



Response to Consultation on Draft Postal Strategy Statement 2012 – 2014

Response to Consultation

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1 Introduction

- 1 In ComReg Document 12/99, ComReg published its Draft Postal Strategy Statement for the period 2012-2014 for consultation. ComReg sought written responses from interested parties on the document and it received feedback from five respondents. Within this document, ComReg has summarised the responses received and sets out its views on how the respective issues will be treated.
- 2 The strategic direction proposed in the Draft Postal Strategy Statement was supported by interested parties. However, following consideration of respondents' views some adjustments have been made to our final Postal Strategy Statement.
- 3 In this document we address the key points raised by interested parties. This discussion then informs our finalised Strategy Statement (ComReg Document 12/116) published in tandem with this document.

List of responses

- 4 Submissions were received from five respondents.

Respondents
An Post
Communications Workers' Union ("CWU")
DX Network Services Ireland ("DX")
Nightline
TICo Mail Works ("TICo")

- 5 A copy of all responses received is available on ComReg's website as ComReg Document 12/116s.

2 Strategic Context and Environment

- 6 In Section 3 of the Draft Postal Strategy Statement, ComReg set out the strategic context and environment for the postal sector and invited comments from interested parties on same.
- 7 Specifically, ComReg asked the following question to determine whether it had correctly identified the key developments and challenges for the Irish postal sector and for postal regulation:

<p>1. Do you agree with ComReg's analysis of the Strategic Context and Environment in Chapter 3? Are the developments / challenges the correct and most important ones? Are there other developments /additional challenges for the Irish postal sector and for postal regulation over the next two years?</p>
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Respondents' views and ComReg's positions

- 8 Respondents broadly endorsed ComReg's analysis of the strategic context and environment. The following key issues were raised by respondents and for each of these ComReg's position is provided:

Ensuring the provision of a universal postal service

- 9 An Post claims that its strategy for maintaining the universal service in the face of declining volumes is described in the consultation paper as being a two pronged approach. In Consultation 12/99, the approach is stated to be "*a combination of delivering costs savings and development of new revenue streams. Notwithstanding this, the universal service provider has also increased certain postage rates earlier this year*". However, An Post notes that all three policy levers under its Five Year Plan must be harnessed in order to safeguard delivery of a viable universal postal service (cost reduction programmes, exploiting new business opportunities and price increases). An Post states that price increases form a critical component of its overall Plan and as a result it has applied to ComReg to increase prices for its universal postal services. An Post also considers that further price increases will be required over the life of this Five Year Plan.

- 10 In response, ComReg agrees that appropriate price increases, in keeping with the tariff requirements of the 2011 Act may be required to ensure the provision of a universal postal service and this was noted in the draft Strategy Statement. However, in allowing any price increases for universal postal services, ComReg must ensure, in accordance with the 2011 Act, that they do not have an adverse effect on the provision of the universal postal service by, for example, contributing to a spiral of declining volumes leading to further price increases. ComReg agrees with An Post that other approaches, such as reducing costs in the face of volumes declines, must be taken to ensure the provision of a universal postal service.

Growing parcel market

- 11 An Post notes that ComReg cites a statement by the Boston Consulting Group (“BCG”) that states that the parcel market will become larger than the letter market. However, An Post also notes the BCG report goes on to state that for most operators this will happen in the next ten years. Therefore, An Post considers that the effect of the growing parcel market is outside the time period for this Strategy Statement. An Post agrees that the parcels market is where the growth opportunities will arise but considers that replacing the reduction in revenue arising from a decline in letter volumes with increases in a very competitive parcels and packet market is not realistic. An Post notes that the Hooper report, a seminal piece of research on the UK’s universal postal service commissioned by the UK Government, agrees with this position.
- 12 In response, ComReg, in the final Strategy Statement, will acknowledge the timeframe noted by BCG for the growing parcel market, while noting the trend for growth in the parcel market.

Changing postal sector

- 13 An Post notes that the new channels for the payment of postage stamps does not take into account the significant advances already achieved by An Post in relation to state of the art vending machines (some incorporating self service facilities) and the introduction of SOAR (adhesive stamps on a roll) available at post office counters.
- 14 In response, ComReg, in the final Strategy Statement, will note these methods of payment.

DCENR’s Strategy Statement

- 15 An Post and CWU state that the DCENR’s Strategy Statement for the postal sector should be considered by ComReg in the development of its Postal Strategy Statement.
- 16 In response, ComReg notes that it is an independent regulator with its remit for the postal sector set by the 2011 Act. However, DCENR’s Strategy Statement was considered in the course of the formulation of ComReg’s draft Postal Strategy Statement.

Regulatory ‘forbearance’

- 17 An Post believes that ComReg should develop a reasoned doctrine of regulatory ‘forbearance’. An Post notes that the DCENR in its ‘Liberalisation of the Irish Postal Market: Options Paper’¹ states that “*regulatory intervention occurs only when necessary.*” An Post further notes that the WiK Consult Report for the European Commission² also sets out as a best regulatory practice that “*national regulatory authorities will also need to develop a reasoned doctrine of ‘forbearance’.* That is, postal regulators, like regulators in other sectors, should develop reasoned criteria that identify circumstances in which regulatory controls should not be exerted even though they may be available.”
- 18 In response, ComReg notes that its remit for the postal sector is set by the 2011 Act. As a matter of principle, ComReg only intervenes where necessary or where required to do so by legislation. All interventions by ComReg are evidence-based and follow due process and relevant procedures.

Ensuring all postal service providers meet their obligations

- 19 An Post claims that a regime aimed at encouraging as many operators as possible, irrespective of their size or resources, to enter the mails market may have unintended consequences. An Post further claims that these other operators may not regard themselves as having a longer term commitment. Furthermore, An Post believes encouraging operators into the mails market may have the perverse effect of undermining the survival of more viable and long established players. Consequently, An Post states that decisions that result in access at multiple points to An Post’s postal network need to be considered carefully.
- 20 In response, ComReg notes the following. Pursuant to the 2011 Act, postal service providers are authorised and as a result of that authorisation must comply with certain conditions. These conditions include the provision of a complaint and redress procedure to safeguard the interests of postal service users. Also, pursuant to section 42 of the 2011 Act, an authorised postal service provider must give ComReg a minimum prior notice in writing of its intention to withdraw a postal service.
- 21 In relation to ensuring the provision of the universal postal service, ComReg notes its function in that regard. However, in respect of the provision of universal postal services (e.g. letters), ComReg notes that there is limited competition for the provision of these services in Ireland and generally across Europe.

¹ Dated October 2009

² http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf

22 ComReg also notes its objective to facilitate the development of competition. In this respect, 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 2011 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.

Facilitating the development of competition

23 Nightline notes that ComReg’s statement of its own statutory objectives appears to indicate that its third objective, namely the facilitation of the development of competition and innovation is “subject to”, and hence subordinate to, its first objective, which relates to ensuring the provision of a universal postal service. According to Nightline, the qualification in this statement suggests that ComReg perceives these two objectives as being in conflict with each other. Nightline requests ComReg to confirm that this is not the case.

24 Nightline also notes that ComReg has played an important role in establishing and implementing clear distinctions between wholesale and retail markets in the telecommunications sector. Nightline believes that similar pro-competition interventions will be required from ComReg if full market opening in Ireland’s postal sector is to become a reality. Nightline believes that there is a strong risk that ComReg may be side-tracked in its pro-competition brief by its focus on the provision and availability of a universal postal service

25 In response to Nightline’s observation on the relationship set by the 2011 Act between ComReg’s role to ensure the universal postal service and to facilitate the development of competition, ComReg notes that its objectives in relation to the provision of postal services are set out at section 12(1)(c) of the 2002 Act as amended by the 2011 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 promoting 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 but ensuring the availability of a universal postal service does take priority over the development of competition and innovation.

26 In response to Nightline's request that ComReg implements a clear distinction between the wholesale and retail markets in the postal sector, ComReg notes that its remit in relation to the postal sector is set by the 2011 Act. Consequently, for access by a postal service provider to the universal postal service provider's postal network, which could potentially be considered as wholesale access, ComReg's role relates solely to a dispute resolution function where requested to intervene in these commercial negotiations. Therefore, ComReg's role in wholesale access for the postal sector is very different from its remit in certain telecommunications markets.

3 Are ComReg's high level goals and priorities broadly correct?

- 27 ComReg asked the following to determine whether interested parties considered that ComReg's high level goals and priorities were broadly correct:

2. Do you agree with ComReg's proposed high level goals?
3. Do you agree with ComReg's proposed priorities within the high level goals?

Respondents' Views and ComReg's positions

- 28 Respondents broadly endorsed ComReg's high level goals and the prioritisation of these. The following were key issues raised by respondents and for each of these ComReg's position is provided:

Ensuring the provision of a universal postal service

- 29 An Post believes that the crucial qualification that the encouragement of competition and innovation must not adversely impact on the universal postal service (as required by section 10 of the 2011 Act) receives insufficient emphasis in the draft Strategy Statement.
- 30 In response, ComReg disagrees. ComReg's remit as set by the 2011 Act is clear in the Postal Strategy Statement.

Competition Law

- 31 Nightline urges ComReg to be vigilant of potential abuse by An Post of its dominant position in the market. Nightline believes that there is a strong risk that margin squeeze may occur, since the incumbent, An Post, will simultaneously be delivering inputs to such competing postal providers as Nightline (for example in form of downstream access) and will also be competing on the competing postal service providers' output market. Nightline also urges ComReg to adopt a more proactive position on how such access should be achieved.
- 32 Also, Nightline asks ComReg to clarify how, in the event of a dispute over access terms; ComReg proposes to work with The Competition Authority to ensure resolution of such a dispute. Nightline also requests ComReg to state what aspects of the respective remits of ComReg and The Competition Authority will be relevant under various scenarios.

33 In response, ComReg notes that its remit is set by the 2011 Act. In relation to access by postal service providers to the postal network of the universal postal service provider, ComReg's role relates solely to dispute resolution where required to intervene in these commercial negotiations. Furthermore, ComReg notes that, unlike for example in the telecommunications sector, it does not have competition law powers in the postal sector so any competition law issues, such as abuse of dominance, will be a matter for The Competition Authority to investigate. ComReg will assist in any competition law investigations in the postal sector where requested to do so by The Competition Authority.

Quality of service for universal postal services

34 An Post notes that section 32(1) of the 2011 Act states that ComReg may, from time to time, revise the quality of service standard. An Post further notes that the current Direction is in place since 2004. An Post contends that quality of service must be viewed in the context of a mails market undergoing a profound and radical transformation. While An Post shares the observation expressed in the draft Postal Strategy Statement that quality of service "*is central to enabling businesses to operate efficiently*" and that a next working day service should be provided, An Post believes that it is vital that the service levels and targets are reflective of current market needs. In this respect, An Post notes that a European Commission postal study conducted by WIK Consult declared that "*these needs may evolve over time. If, for example, expanding use of email reduces the need of rapid delivery of letters, then the quality of service standards should be relaxed.*" Therefore, it seems reasonable to An Post that ComReg's Postal Strategy over a period to 2014 would, at least, conduct market research and review the current direction to ensure that the standard set still reflects the needs of users.

35 In response, ComReg is of the view that the quality of service direction is reflective of market requirements. Subject to resource availability, ComReg plans to conduct surveys in the period of this Strategy Statement and will consider among other things a survey of postal service users in relation to quality of service.

Surveys of postal service users

- 36 An Post considers that using “*robust and accurate evidence derived through....consultation with key stakeholders*” does not support the interests of postal service users as such consultation is not supported by empirical research on actual consumer needs. An Post contends that this is essential in view of the stipulation in Article 5.1 of Directive 97/67/EC that the universal postal service “*shall evolve in response to the technical, economic and social environment and to the needs of users*”. Unfortunately, according to An Post, the Ipsos MRBI surveys commissioned by ComReg on Business and Residential users focus more on measuring satisfaction levels than in seeking to identify evolving needs. In this respect, An Post directs ComReg’s attention to a report published by Consumer Focus in July 2012 entitled “Sense and Sustainability – A Report on the Universal Service in Britain” that was prepared for a UK consumer watchdog by the market research consultants Accent. The research was commissioned to provide a better understanding of what residential and SME consumers in the UK are likely to need from a postal service in the future. According to An Post, the actions set out in the final Strategy Statement should include an assessment of postal service user needs.
- 37 DX welcomes ComReg’s commitment to conduct surveys and encourages ComReg to make sure that they are used to influence the future of the universal postal service.
- 38 In response, ComReg confirms that the Postal Strategy Statement commits to surveys as per action 6.3.2 which notes that the surveys could include “*future requirements from the postal service.*” ComReg also notes that its consultations are open to all interested parties to respond to and in the past postal service users have responded in numbers to ComReg’s consultations, for example, ComReg Decision 03/50.

Customers’ complaints

- 39 An Post recognises that ComReg has a statutory objective to promote the interest of users and pledges its full cooperation to ComReg in “*rectifying any unfair or unreasonable treatment of consumers*” which might unintentionally occur. But An Post considers that considerable time and resources have been expended by both the staff of ComReg and An Post on attempting to resolve frivolous and vexatious cases. To ensure that the vast majority of genuine enquiries receive the attention they deserve, An Post maintains that those which are manifestly unreasonable should not be entertained as a matter of policy.

40 In response, ComReg disagrees that there has been a lot of frivolous or vexatious cases and the evidence does not justify An Post's contention. Further, ComReg is surprised that An Post would view its customers' complaints as such. ComReg believes good customer communication and relationships by An Post with its customers is pivotal to reducing the volume of complaints and is also key to ensuring the universal postal service. In this regard, ComReg notes that it is important for postal service providers to have robust codes of practice / terms and conditions for dealing with customer complaints. Complaints are first dealt with by respective postal service providers. It is only unresolved complaints that are considered by ComReg and these are assessed on a case by case basis against established code of practice / terms and conditions.

Postal levy

41 An Post notes that the Postal Levy Order is to be reviewed in accordance with the 2011 Act. An Post considers that as it will remain the dominant market player for the foreseeable future it will have to meet the majority of ComReg's expenses (relating to the regulation of the postal sector) from its own resources. An Post notes that stakeholders are assured that ComReg applies "*continuous and rigorous scrutiny of costs in all of our activities*". In this respect, An Post states that the cost of postal regulation in the UK is to reduce by 28% over the next three years and as Ireland's population is one thirteenth that of the UK it is An Post's legitimate hope and expectation, with the implementation of similar economies, that the annual cost of postal regulation here would fall proportionately. An Post contends that it is important to the industry that ComReg can demonstrate that it operates in an efficient manner relating to postal matters and the level of expenditure and therefore the Postal Levy is kept to a minimum.

42 In response, ComReg does operate in an efficient manner in relation to postal regulation and the level of expenditure is kept to a minimum. ComReg has a tight budgetary control process and is audited by both the Comptroller and Auditor General and by ComReg's own internal auditors, currently Deloitte.

- 43 In relation to the comparison with the UK, ComReg notes that its postal team is relatively small compared to the UK³. ComReg's postal team is 4 persons⁴ working solely on postal issues with additional use of accounting, legal, and economic staff where required. ComReg considers this level of staffing to be low relative to other National Regulatory Authorities (NRAs). Furthermore, ComReg notes that, regardless of population size, ComReg has to conduct the same regulatory tasks as other NRAs such as Ofcom, for example setting a price cap. Therefore, given similar workloads on NRAs regardless of population size, ComReg requires appropriate staffing and expertise to do this. For this reason, ComReg utilises expert assistance where required so that ComReg can ramp up and down resources as required. ComReg's views in this respect are supported by WiK Consult⁵ 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 about 9 to 10 persons. The relatively low level of resources available to NRAs in some medium to small postal markets, and even more in very small markets, suggests that these NRAs may lack the minimum tools needed to regulate postal markets effectively."*
- 44 Notwithstanding the above, the introduction of the 2011 Act, has front-loaded many tasks for ComReg, and some of these tasks inevitably require expert assistance. Therefore, there will be a front load of costs in relation to postal regulation to be covered by the new Postal Levy Order. ComReg will seek views on this by way of a public consultation before the Order is made. ComReg notes that under section 30(11A) of the 2002 Act, a levy imposed under section 30(2) of that Act in the postal sector has to be imposed in an objective, transparent and proportionate manner which minimizes additional administrative costs and attendant charges to ComReg.

³ In the UK, the dedicated postal regulator, Postcomm, had a staff of between 50-60 full time equivalents and an annual spend of between stg£5 – 8 million. See <http://stakeholders.ofcom.org.uk/binaries/post/postal-service-annual-report.pdf> for more information

⁴ There is a vacancy for an additional analyst

⁵ At page viii of WiK Consult's study for the European Commission 'The Role of Regulators in a More Competitive Postal Market' dated September 2009

4 Are ComReg's proposed actions and proposed timing of these actions broadly correct?

- 45 ComReg asked the following in order to provide an opportunity for interested parties to comment on ComReg's proposed actions and to identify any other actions required. In addition, ComReg sought the views of interested parties on the proposed timing of the actions:

4. Do you agree with ComReg's proposed actions to achieve the priorities within each of the high level goals? Are there additional actions required over the period of this Strategy Statement?
5. Do you agree with ComReg's proposed timing of the actions?

Respondents' view and ComReg's position

- 46 Respondents broadly endorsed ComReg's proposed actions and proposed timing of these actions. In particular, An Post noted that it is critical that the indicative timeframes set by ComReg to complete the actions are adhered to. The following key issue was raised by Nightline:

Consultation on methodology for USO net cost

- 47 Nightline considers that ComReg needs to allocate particular priority and resources to the consultation regarding funding (if any) of the net cost of the universal postal service (if a net cost is found to exist). Nightline contends that clarity on this issue is crucial to the business plans of all market players, including Nightline. Nightline believes that it will be established that no net cost is incurred by An Post in providing the universal service, when all other benefits accruing to the universal service provider are taken into account – but Nightline states that it requires formal confirmation as soon as possible that this will be the case.
- 48 Also, Nightline believes the timeframe for setting the methodology for net cost calculation should be accelerated by one quarter in each case, that is, consultation to commence before the end of 2012 and final determination to be made during Q1 2013. Nightline contends that market players require certainty regarding what costs may or may not be levied on them before they can determine what level of investment they are prepared to make in postal services and infrastructure. Nightline urges ComReg to give priority to this consultation process.

49 In response, ComReg notes that the timelines set out in the Strategy Statement are challenging and cannot be brought forward given the work required before a consultation can take place. ComReg understands and has stated that it will provide regulatory certainty as to how the universal service provider should submit a net cost application. At this stage, absent the methodology being set and any application by the universal postal service provider, ComReg cannot say whether there will be a net cost or not.

5 Other issues raised

50 Some respondents made general comments as opposed to responding to each of ComReg's questions. Also, some respondents make general comments in addition to their responses to each of ComReg's questions. These general comments have been considered by ComReg and key issues raised are listed below along with ComReg's position.

Programme for Government

51 An Post notes that as the designated universal service provider, it is important, and in the interests of all stakeholders in the industry, that An Post remains a strong and vibrant Company. An Post notes that this position was recognised in the Programme for Government.

52 In response, ComReg notes that it is an independent regulator whose remit is set out in primary legislation. However, the Programme for Government was considered in the course of the formulation of ComReg's draft Postal Strategy Statement.

Price increase application by An Post

53 CWU notes that the request from An Post for an increase in the price of a stamp has, as of yet, not been granted by ComReg. CWU notes that a price increase is one of the options available to An Post in the context of managing its cost base in a very challenging environment. Also, CWU considers that the price of the stamp has not tracked inflation over the years and that a review of the tariff is long overdue.

54 In response, ComReg notes that it has recently published an update⁶ of its review of An Post's application to change the charges for certain of its postal services within the scope of universal postal service. As noted therein, Comreg now awaits an amended price application from An Post. ComReg does note that a price increase to match inflation could be considered especially as CPI changes will be allowed under the new price cap regime which will be of the form "CPI-X%".

Legal proceedings in relation to Quality of Service

55 CWU considers that it is not helpful that ComReg has decided to pursue a legal action against An Post with a view to imposing a fine of €12m. CWU considers that this action by ComReg is not in keeping with the spirit and intent of the statutory functions for ComReg as set out in the 2011 Act.

56 As this is part of current legal proceedings, ComReg is not in a position to respond save from noting that ComReg must ensure compliance by the universal service provider with its obligations under the 2011 Act in relation to the provision of universal postal service.

⁶ See Information Notice 12/109 dated 9 October 2012

Better regulation

57 CWU claims that ComReg has all too often in the past not adhered to the principles set out in the Government White Paper 'Better Regulation' which calls for an evidence-based approach to regulatory decision making.

58 In response, ComReg strongly disagrees with this unsubstantiated claim by CWU. ComReg is keenly aware of the importance of accountability for an independent regulatory body, and ComReg works with all of its stakeholders to ensure it operates within the spirit of the principles of "Better Regulation". ComReg's accountability framework ensures independent, transparent and evidence-based regulation. Our use, where appropriate, of public consultation procedures, Regulatory Impact Assessments (RIAs), industry fora, and our Postal Expert Advisory Group ensures that the views of all stakeholders are considered in our decision making process. It also ensures that the impact of our decisions is proportionate, effective, and in the broad interests of all stakeholders.

Important that An Post reduces its cost base

59 DX and TICO believe that it is important and justifiable that An Post reduces its cost base in the context of declining volumes in order to ensure the provision of the universal postal service.

60 ComReg agrees that it is important that An Post reduces its cost base in the face of declining volumes.

Accounting Direction

61 DX states that ComReg should ensure that the Accounting Direction that is designed to minimise the risk of cross subsidisation between regulated and non-regulated markets is fully adhered to and that the Direction is regularly reviewed to ensure that it is fit for purpose.

62 In response, ComReg confirms that it is working to ensure that An Post complies with its Accounting Direction.

6 Conclusion

- 63 In the accompanying finalised Postal Strategy Statement, ComReg has set out its strategic priorities for the next two years. ComReg appreciates the responses received from interested parties and has carefully considered the matters raised. These have been very helpful in validating our overall approach and refining our goals, priorities, actions, and timing of our actions for the period 2012 - 2014.
- 64 ComReg's Postal Strategy Statement for 2012-2014, published in parallel with this document, is therefore the product of revisions to the original draft document based on these inputs and on our own subsequent analysis of the views provided.
- 65 The approach set out in the Postal Strategy Statement for 2012-2014 will be implemented through our published Annual Work Programme and it will also be integrated into the performance objectives of ComReg's postal section, as well as the individual performance objectives set down for ComReg's postal staff.