been made to the final Postal Strategy Statement.

¹ The non-confidential responses received are published on ComReg's website as ComReg Document 17/113s

2 Summary and assessment of responses

Strategic Intent

- 4 ComReg's draft Postal Strategy Statement set out proposed strategic intents for postal regulation and invited comments from interested parties.

Strategic Intent #1: Seek to ensure the provision of the universal postal service

- 5 The draft Postal Strategy Statement noted that ComReg's statutory function includes ensuring the provision of a universal postal service that meets the reasonable needs of postal service users. To meet this legal mandate, the strategic intent is to act within our powers set by the Oireachtas to seek to ensure that there is a universal postal service that meets the reasonable needs of postal service users.

Respondents' views

- 6 An Post agrees with this intent.
- 7 However, An Post submits that ComReg's draft Postal Strategy Statement has isolated An Post in its role as universal postal service provider by focusing almost all of its proposed future regulatory framework on the declining universal postal service. An Post contends that the regulatory framework should focus on appropriate regulation for the collective marketplace and not just An Post, as universal postal service provider.
- 8 An Post also submits that the draft Postal Strategy Statement introduces unnecessary uncertainty over An Post's continued designation to provide the universal postal service. An Post states that the critical importance of the universal service was set out clearly in the Postal Act with ComReg's objective to facilitate the development of competition and innovation being subject to the overriding objective of the availability of the universal service. An Post submits that ComReg's finalised Strategy Statement should reflect both the priority given to the universal service in the Postal Act and the importance of ensuring a vibrant An Post as the universal postal service provider. An Post further submits that the final Postal Strategy Statement should outline a clear strategy with regard to ensuring the continued availability of the universal postal service as opposed to creating any uncertainty around its future provision.
- 9 With regard to the future of the universal postal service, An Post submits that there should be flexibility in the provision of the universal postal service to enable An Post to meet evolving customer requirements. An Post further submits that there should be reduced regulatory intervention as the market continues to develop.

- 10 With regard to seeking to ensure the provision of the universal postal service, An Post notes that while its domestic prices for universal postal services have moved to a more cost oriented basis, its rates for international inbound mail do not reflect cost and must be addressed. An Post contends that addressing the losses on international inbound mail requires the support of all stakeholders, including ComReg. An Post welcomes ComReg's recent engagement with An Post on this issue and the inclusion of this important topic in the strategy statement.
- 11 An Post also submits that it has incurred losses in excess of €375m over the past ten years in the provision of the universal postal service, primarily due to low tariffs.
- 12 In the wider context of ensuring the provision of a universal postal service, An Post submits that ComReg should engage with An Post and other key stakeholders to enhance the understanding and analysis of the universal postal service and the possible strategies which could be employed to maintain and improve the provision of universal postal services in Ireland.
- 13 **Tico** submits that there is a need for action by An Post, the State and ComReg to address the losses on international inbound mail. Tico suggests that such a partnership between An Post, the State and ComReg might take the form of a working group to agree a strategy to address international inbound losses, furthermore, the working group could invite input from interested parties. According to Tico, this is of particular importance as it is unclear to what extent, if any, Brexit will affect terminal dues and the losses on international inbound mail.
- 14 **Citypost** holds the view that ComReg should not focus its attention on ensuring the universal postal service, but should instead focus on facilitating the development of competition and innovation in the provision of postal services.
- 15 Citypost submits that it would welcome a review of the universal postal service provision. However, Citypost contends that this requires an environment where alternative postal service providers exist.

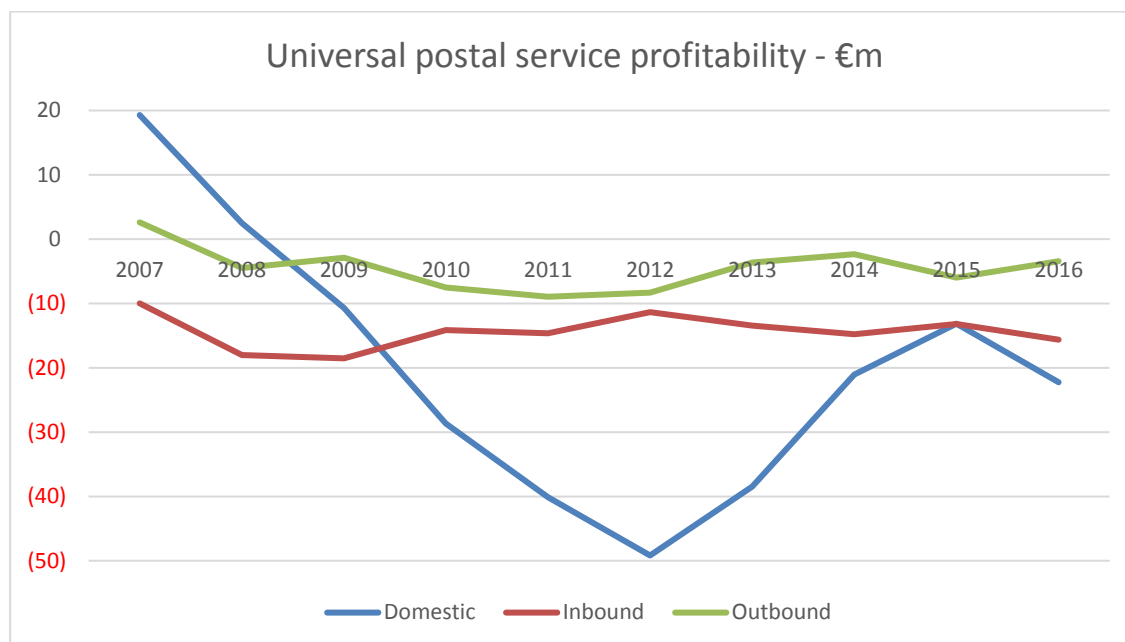
ComReg's assessment of respondents' views

- 16 ComReg welcomes An Post's agreement with ComReg's strategic intent.
- 17 In response to An Post's submission that almost all of ComReg's future regulatory framework relates to the universal postal service, this is correct. ComReg's remit under the Postal Act is largely to ensure the provision of a universal postal service. ComReg notes that this remit is to ensure the provision of a universal postal service. An Post is the current designated universal postal service provider, but the Postal Act allows this to be reviewed and allows that other postal service provider(s) could be designated universal postal service provider(s) in place of or alongside An Post, as current universal postal service provider, or that no designation is made to provide the universal postal service (as is the case in Germany).

- 18 ComReg's remit under the Postal Act is more limited for those postal services that are not universal postal services, this makes sense as such postal services face effective competition, therefore it would not be appropriate to have the same regulatory controls (price, quality, access) on those postal services as for universal postal services.
- 19 ComReg does not agree with An Post that ComReg's focus on the universal postal service is discriminatory on An Post. ComReg's remit is set by the Postal Act and ComReg is therefore correctly focused on ensuring a universal postal service, currently provided by An Post. As required by the Postal Act, An Post is the current designated universal postal service provider, but this is subject to review. An Post has full commercial freedom for its postal services that are not universal postal services.
- 20 In response to An Post's submission that promotion of competition and innovation must not adversely impact on the provision of the universal postal service, ComReg takes note that it has the core statutory function "*to ensure the provision of a universal postal service that meets the reasonable needs of postal service users*" and it has three objectives in the exercise of that function, namely:
- (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,*
- 21 As per the above provisions, ComReg is aware that its objective to facilitate the development of competition and innovation is subject to its objective to promote the availability of an affordable universal postal service within, to and from the State. ComReg considers that this objective is appropriately reflected in both the draft and the final Strategy Statement. ComReg would further note that its core statutory function and legal remit is to ensure the provision of a universal postal service rather than the universal postal service provider. Therefore, given the serious financial and liquidity situation facing An Post, it is reasonable for ComReg to explore, within its limited remit, how a universal postal service can be ensured in these circumstances.

- 22 In response to the losses on international inbound mail in the universal postal service, ComReg notes that addressing the losses on international inbound mail is an important action for An Post to ensure the financial stability of An Post, currently the sole designated universal postal service provider. ComReg welcomes that action is being taken by An Post to address the losses it incurs in the delivery of international inbound mail and recognises that there are a number of options open to An Post and that there are associated actions that An Post will need to take to address these losses. ComReg will continue to review this matter. ComReg agrees with Tico that there is also a role for the State in addressing the losses on international mail, particularly UPU mail, which may require more particular focus following the exit of the UK from the EU. Finally, ComReg notes that its regulatory function in relation to international inbound mail is set by the Postal Act and that in this respect ComReg's regulatory function is a compliance monitoring one for intra-EU mail only.
- 23 In response to An Post's submission that there should be flexibility in the provision of the universal postal service to enable An Post to meet evolving customer requirements, ComReg notes that the universal postal service is set by the Postal Act, transposing the European Postal Services Directive. As required by the Postal Act, ComReg further specifies that universal postal service. In 2018, ComReg's plans to revisit and review that specification, including a public consultation, to ensure that it remains appropriate given the changes in the economic, technical and social environment and to the reasonable needs of postal service users, within the limitations of the Postal Act. If that review finds that the specification should be reduced, this would in turn reduce the regulatory intervention required by ComReg on An Post, as the current universal postal service provider.
- 24 In response to An Post's submission that it has incurred losses in excess of €375m over the last ten years on the provision of the universal postal service, primarily due to low postal tariffs, ComReg notes the following:

Figure 1: An Post's losses on universal postal service over the last ten years



Source: An Post's audited Regulatory Accounts

- One third of those losses, c.€126m, was on International Inbound mail. Over the last ten years, international inbound mail has made losses every year, averaging €14m a year. For this mail, the onus is on An Post to ensure it covers its costs. The losses on this International Inbound mail are largely due to € . In order to address the losses on international inbound mail, ComReg notes that An Post has recently introduced a bulk access price for its incoming cross border postal packets² with this price being more reflective of An Post's domestic prices and its cost base.
- The losses on domestic universal postal services reduced significantly under the price cap³, from c.€49m loss in 2012 to c.€13m loss in 2015.
- Since the implementation of the Postal Act in late 2011, the price of a domestic stamped letter has increased by 82%. These significant price increases have put An Post's stamped letter price above European norms.

² See Iris Oifigiuil 80 published 6 October 2017

³ The price cap set a maximum overall allowance that the prices of universal postal services could increase by, this ensured that universal postal services remained affordable. The price cap is now repealed by amending legislation – see ComReg Document No. 17/18 (https://www.comreg.ie/media/dlm_uploads/2017/03/ComReg-1718.pdf) for further information on the repeal.

- ComReg’s price cap decision, when in effect, set an overall maximum price increase % for certain universal postal services. The setting of the maximum price % under the price cap included a modest 2% per annum efficiency target. If An Post had met or exceeded the efficiency target it would have, all other things below equal, earned profit on the universal postal services subject to the price cap. An Post did not achieve the 2% per annum efficiency target⁴.
- Given significant volume declines, the onus is on An Post to ensure it is cost efficient. Reducing costs commensurate with significant volume declines would minimise losses.

25 In response to An Post’s proposed engagement on the future of the universal postal service, ComReg acknowledges An Post’s offer and is willing to engage on this important matter. Any such engagement would require the engagement of the Department of Communications, Climate Action and Environment (“DCCA”) as the universal postal service is set by primary legislation, the Postal Act, transposing the European Postal Service Directive. There is a move across Europe to a more sustainable universal postal service, reflective of the significant volume declines and the changing role of post for society’s communications needs. For its part, as required by the Postal Act, ComReg will revisit the specification of the universal postal service to ensure it remains appropriate in the context of a changing technological, economic and social environment and to the reasonable needs of postal service users.

26 In response to Citypost’s submission that ComReg should be less focussed on ensuring the universal postal service, ComReg notes that its objectives and functions in relation to the provision of postal services are set by the Postal Act. This explicitly provides that the objective of facilitating the development of competition and innovation in the market for postal service provision is subject to the objective of facilitating 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. ComReg does not consider that this leads to a conflict between the two.

27 In response to Citypost’s submission on the review of the provision of the universal postal service, ComReg notes Citypost’s welcoming of such a review. When conducted, the review will consider all available alternative provisions.

Strategic Intent #2: Promote the interests of postal service users

28 In the draft Postal Strategy Statement, ComReg’s second strategic intent is that postal service users can choose and use postal services with confidence.

⁴ An Post correspondence dated 14 September 2016 – published as ComReg Document No. 16/81a

Respondents' views

- 29 **An Post** agrees with this intent and welcomes ComReg's continuing commitment to ensure that the code of practice set out by respective postal service providers is sufficient and contains appropriate information. However, An Post believes that certain postal service providers are remiss in their responsibilities to postal service users. An Post emphasises the significant importance of ComReg ensuring that all postal service providers, and not just An Post, meet their statutory and regulatory obligations.
- 30 With regard to ComReg's complaint and redress procedures for unresolved disputes between a postal service user and its postal service provider, An Post claims that the process is burdensome, time consuming and costly and should be outsourced to a 3rd party.

ComReg's assessment of respondents' views

- 31 ComReg welcomes An Post's support of ComReg's strategic intent.
- 32 In response to An Post's claim that certain postal service providers are remiss in their responsibilities to postal service users, ComReg notes that An Post has not, as yet, provided any evidence to support its contention regarding the actions of other postal service providers. In response ComReg notes, as required by the Postal Act, that it ensures that all postal service providers comply with their codes of practices.
- 33 ComReg disagrees that its complaint and redress procedures are burdensome, time consuming and costly. These procedures were set following a public consultation process and each dispute is conducted fully in accordance with these procedures and the process has been effective.
- 34 Regarding the outsourcing of the process for resolving disputes between postal service providers and postal service users, ComReg may evaluate alternative ways to carry out this function keeping in mind, among other aspects, efficiency and cost effectiveness.

Strategic Intent #3: Facilitate the development of competition and innovation

- 35 In the draft Postal Strategy Statement, ComReg's third strategic intention is to facilitate the development of competition and innovation in the provision of postal services.

Respondents' views

- 36 **An Post** agrees with this intent.
- 37 Notwithstanding this agreement, An Post submits that it has a number of concerns:

- a) An Post notes that postal services generally are in decline and where there are pockets of growth, these are high competitive, particularly the parcels sector. Given this, An Post contends that regulating An Post in its declining market while not regulating the competitive growth sector is unfair, damaging and potential discriminating. An Post submits that regulation of the postal sector must be appropriate, cost effective and applied equally to all.
- b) An Post contends that ComReg has failed to appreciate that increasing e-commerce and broadband penetration has provided additional competitive pressures on An Post.
- c) An Post claims that ComReg is increasing the regulatory burden and cost on An Post. With regard to the claimed increased regulatory burden, An Post claims that:
- i. Certain previous decisions by ComReg resulted in An Post having to sell certain regulated services below actual cost;
 - ii. ComReg's use of the 13F information gathering powers imposes significant cost and burden on An Post for which there seems to be limited regulatory need or application. An Post submits that ComReg should develop and implement a process to minimise the requirement for such information requests;
 - iii. The published Regulatory Accounts are among the most detailed of all European universal postal service providers and cannot be viewed as either proportional or cost justified. An Post further claims that ComReg appears to ignore the information from the Regulatory Accounts in favour of 13F Information Requests;
 - iv. ComReg has continued to monitor the quality of service ("QoS") of An Post's single piece universal postal service. An Post submits that there is an inherent duplication of cost as An Post also runs a separate QoS monitor.

With regard to the cost of regulation on An Post, An Post notes that the cost of regulation to An Post in 2016 was €1.8m, a cost that An Post claims is "the most expensive postal regulatory regime in Europe". An Post further claims that ComReg has increased the basis of the regulatory levy on An Post by up to 60%. An Post notes that the cost of regulation is effectively borne solely by An Post and this must be changed to reflect market conditions.

- d) An Post contends that where postal service providers are not in compliance with their authorisation, this non-compliance needs to be identified so that postal service users can make informed choices.

- 38 **Citypost** submits that this strategic intent is the key area that ComReg needs to address. Citypost further submits that this strategic intent has failed so far, resulting in absence of a healthy competitive market giving postal service users real choice. Citypost states that there is a well-established dominant provider who controls key access elements vital for proper competition and, according to Citypost, this provider has no interest or incentive in helping change the status quo. Citypost states that ComReg needs to exercise to its fullest extent the regulatory powers it currently holds.
- 39 Citypost also submits that ComReg must have regulatory powers in the postal sector that are equal to its regulatory powers in the electronic communications sector.

ComReg's assessment of respondents' views

- 40 ComReg welcomes An Post's agreement with this strategic intent.
- 41 In response to An Post's concerns, ComReg's response is as follows.
- 42 With regard to An Post's submission that ComReg must regulate the competitive growth sector of post, ComReg notes that its remit for regulation is set by primary legislation, the Postal Act, which transposes the European Postal Services Directive. Furthermore, regulation is only required where there is no effective competition or failures in competition, competitive sectors should not require regulation. ComReg is required, by the Postal Act and the European Postal Services Directive, to regulate the price, access, and quality of the universal postal service, as they do not face effective competition. All decisions made by ComReg regarding the regulation of the universal postal service are subject to public consultation. In making its decisions, ComReg seeks to ensure the appropriate balance between minimising any regulatory burden on the universal postal service provider versus appropriate protection for postal service users availing of the universal postal service. As stated earlier, as required by the Postal Act, ComReg will revisit the specification of the universal postal service. In revisiting that specification of the universal postal service, ComReg will consider An Post's submissions on competition and the growth of competition in the postal sector.
- 43 With regard to An Post's submission that ComReg has failed to appreciate the additional competitive pressures on An Post, ComReg notes the following:
- a) The Postal Act requires ComReg to ensure the provision of a universal postal service that meets the reasonable needs of postal service users and that An Post is the current designated universal postal service provider to provide that universal postal service. The Postal Act sets the universal postal service, as required by the European Postal Services Directive.

- b) The Postal Act further requires ComReg to specify the universal postal service to ensure that the universal postal service develops in response to the technical, economic and social environment and to the reasonable needs of postal service users. ComReg last specified the universal postal service in 2012, as flagged in the draft Postal Strategy Statement and in ComReg's action plan 2017/18, given the passage of time, ComReg will revisit the specification and will consider An Post's submission on the additional competitive pressures in the postal sector, particularly for the delivery of parcels.

44 In relation to An Post's submission that ComReg ensures that all postal service providers in the postal market are meeting their obligations to maintain the current high confidence levels of postal users; ComReg notes that it performs this task as required by the Postal Act.

45 In response to specific comments raised by An Post on the claimed regulatory burden, ComReg notes the following:

- a) With regard to An Post's submission that it had to sell certain regulated services below actual cost, ComReg notes that the Postal Act, when s.30 was in effect, required ComReg to make incentives for the efficient provision of the universal postal service in its price cap decision. ComReg's price cap decision, when in effect, set an overall maximum price increase % for certain universal postal services. The setting of the maximum price % under the price cap included a modest 2% per annum efficiency target. If An Post had met or exceeded the efficiency target it would have, all other things below equal, earned profit on the universal postal services subject to the price cap. An Post did not achieve the 2% per annum efficiency target⁵.
- b) With regard to An Post's submission that ComReg's use of the 13F information gathering powers imposes significant cost and burden on An Post for which there seems to be limited regulatory need or application, ComReg would note that:
- i. There have been only six 13F Information Requests to An Post, two made in 2013, one in 2014, two in 2016, and one in 2017. ComReg rarely uses its 13F Information Request powers.
- ii. Each of these 13F Information Requests were required to enable ComReg carry out specific regulatory tasks required of it by the Postal Act:
- 1 was required to inform the price cap repeal report, as required by the Communications Regulation (Postal Services) (Amendment) Act 2017;
 - 2 were required for the setting of the price cap;

⁵ An Post correspondence dated 14 September 2016 – published as ComReg Document No. 16/81a

- 1 was required for the review of the price cap;
 - 2 were required to provide information on the delivery of certain mail.
- c) In response to An Post's submission that ComReg's decision on the Regulatory Accounts cannot be viewed as proportionate or cost justified, ComReg would note ComReg's decision was made following due process, including a public consultation. ComReg would further note that the published Regulatory Accounts are, for the most part, the same since 2006. Furthermore, as required by the 2017 Accounting Direction, An Post has now submitted its timetable for compliance⁶.
- d) In response to An Post's submission that ComReg has continued to focus on the quality of service of An Post's single piece universal postal service:-
- i. ComReg would note that this is correct as ComReg is required to do so, *inter alia*, by s.32(5) of the Postal Act.
 - ii. ComReg would further note that An Post's rate of next-day delivery for single piece priority mail has improved by 20 percentage points - a rate of improvement of 28% - since ComReg first introduced independent monitoring of the quality of the universal postal service in 2003⁷.
 - iii. In response to An Post's submission that there should be a single QoS Monitor, ComReg confirms that ComReg is required by the Postal Act to monitor compliance with the quality of service standard. Given that An Post's quality of service standard, currently 91%, ComReg would question the need for the separate QoS Monitor run by An Post, however, this is a matter for An Post. ComReg agrees that if An Post ceased its separate QoS Monitor, then An Post would save considerable costs and resources, this is particularly important given An Post's financial and liquidity position.

⁶ See ComReg Information Notice 17/93

⁷ In 2003 just 71% of single piece priority mail was being delivered next-day, it is now 91%

- 46 In response to An Post's submission that ComReg is the "the most expensive postal regulatory regime in Europe", ComReg confirms that this is incorrect⁸. With regard to the basis of the regulatory levy, this was subject to a public consultation in 2013⁹, which set out clearly that the levy was based on a careful review of all relevant expenditure in order to determine the likely amount necessary to enable ComReg to properly discharge its statutory functions relating to the regulation of postal services. An Post refers to a 60% increase in the basis of the levy, that is an increase in the levy percentage on applicable revenue, whereas it is the annual cost in €m that should be compared. In order to set the levy percentage on applicable revenue, the public consultation on the levy projected an annual cost of €1.7m for ComReg. The €1.8m current levy amount is just 6% above this projected annual cost used to set the levy percentage.
- 47 ComReg operates in an efficient manner and the level of expenditure is kept to a minimum and subject to public procurement processes, where required. ComReg has a tight budgetary control process and is audited by both the Comptroller and Auditor General and by ComReg's own internal auditors.
- 48 In response to An Post's submission that the cost of regulation is effectively borne solely by An Post, this is correct. Section 30(2) of the Communications Regulation Act 2002 (as amended) provides that "for the purpose of meeting expenses properly incurred ... in the discharge of its functions relating to postal services [ComReg] may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service." In accordance with that provision, ComReg's decision on its levy¹⁰ for postal regulation clearly sets out the basis for setting the levy. That decision was based on careful review of all relevant expenditure in order to determine the amount necessary to enable ComReg to properly discharge its statutory functions relating to postal services. As above, in accordance with the Postal Act, only those postal service providers who provide a postal service within the scope of the universal postal service pay the cost of regulation by way of a levy to ComReg. There are only two postal service providers providing postal services within the scope of the universal postal service, and An Post is by far the largest of these. The other postal service provider has relatively minimal revenue on its postal services within the scope of the universal postal service and it contributes in proportion to this revenue, subject to a minimum levy contribution threshold.

⁸ For example, the cost of postal regulation in Belgium is €2.9m p.a. and in Portugal €1.9m p.a.

⁹ ComReg Document No. 13/30 dated March 2013

¹⁰ ComReg Document No. 13/50 dated May 2013

- 49 In response to An Post's view on that certain postal service providers may not be compliant with their authorisation requirements, ComReg's role in relation to the authorisation of postal service providers is clearly set out in section 38 of the Postal Act and all authorised service providers are of themselves required to be compliant with the obligations set out in the Postal Act, and in particular section 39 of the Postal Act. Upon receipt of a written complaint supported by evidence, ComReg has and would make contact with a postal service provider if there are concerns in relation to the terms of its authorisation.
- 50 In response to Citypost's submission on the lack of competition and that the established dominant provider controls key access elements vital for proper competition, ComReg considers that efficient competition can benefit both postal service users and the universal postal service provider. For example, the universal postal service provider can benefit from economies of scale where competing postal service providers utilise its postal network to provide their postal services (e.g. An Post provide the "last mile" delivery for competing postal service providers). However, arising from the Postal Act, ComReg notes that in relation to access by postal service providers to the postal network of the universal postal service provider, its role is limited to one of dispute resolution where invited to intervene by either party to the commercial negotiation. If Citypost wishes to submit a dispute it must follow the process as set out in ComReg's dispute procedures for access by a postal service provider to the postal network of a universal postal service provider¹¹.
- 51 In response to Citypost's submission that ComReg's regulatory powers in the postal sector should match its powers to regulate the electronic communications sector, ComReg agrees. Unlike the electronic communications sector regulated by ComReg, ComReg does not have competition law powers in the postal sector. This would be a matter for the State to address by amending legislation.

2.1 Other comments raised by respondents

- 52 The following summaries other comments raised by respondents and then follows with ComReg's assessment of these.

Role of ComReg

- 53 The **CWU** submits that:

- ComReg's role in price setting has been repealed and is now limited to an ex-post review;

¹¹ ComReg Document No. 12/111 dated October 2012

- ComReg has no role in setting or negotiating terminal dues tariffs and these represent 40% of An Post's total losses in providing the universal postal service;
- ComReg has taken questionable decisions; the first on quality of service compliance, the second regarding the delivery of mail to a rural postal service user.

54 In light of this, the CWU submits that it is wholly appropriate to review the current and continued funding of ComReg and its role. The CWU further submits that perhaps it is time to move the role of compliance and monitoring, which, according to the CWU, largely defines the role of ComReg, over to the Competition and Consumer Protection Commission. Alternatively, the CWU submits that ComReg should be benchmarked against international comparators and whether the cost of regulation should be reduced accordingly.

55 An Post submits that in recent years there have been changes to ComReg's areas of responsibilities but claims it is not evident how such changes have been incorporated into the draft strategic intents, which appear to have only minor modifications to the last Strategy Statement. Furthermore, An Post submits that it would have expected ComReg to review and develop on its previous strategy statements.

ComReg's assessment of respondents' views

56 The European Postal Services Directive requires each Member State to designate one or more national regulatory authorities for the postal sector that are legally separate and operationally independent of the postal operators. As required by the European Postal Service Directive, the designated national regulatory authority has as a particular task to ensure compliance with obligations arising from the Directive, in particular establishing monitoring and regulatory procedures to ensure the provision of the universal service. As per s.14 of the Postal Act, the State has made ComReg the national regulatory authority for the purposes of the Directive. As the designated national regulatory authority, ComReg is tasked with statutory functions and objectives set by the Postal Act. These statutory functions and objectives account for most of ComReg's role and are unchanged since the Postal Act took effect, therefore the CWU is incorrect to state that ComReg's role as being fundamentally changed following the repeal of the price cap.

- 57 In response to An Post's submission on the changed areas of responsibilities, ComReg again notes that its statutory functions and objectives have not changed since the last strategy statement, therefore it is logical that ComReg's strategic intents remain largely the same, reflecting ComReg's largely unchanged statutory remit. An Post has not set out the specifics of the responsibilities of ComReg it submits have changed since the last strategy statement. In the absence of these specifics from An Post, ComReg assumes An Post is referring to the repeal of the price cap by the State in 2017; if so, this repeal simply removed ex-ante price control of the universal postal services by ComReg, an ex-post compliance role on the pricing of universal postal services remains. This is clearly set out in the draft Postal Strategy Statement. Other than the repeal of the price cap resulting in ComReg having no ex-ante price control role, there has been no change to ComReg's statutory remit.
- 58 With regard to CWU's submission on the cost of regulation, as noted earlier, ComReg operates in an efficient manner and the level of expenditure is kept to a minimum and subject to public procurement processes, where required. ComReg has a tight budgetary control process and is audited by both the Comptroller and Auditor General and by ComReg's own internal auditors.
- 59 With regard to the CWU's submission on international benchmarks, ComReg notes that its postal regulation team is relatively small compared to other EU Member States. ComReg's postal regulation team is 5 persons working solely on postal issues with additional use of legal staff where required. ComReg consider this level of staffing to be low relative to other European postal regulators. ComReg's views in this respect are supported by WiK Consult¹² in its report to the European Commission which noted that "...a NRA requires a basic minimum level of resources to do its job, including, on average, a staff of 9 to 10 persons." Regardless of population size, ComReg has to conduct the same regulatory tasks required by the European Postal Services Directive. Therefore given similar workloads regardless of population size, ComReg requires appropriate staffing and expertise to meet the requirements of the European Postal Services Directive. For this reason, ComReg utilises external expert assistance where required so that ComReg can ramp up and down resources as required.
- 60 With regard to the compliance cases referred to by the CWU, ComReg does not agree with the submission made by the CWU; ComReg took appropriate action within its regulatory function and remit to protect the interests of postal users within the State.

¹² At page vii of WiK Consult's study for the European Commission 'The role of regulators in a more competitive postal market' dated September 2009

Regulatory Impact Assessment

61 **An Post** questions why a Regulatory Impact Assessment (“RIA”) is not conducted for the Postal Strategy Statement.

ComReg’s assessment of respondents’ views

62 In response, ComReg notes that no decision is being made that requires a Regulatory Impact Assessment. Most of the proposed actions in the Strategy Statement will be subject to separate public consultations; ComReg will consider whether a RIA is required for each of those actions at that time.

Claimed lack of coherent postal strategy

63 **An Post** submits that the draft Postal Strategy Statement does not provide a coherent strategy for the future of the postal sector with little detail on practical implementation so that An Post states it is not clear to it what the resulting regulatory strategy involves.

ComReg’s assessment of respondents’ views

64 In response, ComReg notes that its strategic intents and related goals for those strategic intents are clearly set out. Furthermore, these strategic intents and goals are coherent, mainly informed by our statutory remit under the Postal Act. As An Post is aware, and as set out in the Strategy Statement, any ComReg proposals for each of these goals will be subject to a separate process, including public consultation, where required, to set out the full details on the practical implementation of any proposals to meet these goals. Therefore, ComReg is not yet in a position to set out any detailed proposals but will do so in relevant consultations as they arise.

Data and evidence to support strategy

65 **An Post** claims that the draft Postal Strategy Statement makes a number of statements and opinions which appear to be over-simplistic and lacking sufficient supporting analysis. An Post also claims that these statements are inconsistent with An Post’s own detailed research and analysis in these areas. An Post notes that ComReg only compares the headline price of stamped letter across the EU, An Post states that this is not a relevant benchmark. An Post further submits that the data ComReg presents does not use a consistent period of time.

ComReg's assessment of respondents' views

66 In response, ComReg disagrees with An Post's contention and notes that An Post does not provide specific examples where ComReg's statements lack sufficient supporting analysis. ComReg further notes that An Post's did not submit its own detailed research and analysis which it claims are inconsistent with ComReg's statements. With regard to the comparison of the price of a domestic stamped letter across Europe, ComReg remains of the view that it is appropriate and relevant, particularly as the domestic stamped letter accounts for a significant proportion of the universal postal service and noting that the information is taken from a report conducted by Deutsche Post¹³. With regard to the period of analysis, ComReg notes that this is simply based on the period of available public data.

Prioritisation of proposed actions

67 **An Post** requests that ComReg provide a plan clearly setting out ComReg's prioritisation of its proposed actions.

68 An Post claims that in the past it has had concerns over ComReg's regulatory focus and areas prioritised and provides, by way of example, its request that ComReg review the overall pricing regime.

ComReg's assessment of respondents' views

69 In response to An Post's request for a plan setting out the timing of ComReg's proposed actions, ComReg refers An Post to its published action plan 2017/18¹⁴.

70 In response to An Post's comments on the prioritisation of work when required and its example of the review of the price cap, ComReg notes that ComReg did commence a review of the price cap immediately following the request for a review of the price cap being made by An Post – see ComReg Document No. 16/81 dated 16 September 2016 following An Post's request by correspondence dated 14 September 2016 (published ComReg Document No. 16/81a). That review was completed¹⁵ within the timeframe of s.30(5) of the Postal Act but a ComReg decision on that review was not required following the passing of the Communications Regulation (Postal Services) (Amendment) Act 2017 in March 2017, which repealed the legislative requirement for a price cap and ComReg's price cap decision.

¹³

http://www.dpdhl.com/en/media_relations/media_library/documents/letter_price_survey_europe.html

¹⁴ See <https://www.comreg.ie/about/what-we-do/corporate-governance/> for ComReg's action plan

¹⁵ Report by Frontier Economics 'Review of price cap on certain universal postal services'

Claimed introduction of additional regulatory uncertainty

71 According to **An Post**, the draft Postal Strategy Statement can be seen as introducing additional regulatory uncertainty as there is mention of:

- Revisiting the specification of the universal postal service
- Reviewing the designation of universal postal service provider(s).

ComReg's assessment of respondents' views

72 In response, ComReg disagrees that its draft Postal Strategy Statement can be seen as introducing regulatory uncertainty. The specifics An Post refers to are tasks that the Postal Act requires ComReg to undertake, and any decision regarding these tasks will follow due process, including public consultation.

An Post's statement to the Oireachtas

73 According to **An Post** the draft Postal Strategy Statement is incorrect, inaccurate and misleading to state that An Post's statement to the Oireachtas Joint and Select Committee on Communications, Climate Action and Environment in January 2017 was contrary to information in An Post's audited 2016 Regulatory Accounts, published April 2017.

ComReg's assessment of respondents' views

74 With regard to comments by ComReg in the Draft Postal Strategy Statement 2018-2020, dated 25th August 2017, relating to An Post's appearance at the Oireachtas Committee on Communications, Climate Change and Environment on 17th January 2017, (now withdrawn by this Response to Consultation), ComReg accepts that statements by An Post to the Oireachtas Committee were truthfully made.

An Post's financial and liquidity situation

75 **An Post** submits that ComReg's statement as to the financial and liquidity situation facing An Post is damaging to An Post as it raises some concerns on the stability of An Post and the continuation of service provision to customers. An Post claims that this could put An Post at a commercial disadvantage and indirectly encourage customers to further reduce volumes.

- 76 An Post also submits that given ComReg has publicly noted its concerns on the financial and liquidity situation facing An Post since 2012, An Post questions how these concerns have not been addressed by ComReg to date, in particular through the previous pricing regime. An Post further submits that the requirement for the significant price increases by An Post in April 2017 at the very least points to a serious problem with ComReg's previous pricing regime and its decision making in this area. In addition, both An Post and the **CWU** submit that ComReg fails to highlight the improved financial situation with the removal of the price cap regime.
- 77 The CWU submits that An Post's liquidity issues are largely driven by An Post's need to carry years of losses arising from the provision of the universal postal service. The CWU claims that ComReg would not permit the adequate and necessary price rises that would have allowed An Post to mitigate the losses arising from the provision of the universal postal service. The CWU further claims that the price cap limited the commercial freedom of An Post.
- 78 To address the financial and liquidity situation, An Post acknowledges the need for a continuing focus on reducing its cost base and submits that it is undertaking significant efforts and actions to address the financial issues that arise from a decline in mail volumes. An Post notes that this is being undertaken in conjunction with the Department of Communications, Climate Action and Environment ("DCCA") and NewERA¹⁶ with Department of Public Expenditure and Reform ("DPER"). However, An Post contends that the reduction of its cost base is not a simple task and there is not a simple linear relationship between a reduction in mail volumes and the ability to reduce costs. Furthermore, An Post submits that it has to take into consideration the impact on the universal postal service of any cost reduction.
- 79 With regard to ComReg's finding of inefficiency within An Post, An Post stresses that this was internal economic benchmarking of An Post's delivery network in 2014, and this revealed inefficiencies in the range of 7% to 22%. An Post and the CWU submit that ComReg must present the inefficiency range and not just the upper bound.

¹⁶ NewERA (New Economy and Recovery Authority) provides centralised financial and commercial advisory services and acts as a dedicated source of corporate finance advice to Ministers of the Government

ComReg's assessment of respondents' views

- 80 In response, ComReg strongly disagrees that its statements as to the serious financial and liquidity situation facing An Post is damaging to An Post. The statements are factual, based on An Post's audited Annual Reports. Also, An Post has made similar statements about its financial and liquidity situation¹⁷, indeed An Post's submission to the consultation on the draft Postal Strategy Statement opens with "(i)n response to its severe cash flow position An Post worked with Government to remove the Price Cap Mechanism allowing An Post to implement cost based tariffs and providing the financial resources, for a short period, to facilitate the implement the strategy" developed with McKinsey & Company. This is also acknowledged by DCCAIE noting that the "main impact" of the repeal of the price cap has been to "avoid a cash crunch in 2017" at An Post¹⁸. Furthermore, An Post has stated that "(t)he recent Government decision to fund [An Post] provides some funding certainty although further debt funding cannot be ruled out".¹⁹
- 81 Regarding the "comprehensive detailed strategy" that An Post has developed with McKinsey & Company, An Post has not submitted this to ComReg.
- 82 With regard to reducing losses on the universal postal service, since 2012, ComReg has acted within its remit set by the Postal Act. ComReg's actions on the pricing of the universal postal services reduced the losses on universal postal services subject to price control by just over two-thirds. ComReg's price cap decision, when in effect, set an overall maximum price increase % for certain universal postal services. The setting of the maximum price % under the price cap included a modest 2% per annum efficiency target. If An Post had met or exceeded the efficiency target it would have, all other things below equal, earned profit on the universal postal services subject to the price cap. An Post did not achieve the 2% per annum efficiency target²⁰. However, ComReg has always acknowledged that fully reducing the losses required action from An Post management, particularly the reduction of cost in line with volume reductions.

¹⁷ For example, letter from An Post dated 10 February 2017 (published ComReg Document No. 17/18s) and letters from An Post dated 14 October 2016 (published ComReg Document No. 16/81a)

¹⁸ DCCAIE press release, 21 November 2017 @ <https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Minister-Denis-Naughten-secures-%E2%82%AC30-million-in-State-funding-to-protect-Post-Office-network.aspx>

¹⁹ Statement by An Post to Oireachtas Communications Committee, 28 November 2017

²⁰ An Post correspondence dated 14 September 2016 – published as ComReg Document No. 16/81a

- 83 With regard to the claimed improved financial situation arising from the removal of the price cap, ComReg notes that there is currently no publicly available financial information to support this. An Post's 2017 financial information will not be made publicly available until May 2018. However, ComReg notes despite the repeal of the price cap in March 2017, State funding was still required in November 2017²¹ and according to An Post further debt funding by the State "cannot be ruled out"¹⁹.
- 84 With regard to the actions being undertaken by An Post in conjunction with DCCAE, DPER, and NewERA, ComReg notes that it has provided, and will continue to provide, reports and analysis to DCCAE and DPER (as An Post's shareholders) on An Post's financial performance.
- 85 ComReg welcomes An Post's acknowledgement for the need for a continuing focus on reducing its cost base. With regard to An Post's submission on the cost inefficiency of 7-22%, ComReg has added the range to the final Strategy Statement to clarify.
- 86 With regard to An Post's statement that the available scope to achieve cost reductions is limited by its obligation to provide the universal postal service to its current specification, ComReg notes that this is an issue for An Post management to address in the first instance. ComReg also notes that any application by An Post to seek to fund the net costs (if any) of providing the universal postal service should provide An Post management with some useful information in this respect, as such an application would have to set out how An Post would re-optimize its mail operation in the absence of the USO – i.e. such an application would identify the changes to services that An Post would make if it operated on an unconstrained commercial basis. Also, as set out in the Strategy Statement, ComReg will revisit the specification of the universal postal service to ensure that it remains appropriate given the changes in the economic, technical and social environment and to the reasonable needs of postal service users. If that review finds that the specification should be reduced, this would in turn reduce the level of regulatory intervention and the extent of the requirements imposed on An Post, as the current universal postal service provider.
- 87 In response to the CWU's claim that the liquidity situation is largely driven by An Post's provision of the universal postal service and a claimed failure by ComReg to not permit necessary price rises, ComReg notes the following:
- Prior to the implementation of the price cap, ComReg permitted all price rises to the universal postal service sought;

²¹ An Post press release, 21 November 2017 @ <http://www.anpost.ie/AnPost/MainContent/About+An+Post/Media+Centre/Press+Releases/2017/STATEMENT++Announcement+of+30m+support+for+An+Post+restructuring.htm>

- The price cap permitted a significant price increase for the universal postal services in the first year of the price cap, followed by more modest annual price increases. The price cap significantly reduced losses on the provision of the universal postal service;
- The price cap only applied to certain universal postal services. For all other postal services, An Post had full commercial freedom on pricing;
- As acknowledged by An Post, there is also a need to reduce costs in line with volume declines in the universal postal service;
- A significant proportion of losses in the universal postal service relate to international inbound mail. The pricing of international inbound mail is a matter for An Post.

ComReg queries on the reporting of increased stamped volumes in the 2016 audited Regulatory Accounts

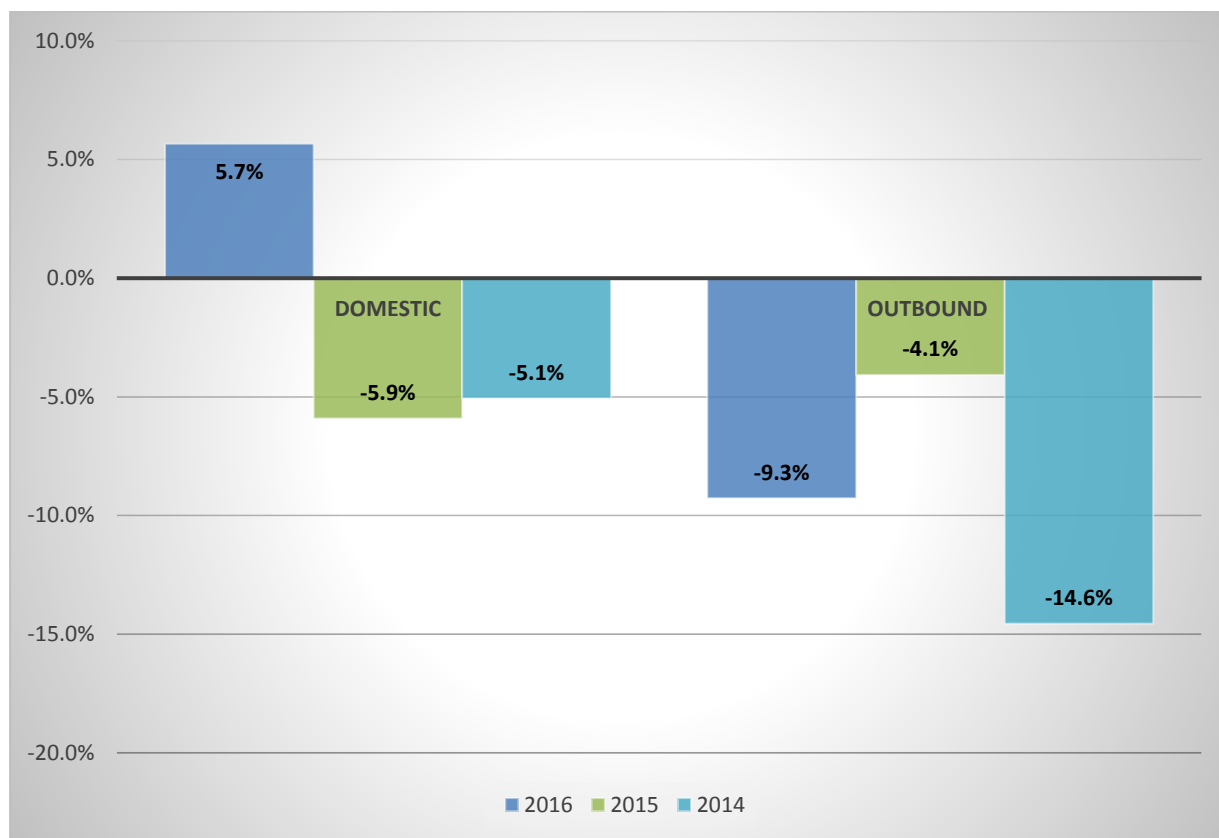
88 **An Post** notes that it is currently engaged in answering ComReg's specific queries on the 2016 audited Regulatory Accounts and questions why the draft Postal Strategy Statement didn't await An Post's response to these queries.

ComReg's assessment of respondents' views

89 In response, most of ComReg's queries on the 2016 Regulatory Accounts are in relation to matters not raised in the draft Postal Strategy Statement. However, a significant query from ComReg, which was flagged in the draft Strategy Statement, was to understand why the 2016 audited Regulatory Accounts reported an increase in stamped volumes of c.4% in 2016 (due to c.6% increase in domestic stamped volumes), particularly Domestic Stamped Letter Volumes which reported an increase of c.7% in volume. ComReg is particularly concerned as such an increase in volume results in a significant increase in costs²² to those stamped universal postal services. The information from the Regulatory Accounts is critical to ComReg in monitoring An Post's compliance with various obligations under the 2011 Act, including the tariff requirements (that the price of each universal postal service is cost-oriented, with particular focus on the Domestic Stamped Letter given its price increase of 39% to €1).

²² As a significant proportion of Direct and Indirect costs are allocated based on volume and are consequently impacted by volume movements year on year

Figure 2: An Post’s % change in stamp volumes – domestic and outbound



Source: ComReg analysis of An Post’s audited Regulatory Accounts

90 ComReg has offered to engage with An Post to determine why these increases in stamped volumes were reported in the audited 2016 Regulatory Accounts, a change of some 8-9% when compared against declines in prior years. As noted by ComReg in the Postal Strategy Statement, the greatest clarity possible regarding changes in mail volumes at An Post is paramount for all stakeholders.